

GETTING THE
DEAL THROUGH 

Franchise 2016

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Colombia

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Overview

1 What forms of business entities are relevant to the typical franchisor?

Article 474 of the Colombian Commercial Code states that foreign entities are obliged to incorporate a branch in Colombian territory whenever their purpose is to execute 'permanent activities' in Colombia. However, as the execution of a franchising agreement with a Colombian national is not considered to be a permanent activity under Colombian legislation, for a typical franchisor there is no legal requirement to incorporate any type of entity.

2 What laws and agencies govern the formation of business entities?

The general regulations of the Code of Commerce are available for the incorporation of a company that will be used as a vehicle to carry out the operations of either the franchisee or the franchisor.

3 Provide an overview of the requirements for forming and maintaining a business entity.

The basic requirements, regardless of the kind of business entity chosen, will involve at least the designation of:

- a name;
- the number of shareholders and their participation in the capital of the corporation;
- a domicile;
- a legal representative;
- the term of existence;
- the description of business activities to be executed; and
- the entity's by-laws.

4 What restrictions apply to foreign business entities and foreign investment?

Although foreign investment is generally unrestricted, there are some exceptions to this rule for the following cases:

- processing, storage and disposal of toxic, radioactive or dangerous materials when they have not been locally produced;
- activities of national security and defence; and
- public television concessions, which may not have foreign investment greater than 40 per cent of the concession's share capital.

On the other hand, in some cases according to the regulations governing the financial and insurance sector, foreign investors must obtain prior authorisation from the Financial Superintendency.

The incorporation of foreign business entities in Colombia requires the same procedures as for establishment of a wholly Colombian-owned company, since any of the corporate types can be adopted by foreign investors without special arrangements or requirements.

5 Briefly describe the aspects of the tax system relevant to franchisors. How are foreign businesses and individuals taxed?

As a general rule, a withholding tax of 33 per cent of the nominal value of the payment of royalties, interest, commissions, fees, rents, compensation for personal services, or operation of any kind of intellectual property or

Know-How, technical services assistance, is applied upon remittance of the money abroad considering this payment arises from a national source that has the ability to increase the foreign franchisor's equity. Nevertheless, according to Resolution 62 of 24 February 2014, with the registration of the agreement before the competent authority a deduction could be given to the franchisee over the retention value and in consequence the applicable rate in that case would be only a 10 per cent. It is worth mentioning that this deduction applies to services that could be categorised as of technical assistance and sometimes in very limited instances a franchise agreement can fall in this category.

On the other hand, imports, goods sold in Colombia and services provided in Colombian territory are subject to VAT at a rate of 16 per cent. Regardless of the domicile of the provider, if the services are rendered in Colombian territory, VAT must be withheld by the franchisee. Withholding taxes apply for income as well as for VAT in accordance with articles 406 to 416 and article 437-1 of the Colombia Tax Statute. Each of the payments made by the franchisee to the franchisor for technical assistance services provided is considered for the franchisor as Colombian-sourced income, and is subject to income tax in Colombia, consequently a withholding tax applies.

6 Are there any relevant labour and employment considerations for typical franchisors? What is the risk that a franchisee or employees of a franchisee could be deemed employees of the franchisor? What can be done to reduce this risk?

An employment contract may be oral or in writing. It shall be deemed to be an employment contract regardless of the name given to the relationship, when the following three elements are present:

- the worker provides a personal service to the employer;
- the subordination of the employee, which allows the employer to demand that the employee comply with orders at any time, with respect to the manner, time or quantity of work to be performed, and to impose regulations in connection therewith; and
- the payment of a remuneration.

Note that one of the most important elements in franchise agreements is that the franchisee is paying the franchisor for the right to receive specialised know-how and a trademark licence. Consequently, one of the essential elements of a labour agreement is not present because the payment is made by the person who operates the business (franchisee) to the person who provides the know-how (franchisor).

