Global Financial Services Regulatory Guide - Colombia

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# 1. Who regulates banking and financial services in your jurisdiction?

## Who regulates banking and financial services in your jurisdiction?

Colombia has three main authorities responsible for supervising/regulating its financial, securities and capital market institutions.

First, the Ministry of Finance and Public Credit, through its financial regulation unit (URF) is responsible for preparing and adopting regulations on the requirements, restrictions and guidelines for the operation of the financial, insurance and securities markets in Colombia, within the limits set forth by the Constitution of Colombia and its framework laws. Under the Constitution, activities involving the collection, management, use and investment of resources collected from the public are activities of public interest and thus, subject to special supervision by the State.

The Constitution states that the president of Colombia is the authority responsible for the supervision, surveillance and control of anyone carrying out financial activities or activities involving securities markets or insurance, as well as any other activity related to the management, use or investment of resources obtained from the public (Article 189.24, Colombian Constitution).

The Constitution also entitles the president of Colombia to intervene in financial, capital market and insurance activities and any other activity related to the management, use or investment of resources that come from the savings of third parties.

Law 35/1993 sets forth the objectives that the intervention in financial, securities market and insurance activities must have, which includes, among others: (i) the protection of the public interest and the rights of consumers; (ii) the safeness and transparency of contracts and markets; (iii) the promotion of free markets and efficiency among financial entities; (iv) the democratization of credit; (v) the avoidance of excessive risk concentration; and (vi) the promotion of solidary financial institutions.

Second, the office of the Financial Superintendent of Colombia (*Superintendencia Financiera de Colombia* or SFC) is the main public authority responsible for inspecting, supervising and, to an extent, regulating financial, insurance and securities institutions. The SFC is responsible for –among others–the day-to-day supervision of regulated entities, authorizing those activities requiring financial licenses and enforcing violations of financial regulation and the law in general by regulated entities (and in some instances, by unregulated parties).

Third, the Colombian Central Bank (*Banco de la República*), as the monetary authority under the Constitution, is responsible for the macro-supervision of the banking industry. Although it is not a frontline regulator like the SFC, it does have a role under Articles 371 to 373 of the Constitution. In addition, the Central Bank is the main authority for foreign exchange regulation.

With respect to anti-money laundering, both the Ministry of Finance (through its financial intelligence unit) and the SFC are responsible for supervising financial services firms.

# 2. What are the main sources of regulatory laws in your jurisdiction?

## What are the main sources of regulatory laws in your jurisdiction?

The relevant legislation in Colombia is composed of laws issued by the Congress of Colombia (either “framework” laws, or laws addressing specific matters), secondary legislation produced by the Ministry of Finance and Public Credit issued as presidential decrees, and resolutions and circulars of the SFC. Decrees issued as secondary legislation by the president are hierarchically below the laws produced by Congress. They thus are meant to implement such laws, without exceeding the scope and boundaries of such laws. In turn, the secondary legislation produced by the SFC implements in detail the rules set forth by presidential decrees without exceeding the limits provided by such decrees. SFC regulation may address general or specific matters.

The following is a list of the main statutes:

Law 45/1990 – This law contains general rules and requirements applicable to regulated entities (such as banks, finance corporations, financing companies, finance lease companies, insurers and insurance intermediaries).

Decree 663/1993 – While formally a decree, it has the authority of legislation approved by Congress. This decree is of paramount importance as it contains the Financial Systems Organic Statute (EOSF), which, among other matters: (i) sets forth the general structure of the Colombian intermediated financial system; (ii) describes the activities authorized to be carried on by regulated entities; (iii) sets forth in detail the creation, authorization, operation and liquidation of regulated entities; and (iv) sets forth in detail the powers of the SFC. This decree has been amended a number of times since its inception.

Law 526/1999 – Creates the Financial Information and Analysis Unit (UIAF) which aims to prevent and detect operations that can be used as an instrument for concealing, managing, investing or leveraging any form of money or other assets arising from or for financing criminal activities, or to give appearance of legality to criminal activities or to transactions and funds associated with them.

Law 546/1999 – This law sets forth the rules on residential mortgage lending.

Law 964/2005 – This is the framework law of the public securities market.

Law 1328/2009 – This law amends Decree 663/1993 and sets forth rules on financial consumer protection.

In order to implement these laws, the government has issued the following secondary legislation (either directly or through the SFC):

Decree 2555/2010—This consolidates secondary legislation applicable to financial intermediaries, insurance and, importantly, securities markets in a single document.