Besides that, excessive limitation by franchisors of franchisees' freedom to organise their business can be justified as a consequence of the trademark licence granted by the owner of the mark, and not because the franchisee is rendering a personal service to the franchisor. In a franchise agreement it is obvious that the use of the mark involves the imposition of limitations to the franchisee by the franchisor out of commercial necessity, so it is extremely unlikely if not impossible that a franchise agreement could be categorised as a labour relationship.

On the other hand, please note that because of the reasons mentioned above, it is highly unlikely for the franchisee's employees to be classed as employees of the franchisor.

7 How are trademarks and know-how protected?

Trademarks are protected through registration with the competent national office. Mere use of the trademark does not provide any rights, and registration should meet the following requirements:

- the petition;
- a reproduction of the trademark where it is a denomination containing graphic elements, shape or colour, or a figurative, mixed or three-dimensional trademark with or without the use of colour;
- such powers of attorney as may be needed;
- proof of payment of the prescribed fees;
- the certificate of registration in the country of origin issued by the granting authority and, if so stipulated in domestic legislation, the receipt for payment of the prescribed fee, should applicants wish to avail themselves of the right provided for in article 6 of the Paris Convention for the Protection of Industrial Property.

Registration of a trademark, which can be presented for individual or multi-class trademarks, is granted for a term of 10 years counted from the issuance date and may be renewed for successive and unlimited 10-year periods.

Know-how may be equivalent to an industrial secret and protected as such. Consequently, agreements for the transfer of know-how, technical assistance, or the provision of basic or detailed engineering may include confidentiality clauses to protect the trade secrets contained therein, provided that such clauses are not contrary to antitrust provisions on free competition. For example, know-how that lacks confidentiality cannot be imposed as such upon the franchisee.

8 What are the relevant aspects of the real estate market and real estate law?

In terms of franchising agreements, there are no significant aspects regarding real estate, considering that the franchisor's task is to communicate to the franchisee the guidelines of the place of business according to which the franchising agreement shall be executed. They only become relevant depending on the nature of the business and the location the parties might select to carry out the operation.

Laws and agencies that regulate the offer and sale of franchises

9 What is the legal definition of a franchise?

Considering that in Colombia there is no legal definition of a franchise agreement, legal scholars have outlined several concepts regarding this matter. Without favouring one definition over another, we would summarise them by pointing out that a franchise agreement includes obligations of subsequent execution, by which a person (the franchisor) gives to another (the franchisee) the right to reproduce, under the franchisor's teaching and, with its continued assistance, a management system previously tested by the franchisor. The management system shall be distinguished by use of the franchisor's brand, with the comparative advantage sought by the franchisee that reasonably allows it to conduct a business minimising the trial and error aspects of a new business venture.

In summary, the agreements that are normally structured within franchising agreements and are considered its essential or important elements are the following:

- trademark licence: the franchisor authorises the franchisee to use the trademark and other distinctive signs that the former owns;
- transfer of know-how: the franchisor must train the franchisee regarding its business model, techniques and methods to be applied in the management of the business;
- distribution: in those models where the franchisee shall sell products supplied by the franchisor, it is necessary to introduce elements of the distribution agreement, but this does not affect the contractual nature of the franchise agreement as not every franchisee agreement involves the sale of goods;
- entry fee and royalties: commonly it is necessary to pay a fee for admission to the franchise, and a regular amount by the franchisee that is usually set based on a percentage of the franchisee sales;
- exclusivity: it is usual but not mandatory to set a territory where the franchisee will be able to act exclusively; and
- confidentiality: usually the franchisee must not reveal to third parties, even after the expiry of the contract, the information acquired during the performance of the contract, when this information is categorised as trade secrets.

10 Which laws and government agencies regulate the offer and sale of franchises?

In Colombia, there is no legislation governing commercial franchise agreements. Under this understanding, the franchise is known as an atypical contract, because it reflects a legal business that is not regulated by any code and its clauses are negotiated freely by the parties.

Accordingly, as the franchise is mainly regulated under the framework of a commercial contract, the applicable law is the general system of contracts and obligations of the Civil and Commercial Codes, which deal with the principles governing acts and contracts, and the obligations of civil law (effect, interpretation, cancellation or termination).