SFCs Basic Legal Circular – This contains detailed rules and guidance.

While the above statutes and and secondary legislation are applicable primarily to Colombian-regulated institutions, they are also relevant in certain respects to non-Colombian entities, particularly concerning the promotion of financial/capital-markets products (as further discussed in Section 3).

# 3. What types of activities require a license in your jurisdiction?

## What types of activities require a license in your jurisdiction?

Based on constitutional mandates, Colombia regulates a broad range of activities, which require the SFCs authorization and often, the setting up of a local, regulated entity. Relevant examples are as follows:

Banking activities involving accepting deposits (which covers banks in general and an array of other deposit-taking institutions)

Lending in general, when the sums originate in funds collected from the public

Carrying out insurance and reinsurance in general

Carrying out insurance and reinsurance intermediation

Intermediation of publicly traded securities (which covers, among others, broker-dealers, providing securities investment advice and providing activities ancillary to securities markets such as custody, registration of transactions, settlement and self-regulation)

Infrastructure providers (which covers electronic payment services, rating agencies and delivery of detailed market information, among others)

Trust services (which may collect funds from the public)

Bonded warehouses

Investment management (which may be carried out by an array of institutions, such as broker-dealers, pension funds and trust companies)

Financial cooperatives

Management of pension funds

Promotion of non-Colombian financial/capital market services and products in Colombia

Note that proprietary sale and/or purchase of cryptoassets and cryptocurrencies is considered a non-regulated activity under current law and the Colombian central bank has stated in non-binding opinions that the cryptocurrencies are not currencies. However, following a number of supervisory recommendations and opinions, financial institutions are mostly barred from investing in or trading with cryptoassets.

# 4. How do the licensing requirements apply to cross-border business in your jurisdiction?

## How do the licensing requirements apply to cross-border business in your jurisdiction?

Where a firm outside Colombia deals with a client or a counterparty located in Colombia, its activities will typically be considered promotion of financial/capital-market products and thus will be subject to Colombian regulations on such activity. The service provider will need to consider whether they are triggering a local licensing obligation and also whether they comply with Colombian marketing rules.

A general restriction applies to any entity organized outside of Colombia whose corporate purpose is the offering of financial and/or securities-related services or products (“**Promotion Restriction**”). The law defines “promotion or advertising” as any communication or message made directly to a person or transmitted through any means of communication, which is aimed at, or has the actual effect of, initiating (directly or indirectly) the delivery of financial or capital-market activities.

Broadly, the Promotion Restriction prohibits foreign entities from advertising or promoting financial or capital market services/products in Colombia or specifically targeting residents of Colombia for such purposes. In particular, such entities are prohibited from the following:

Sending employees, contractors, representatives or agents to Colombia or retaining the services of residents of Colombia for the purpose of carrying out promotion or advertising activities of the entity or its services/products

Performing, directly or indirectly, any promotional or advertising activities in Colombia in connection with the foreign entity

Foreign entities may only promote or advertise their financial and/or capital-market services in Colombia or target individuals or companies in Colombia under either of the following circumstances:

If they have set up a representative office (oficina de representación)

If the Foreign Entity seeks to promote capital-market services/products, the foreign entity has signed a correspondent agreement (contrato de corresponsalía) with a local broker-dealer (sociedad comisionista de bolsa) or a financial corporation (corporación financiera)

Nonetheless, the Promotion Restriction does not apply under “reverse solicitation” scenarios, that is, when the Colombian client contacts the foreign entity, at its own initiative, and in the absence of any promotion or publicity by the foreign entity.

# 5. What are the requirements to obtain authorization in your jurisdiction?

## What are the requirements to obtain authorization in your jurisdiction?

Separate authorization requirements must be considered, depending on whether the foreign entity wishes to carry out its activities offshore or onshore.

If offshore, the entity will need to file an application with the SFC for authorization to set up a local representative office or execute a correspondent agreement (as applicable). The process is set out in Section 6.

If onshore, the entity will need to file with the SFC an application to set up a local entity and authorization to carry out operations locally. While the process may vary depending on the nature of the activity to be carried out locally, in most cases, the process set forth under Article 53 of the EOSF will apply (“**Article 53 Authorization**”). The process is set out in Section 6. For most types of local regulated entities, regulatory capital requirements also apply.