In accordance with article 4 of the Commerce Code, the terms of the contracts validly executed shall prevail over those commercial laws and customs which can also be applicable. That is, the law and customs may be applied only in those cases where the contract is silent on the matter discussed by the parties.

However, in practice this principle is very difficult to apply, and very case-specific, as there are many regulations – such as those setting forth legal procedures that cannot be ignored or modified by the parties by means of a private agreement – that a court might categorise as of public interest and override what was agreed by the parties.

On the other hand, and as stated in article 3 of the Commerce Code, the commercial custom is also applicable to franchising agreements and it has the same authority as commercial law in those issues that are not regulated by the agreement. International custom may also be applicable, as well as the analogy with civil law and other regulations.

11 Describe the relevant requirements of these laws and agencies.

See question 10.

12 What are the exemptions and exclusions from any franchise laws and regulations?

There are no such exemptions or exclusions.

13 Does any law or regulation create a requirement that must be met before a franchisor may offer franchises?

There are no laws or regulations setting out particular requirements in this regard.

14 Are there any laws, regulations or government policies that restrict the manner in which a franchisor recruits franchisees or selects its or its franchisees' suppliers?

There are no laws or regulations setting out particular requirements in this regard.

15 What is the compliance procedure for making pre-contractual disclosure in your country? How often must the disclosures be updated?

In Colombia there are no pre-contractual disclosure requirements for a franchise agreement, hence, no specific obligations on what a franchisor must disclose on the commercial offer during the pre-contractual stage.

16 In the case of a sub-franchising structure, who must make pre-sale disclosures to sub-franchisees? If the sub-franchisor must provide disclosure, what must be disclosed concerning the franchisor and the contractual or other relationship between the franchisor and the sub-franchisor?

There are no specific legal requirements applicable to disclosure in the case of sub-franchising.

17 What information must the disclosure document contain?

Under our general system of contracts, the franchise offer must contain the essential elements of the business. In this way, the information disclosed by the franchisor in the commercial offer shall not be misleading and will be sufficiently complete in a way that provides a fair assessment of the responsibilities and rights of the franchisee. Failure to do so might provide legal grounds to argue that the franchisee's consent was vitiated and might render some clauses, and even the whole agreement, null and void.

18 Is there any obligation for continuing disclosure?

As stated before, there is no specific legal requirement for disclosure or to inform about new developments of the system. However, according to the

general rule applicable to commercial relationships, the parties must disclose any information that may have a significant impact on the execution of the contract in order to avoid a possible breach of contract.

19 How do the relevant government agencies enforce the disclosure requirements?

Not applicable. (See question 16.)

20 What actions can franchisees take to obtain relief for violations of disclosure requirements? What are the legal remedies for such violations? How are damages calculated? If the franchisee can cancel or rescind the franchise contract, is the franchisee also entitled to reimbursement or damages?

There are no specific forms of relief because there are no disclosure obligations. However, if the franchisee demonstrates that damage has been incurred because the franchisor omitted important information that could only be obtained through disclosure, termination and actual damages plus loss of profits may be obtainable.

21 In the case of sub-franchising, how is liability for disclosure violations shared between franchisor and sub-franchisor? Are individual officers, directors and employees of the franchisor or the sub-franchisor exposed to liability? If so, what liability?

See questions 17 and 18.

22 In addition to any laws or government agencies that specifically regulate offering and selling franchises, what are the general principles of law that affect the offer and sale of franchises? What other regulations or government agencies or industry codes of conduct may affect the offer and sale of franchises?

See question 10.

23 Other than franchise-specific rules on what disclosures a franchisor should make to a potential franchisee or a franchisee should make to a sub-franchisee regarding predecessors, litigation, trademarks, fees etc, are there any general rules on pre-sale disclosure that might apply to such transactions?

Not applicable.

24 What actions may franchisees take if a franchisor engages in fraudulent or deceptive practices in connection with the offer and sale of franchises? How does this protection differ from the protection provided under franchise sales disclosure laws?

No specific laws apply for this particular case in relation to franchises. General rules on breach of contract and liability shall apply with the usual consequences of right of termination and payment of indemnification for actual damages and loss of profits. Besides this, criminal actions might also be available.

Legal restrictions on the terms of franchise contracts and the relationship between parties in a franchise relationship

25 Are there specific laws regulating the ongoing relationship between franchisor and franchisee after the franchise contract comes into effect?

No.

26 Do other laws affect the franchise relationship?

Considering that franchise agreements usually involve the performance of other contracts regulated by law, such as distribution and trademark licences, the articles contained in the Commercial Code for these contracts may affect the development of the franchise relationship.

Applicable trademark law demands that a trademark licence agreement shall be executed in writing. Therefore, it is arguable that a franchise contract must be in writing to be valid.

Colombian legislation requires registration of trademark licence agreement before the local Trademark Office (Superintendence of Industry and Commerce), to make the agreement opposable to third parties. This registration is not mandatory for the enforcement of the agreement between the parties, but it will be convenient to carry it out, to prove the use of

trademark registrations and because of its relevance as evidence to defend the trademarks against potential cancellation actions.

In summary, the omission to register the agreement will not hinder either party's right to file claims against the other and to enforce the agreement, in accordance with the Decision 486 of the Andean Community, but neither party could bind third parties.

Notarisation is not necessary for the validity of the agreement, but the Trademark Office requires the signatures of the parties to be duly legalised before a notary public or by apostille or before a consul to register the trademark licence.

27 Do other government or trade association policies affect the franchise relationship?

No.

28 In what circumstances may a franchisor terminate a franchise relationship? What are the specific legal restrictions on a franchisor's ability to terminate a franchise relationship?

As the franchise contract is atypical, rules and conditions must be stipulated in the agreement. As a consequence, if one of those rules or conditions were not followed, it would justify termination of the contract.

However, there are some grounds for termination established by law that are applicable to commercial relationships in general, such as if the other party is convicted of a crime, an act of God precludes the continuation of the commercial agreement, one of the parties is declared bankrupt, the trademark that distinguishes the franchise is cancelled or revoked, or the franchisee does not comply with the Colombian laws, for example, with tax and labour law.

This is certainly not a definitive list, and it is perhaps impossible to present a conclusive one. However, as a rule of thumb it would be fair to conclude that if any of the essential elements that constitute a franchise is not present, such situation would provide a reason for earlier termination.

A relative or absolute invalidity might arise if the contract becomes overly burdensome for either party, or if an unexpected situation arises that unfairly enriches one of the parties at the expense of the other. However, such termination can only be declared by a court or an arbitration tribunal.

29 In what circumstances may a franchisee terminate a franchise relationship?

See question 28.

30 May a franchisor refuse to renew the franchise agreement with a franchisee? If yes, in what circumstances may a franchisor refuse to renew?

As a general rule, a franchise agreement's term is fixed with automatic renewal when the franchisee has previously complied with the terms and conditions of the agreement and paid the 'renewal fee', if that applies. However, the parties usually include a termination notice before the term of renewal, in which either may communicate to the other party its intention not to renew the agreement.

31 May a franchisor restrict a franchisee's ability to transfer its franchise or restrict transfers of ownership interests in a franchisee entity?

Yes. The parties may include a prohibition on assignment in the franchising agreement in favour of the franchisor, so if the franchisee assigned the franchise the franchisor could terminate the franchising agreement.

32 Are there laws or regulations affecting the nature, amount or payment of fees?

Since there are no laws or regulations specific to franchise agreements in Colombia, the limits concerning fees and royalties, as well as the value of the initial fee, are to be defined by the parties in the agreement. Nevertheless, there are several paperwork requirements when the franchise agreement involves exchange operations involving foreign currency payments and operations of import and export of goods. Colombian residents and foreign residents who perform an exchange operation in Colombia must complete an exchange declaration form. The exchange declaration must be submitted to a commercial bank or authorised financial institution.

33 Are there restrictions on the amount of interest that can be charged on overdue payments?

Yes. Article 884 of the Commercial Code establishes that the parties may establish the amount of interest applicable to the contract, as long as this amount does not exceed one-and-a-half times the interest rate set by the Central Bank for overdue payments.