# 6. What is the process for becoming authorized in your jurisdiction?

## What is the process for becoming authorized in your jurisdiction?

(a) Offshore activities/products - representative office/correspondence agreement authorization

An applicant wishing to obtain authorization for promoting financial and/or capital market products/services must complete a formal process involving the completion of required application forms and the submission of supporting information.

In relation to timing, while the law does not set forth limits, in most cases, the regulator will take between three and six months from receipt of a completed application in which to determine whether or not to approve the application.

In general, the following documents will be required to be filed:

Certificate issued by the competent authority evidencing the: (i) legal existence; (ii) authorized representatives; and (iii) activities for which the entity is authorized in its own jurisdiction, as well as the initial and expiration dates of authorization (if applicable)

 Articles of incorporation and bylaws

 Authorization or consent issued by the competent authority for the promotion of services through a representative office

 Business plan, which must contain a description of the main activities that will be conducted in Colombia, including a description of planned marketing activities

 Documentation appointing an individual in Colombia as the representative of the office (issued by the corresponding corporate body or authority), together with such individual’s CV (containing sufficient evidence enabling determination of such individual’s moral character, knowledge and experience in the field)

 Consent for the disclosure of criminal records of the company and its directors

(b) Onshore activities/products – Article 53 Authorization

If an applicant wishes to carry out onshore regulated activities, an Article 53 Authorization most often will apply.

An applicant must complete a formal process to obtain authorization, involving the completion of required application forms and the submission of supporting information.

In relation to timing, in most cases, the regulator will have four months from receipt of a completed application in which to determine whether or not to approve the application (in practice, the filing process may take 12 months or more).

The requirements and complexity of an Article 53 Authorization may vary depending on the complexity of the activity to be carried out in Colombia and the nature of the entity to be set up. Nonetheless, the following three steps will generally apply:

a. Request, SFC approval and publication

This initial filing must include the following documents:

Draft bylaws of the future company

Proposed capital and form of payment

CVs of the proposed shareholders (if individuals)

CVs of the proposed company managers and directors1

Business study confirming the feasibility of the company, which must describe:

technological and administrative infrastructure

internal control mechanisms

risk management plan

Copy of the authorization issued by the corresponding regulator for the setting-up of the entity (if applicable)

Any additional information as may be requested by the SFC

After filing all required documents in due form, the SFC will publish twice in a Colombian newspaper a notice indicating that a request has been made for the set-up of the entity and basic information on the filing (name of entity, proposed capital, etc.). The purpose of the notice is to allow third parties to present objections to the authorization (which any interested party must file within ten days of each notice).

After the notices stage is terminated and all documents are complete, the SFC must decide on the requested authorization within four months. However, this term may be extended if the SFC asks further questions or complementary information. The SFC may deny authorization if it finds that the filing does not meet legal requirements or if it considers that the character, responsibility, suitability and capital solvency of the shareholders have not been satisfactorily proven.

b. Incorporation

After the SFC issues its approval, the shareholders must incorporate the company (i.e., sign the corresponding public deed before a Colombian notary public and register the company in the corresponding chamber of commerce), within the term set forth by the SFC.

However, the entity may not yet start to operate.

c. Authorization to operate

Finally, the newly created entity must provide evidence to the SFC of compliance with the following:

Due incorporation

Payment of regulatory capital

Readiness of technical and operational infrastructure

Upon confirmation, the SFC must issue the authorization certificate within the following five days. The company may not start business operations until after the SFC issues such certificate.

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[[1]](https://resourcehub.bakermckenzie.com/en#9982/Chapters%20for%20uploading%20to%20DP%20for%20FSR%20Guide%202019/Colombia%20Global%20FSR%20Guide%202019.docx) Must sufficiently reflect their character, responsibility and suitability.

# 7. What financial services passporting arrangements does your jurisdiction have with other jurisdiction?

## What financial services passporting arrangements does your jurisdiction have with other jurisdiction?

Applicable law allows certain local securities intermediaries (e.g., broker-dealers) to distribute non-Colombian collective investment funds that meet certain conditions and criteria (regardless of their denomination), provided that the supervising authority in the place of incorporation of the fund has executed an information-sharing protocol or agreement with the SFC. For this mechanism to be viable, the fund must be subject to regulatory supervision.

The SFC has executed information-sharing agreements with a number of regulators, including CIMA (Cayman Islands), CONSAR (Mexico), SBIF (Chile) and OSFI (Canada).

Under this distribution structure, the fund itself will not be subject to SFC supervision, but the local distributor will continue to be subject to local distribution rules and SFC supervision.

# 8. Authors and contact information

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