34 Are there laws or regulations restricting a franchisee's ability to make payments to a foreign franchisor in the franchisor's domestic currency?

Yes, the fees can be paid in a foreign currency. Colombia has no foreign currency export limitations.

35 Are confidentiality covenants in franchise agreements enforceable?

Yes, as long as such an obligation is explicitly stated in the agreement. No information is secret without the appropriate classification. In accordance with Decision 486 of the Andean Community, industrial secrets must fulfil certain requirements, such as the characteristic of being 'secret', which means that the owner has defined the information as confidential and informed the recipient of its confidential nature. Also, among other requirements, the said secret must have a commercial value and not be easily available to the public.

36 Is there a general legal obligation on parties to deal with each other in good faith? If so, how does it affect franchise relationships?

Yes. As the general system of contracts is applicable to franchise agreements, the general principle of good faith is paramount, as it is constitutionally enshrined; and, based on this, when any of the parties act in bad faith, for example, by providing misleading information, exaggerating the income that the franchised business can generate, hiding costs that are necessary to put the business into place, or disclosing or making improper use of the information obtained, the breaching party is liable for the damage caused and can be sued before a court of law.

37 Does any law treat franchisees as consumers for the purposes of consumer protection or other legislation?

No. Colombian consumer law has been designed only for end-users that are not part of the distribution chain.

38 Must disclosure documents and franchise agreements be in the language of your country?

Parties may choose the language in which the franchise relationship shall be conducted. In this regard, they are able to use a foreign language in the agreement if both are proficient speakers of such language. It is not mandatory to have the franchise agreement executed bilingually, however, it is recommended. Taking into consideration that Spanish is the official language of Colombia, we recommend that an agreement is executed in both English and Spanish, clearly specifying which of those versions prevails.

39 What restrictions are there on provisions in franchise contracts?

As mentioned before, the law does not address franchise agreements per se but a franchisor cannot avoid liability to consumers regarding acts carried out by the franchisee. Accordingly they should pay special attention to rules about consumer protection and database use. Set forth under Law 1480 of 2011, rules are provided for the relations between the consumer and the producers, distributors, retailers and suppliers, and any other party involved in the chain of sale of products and services. The law grants several rights to protect the consumer, relating to adequacy, quality, security, trademarks, legends, advertisements, and the liability of producers, retailers and suppliers, among other provisions. For illustrative purposes, the following are the most relevant provisions in relation to the franchising agreements:

- legal guaranty: set for a period of one year for new products and three months for used products, such periods could be less than the established term in the event that the final seller sets forth a different term for the guaranty. Such a term must be dictated to all the consumers;
- the joint responsibility of producers, retailers and suppliers over the guaranty of the products;

- defective products liability: the producers, distributors, retailers and suppliers are jointly responsible for damages caused by a defective product;
- the right to reverse the purchase of products or services in which the sellers give credit facilities to the consumer and the non-traditional or long-distance sales within five years from the time the customer acquired the products or services;
- the rules for internet sales and the right of consumers to reverse the payment made if the transaction is a fraud or mistake; and
- the express consent of the consumer to gather information about that consumer.

Intellectual property

The following intellectual property provisions must be taken into account:

- copyrights: regulated by Law 23 of 1982, Law 44 of 1993, Decision 351 of the Cartagena Agreement and regulatory decrees; and
- industrial property: the common regulation on patent rights is Decision 486 of the Andean Community Committee, which entered into force on 1 December 2000 for the members of the Andean Pact (Bolivia, Colombia, Ecuador, Peru and Venezuela) by Decree 2591 of 13 December 2000, and by regulatory Resolution 210 of 15 January 2001.

Exchange regime

As the franchise contract involves exchange operations, the parties must apply Law 9 of 1991, Resolution 8, 2000 of the Board of Directors of the Central Bank, and Law 1735 of 1993.

There are two basic markets in Colombia: the exchange market, comprising foreign currency that must be channelled through the intermediaries of the exchange market (ie, Colombian banks, financial institutions and exchange houses), and the free market.

Pursuant to article 7 of External Resolution No. 8 of 2000 of the Board of Directors of the Central Bank (the Exchange Statute), the following operations must be channelled through the exchange market:

- imports and exports of goods;
- foreign loans and related earnings;
- foreign investment in Colombia and related earnings;
- Colombian investment abroad and related earnings;
- financial investments in securities issued or assets located abroad and related earnings, except when investment is made with currency originating from free market operations;
- guarantees in foreign currency; and
- derivative operations.

All other operations in foreign currency may be channelled either through the exchange market or through the free market.

Colombian residents and foreign residents who perform an exchange operation in Colombia must complete an exchange declaration. The exchange declaration must be submitted to a commercial bank or authorised financial institution.

Foreign investments are permitted in all areas of the economy with the exception of activities related to defence and national security and the processing and disposal of toxic, dangerous or radioactive waste not generated in the country.

Payment of imports and royalties must be channelled through the exchange market and the supplier of the product may finance imports by foreign financial institutions, and by Colombian banks and authorised financial institutions.

Registration of technology import contracts

Resolution 0062 of 24 February 2014 must be taken into account since it regulates the terms, content and form for registration of technology import contracts. According to the Resolution, franchise agreements should be registered before the National Tax Office. The registration of such contracts is an implementation of Andean Community Rule 291 which sets out the common regime on trademarks, patents, licences and royalties. Generally, a withholding tax of 33 per cent of the nominal value of the payment of royalties, interest, commissions, fees, rents, compensation for personal services, or operation of any kind of intellectual property or know-how, technical services assistance, is applied upon remittance of the money abroad. With the registration of the agreement with the competent authority a deduction is granted over the retention value. Therefore, the fundamental purpose of this mechanism of registration in the Colombian legal system is obtaining tax benefits.

Environmental law

Established rights and obligations for those whose work or activity could degrade renewable natural resources or landscapes. Policies and regulations for the recovery, preservation, regulation, management, use and exploitation of the environment and the renewable natural resources might be of relevance in some franchise agreements.

Registration of licensing agreements

Resolution 0062 of 24 February 2014 must be taken into account since it regulates the terms content and form for registration of technology transfer agreements among which franchise agreements are included as all of them contain provisions about trademarks and know-how even patents. They should be registered before the National Tax Office (DIAN). The registration of such agreements is realised as an implementation of the Andean Rule 291 which states the Common Regime on Trademarks, Patents, Licences and Royalties.

40 Describe the aspects of competition law in your country that are relevant to the typical franchisor. How are they enforced?**Unfair Competition Law**

Set forth under Law 256/96 and Law 1340/09, the Unfair Competition Law provides rules against dishonest or fraudulent rivalry in trade and commerce, while the Antitrust Law protects free access to the market by preventing or prohibiting conduct or behaviour that restricts or tends to restrict free competition in the Colombian market, and prohibits abusive exploitation of a dominant position in the market. In this sense, clauses by which the franchisee is encouraged to take an unduly aggressive stance to win market share may fall under their provisions.

Non-competition

Contractual non-competition clauses are fully binding, except for individuals once the franchise or labour agreement expires - regardless of fault. Otherwise, the constitutional right to earn a living and to personal development would be violated.

It is possible to extend the franchisee's non-competition obligation to non-competing goods. In fact, one of the elements - although not fundamental - behind franchisee agreements is the commitment of franchisees to use their best efforts and attentions to the development of the franchised business. Therefore, if franchisees dedicate their time and resources to other activities, even if they do not compete directly with the goods or services offered under the franchised business, they might be breaching their agreement. On the other hand, such restriction cannot be arbitrary or applicable to activities that do not in any way affect the business model of the franchisor.

41 Describe the court system. What types of dispute resolution procedures are available relevant to franchising?

There are two main systems under Colombian law. The first is the ordinary system, in which the parties bring their disputes before a national judge to solve the controversy. Under this system, the proceedings take a significant amount of time because there are numerous cases assigned to each judge.

The other is when the parties decide to go to arbitration, in which case they waive their right to go to a national court and submit their disputes to an arbitration tribunal.

42 Describe the principal advantages and disadvantages of arbitration for foreign franchisors considering doing business in your jurisdiction.

The main advantage of going to arbitration is that the controversy is resolved through a much faster procedure than before a national court. In this regard, parties may agree on national or international arbitration.

According to the Colombian legal system, the agreement is to be governed by the laws and regulations of the country where it will be performed. Accordingly, if the agreement is to be performed in Colombia it shall be governed by the Colombian laws and regulations. Nevertheless, the parties are able to choose a different jurisdiction provided that there is a foreign element in the given contract such as the franchisor having its domicile in a foreign country. This is the only way to modify the Colombian jurisdiction over the agreement.

When choosing international arbitration, the principal advantage for foreign franchisors is that Colombia is a signatory of the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards. A final judgment or award granted outside Colombia pursuant to the applicable foreign laws, which is obtained without fraud and rendered after due notice, would be capable of being enforced in the courts of Colombia, provided that a judgment rendered by a court of Colombia would be enforceable in the given foreign jurisdiction, on a reciprocal basis, and that the judgment or award:

- does not relate to rights over real property located in Colombia at the time the suit was filed;
- does not contravene any public policy laws or regulations of Colombia, other than those governing judicial proceedings;
- is a final judgment or award not subject to appeal in accordance with the applicable foreign laws;
- does not refer to any matter upon which Colombian courts have exclusive jurisdiction;
- does not refer to any matter subject to a lawsuit brought in Colombia already decided by any court of Colombia;
- was obtained upon complying with the applicable foreign laws relating to service of process to the defendant, which compliance is presumed if the judgment or award is not subject to appeal; and
- is submitted to the exequatur procedure before the Supreme Court of Colombia.

The exequatur procedure is very demanding and strict, and even though the Supreme Court does not re-examine the merits of the case, a substantial number of applications for exequatur are rejected for lack of compliance with the applicable formalities, particularly for lack of sufficient evidence to prove the applicable foreign law. Assuming the exequatur is obtained, the foreign judgment shall, as a general rule, be enforced by means of an executive judicial action.



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While it is impossible to say how long it will take to enforce an international award, because that depends a lot on whether such award is contested or not before the Supreme Court, it is fair to say that it will not take less than two years, which might be the main disadvantage of going to arbitration.

43 In what respects, if at all, are foreign franchisors treated differently from domestic franchisors?

As an international law principle contained in international treaties, there cannot be any different treatment between foreign nationals and Colombian nationals. In this regard, every benefit or privilege granted to a Colombian national must be equally granted to a foreign national.

Getting the Deal Through

Acquisition Finance	Distribution & Agency	Labour & Employment	Public Procurement
Advertising & Marketing	Domains & Domain Names	Licensing	Real Estate
Air Transport	Dominance	Life Sciences	Restructuring & Insolvency
Anti-Corruption Regulation	e-Commerce	Mediation	Right of Publicity
Anti-Money Laundering	Electricity Regulation	Merger Control	Securities Finance
Arbitration	Enforcement of Foreign Judgments	Mergers & Acquisitions	Securities Litigation
Asset Recovery	Environment	Mining	Ship Finance
Aviation Finance & Leasing	Executive Compensation & Employee Benefits	Oil Regulation	Shipbuilding
Banking Regulation	Foreign Investment Review	Outsourcing	Shipping
Cartel Regulation	Franchise	Patents	State Aid
Climate Regulation	Fund Management	Pensions & Retirement Plans	Structured Finance & Securitisation
Construction	Gas Regulation	Pharmaceutical Antitrust	Tax Controversy
Copyright	Government Investigations	Private Antitrust Litigation	Tax on Inbound Investment
Corporate Governance	Insurance & Reinsurance	Private Client	Telecoms & Media
Corporate Immigration	Insurance Litigation	Private Equity	Trade & Customs
Cybersecurity	Intellectual Property & Antitrust	Product Liability	Trademarks
Data Protection & Privacy	Investment Treaty Arbitration	Product Recall	Transfer Pricing
Debt Capital Markets	Islamic Finance & Markets	Project Finance	Vertical Agreements
Dispute Resolution		Public-Private Partnerships	

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