



# Annual corporate compliance

Bogotá D.C., March 2, 2020

Dear:

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

**Subject: 2020 annual corporate compliance for legal entities with presence in Colombia**

Find herein a summary of the corporate, commercial, customs and foreign exchange obligations for 2020.

## 1. Corporate and commercial obligations

### 1. Renewal of the mercantile registry

1.

- Legal entities (companies and branches) must renew each year their mercantile registry before the chamber of commerce of their place of domicile.
- Failing to comply with this obligation may entail economic sanctions by the Superintendence of Industry and Commerce.

### 2. Hosting the general shareholders or partners assembly of 2019

2.

- Legal entities must meet at least once every year in order to approve financial statements in the date set forth in the bylaws. If this matter is not regulated in the bylaws, the meeting must take place in the first three months of the year.
- Within the month after approval of the financial statements, they must be filed before the chamber of commerce of their place of domicile.
- Failing to comply with this obligation would prevent the approval of the financial statements and may entail economic sanctions by the Superintendence of Companies (hereinafter, the "Superintendence").

### 3. Appointment of the statutory auditor

3.

- Companies that meet any of the following conditions must appoint a statutory auditor:
  - a). Gross assets, up to December 31st, 2019, equal or superior to 5000 Colombian monthly minimum wages.
  - b). Gross income, up to December 31st, 2019, equal or superior to 3000 Colombian monthly minimum wages.
- Failing to comply with this obligation may entail economic sanctions by the Superintendence

### 4. Web page's registration

4.

- 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.

### 5. Submitting information before the Superintendence

5.

- 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) 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.

6.

## Submitting financial information before the Superintendence

- According 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 2019. 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.)	2019 deadline	Last two digits of the tax ID number (NIT.)	2019 deadline
01-05	Monday, March 30th	51-55	Monday, April 20th
06-10	Tuesday, March 31st	56-6041	Tuesday, April 21st
11-15	Wednesday, April 1st	61-65	Wednesday, April 22nd
16-20	Thursday, April 2nd	66-7031	Thursday, April 23rd
21-25	Friday, April 3rd	71-75	Friday, April 24th
26-30	Monday, April 13th	76-80	Monday, April 27th
31-35	Tuesday, April 14th	81-85	Tuesday, April 28th
36-40	Wednesday, April 15th	86-90	Wednesday, April 29th
41-45	Thursday, April 16th	91-95	Thursday, April 30th
46-50	Friday, April 17th	96-00	Monday, May 4th

- 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 30, 2020, in accordance with External Circular 100-006 of 2018.
- Failing to comply with this reporting obligation may entail economic sanctions by the Superintendence.

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.)	2019 deadline	Last two digits of the tax ID number (NIT.)	2019 deadline
00-10	Monday, May 11th	51-60	Monday, May 18th
11-20	Tuesday, May 12th	61-70	Tuesday, May 19th
21-30	Wednesday, May 13th	71-80	Wednesday, May 20th
31-40	Thursday, May 14th	81-90	Thursday, May 21st
41-50	Friday, May 15th	91-00	Friday, May 22nd

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

8.

## 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.

9.

## 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.
- Failing to comply with this obligation may lead to economic sanctions by the Superintendence and the DIAN.

10.

### 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

12.

### Other matters

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

11.

### 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 2nd and March 31st.
  - 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.

## 2. Customs and foreign exchange obligations

### 1. Holders of the clearing account

#### a. Exogenous quarterly exchange information

- According to the Resolution No. 9147 of 2006, during the months of January, April, July, and October the holders of clearing accounts must transmit to the DIAN the exogenous exchange information of the immediately preceding quarter.
- The deadlines to fill out the information, will depend on the last digit (without taking into account the verification digit) of the NIT (Tax Identification Number) of the holders of the clearing accounts, as follows:

Last digit of the ID	Maximum presentation date in January, April, July and October
1	The tenth (10th) business day
2	The eleventh (11th) business day
3	The twelfth (12th) business day
4	The thirteenth (13th) business day
5	The fourteenth (14th) business day
6	The fifteenth (15th) business day
7	The sixteenth (16th) business day
8	The seventeenth (17th) business day
9	The eighteenth (18th) business day
0	The nineteenth (19th) business day

- Quarterly period is understood as the period between January 1st and March 31st, between April 1st and June 30th, between July 1st and September 30th, and, between October 1st and December 31st, respectively.
- Within the information to transmit it is required to include the details of the import, export, external indebtedness operations, services, transfers and other matters, data clarifications, etc. In any case, for the purposes of the operations to be transmitted, the FX code determined by Resolution number 69 of 2019 must be used.
- The Resolution number 69 of 2019 came into force on January 1st, 2020, and will apply from the first quarter of 2020 (January, February and March of 2020, to be presented on April of 2020) for the FX exogenous information that must be submitted before the DIAN. This Resolution introduced new FX codes and actualized the table of codes of purpose applicable for external indebtedness that must be submitted before exogenous information. Please bear in mind that the abovementioned Resolution repealed the Resolution number 99 Of 2015; therefore, it is necessary to validate each FX code to guarantee if that information must be included or not as part of the exogenous information to be submitted.
- Note: The foreign exchange market intermediaries and the concessionaires of financial post services that render financial services, are also forced to comply with the obligation of presenting and transmitting the exogenous exchange information for the operations that must be approved by the Central Bank.

## **b. Form No. 10 “Description of operations regarding the compensation account”**

- The Central Bank has established a mechanism for residents in Colombia in order that they comply with their obligations of transfer and reimburse of foreign currency for the payment of their foreign exchange operations.
- Within the monthly obligations of the compensation account holders, all the amount received and/or transferred must be informed filing Form No.10 “Description of operations regarding the compensation account” before the Central Bank, on a monthly basis within the calendar month following the operations to be reported, which means, until the last business day of the following month.

## **International investment**

### **a. Channeling of the foreign exchange**

- The recipients of foreign investment in Colombia must channel the amounts received for this matter through the foreign exchange market (foreign exchange market intermediary or clearing account), with the filing of a declaration of data exchange for foreign investment with the exchange number that applies. The registration will be automatically performed with the channeling of the currencies.
- Bear in mind that the branches of foreign subsidiaries may use the same declaration to register the Supplementary Investment of Assigned Capital.

### **b. Channeling of the foreign exchange**

- International investments made through mechanisms other than foreign currency, for instance, in-kind contributions, capitalization of external credit or sums that the foreign investors have the right to received, as well as business reorganization processes (whether mergers or divisions) must be reported to the Central Bank.

### **c. Replacement, cancellation and change of capital**

- The substitution procedures (changes in the holders of the investment or of the receiving company), cancellation or change of foreign investment capital must be registered with the Central Bank through the exchange forms that have been established for that purpose.

### **d. Advance payments for future capitalizations**

- Advances payments for future capitalization are considered as external indebtedness and must be registered before the Central Bank prior to the disbursement of resources. In the event that the advance is capitalized, and the shares or quotas of such capitalization are issued, the investment registration must be made. On the contrary, if it is not fully or partially capitalized, this must be reported through the presentation of a form by external indebtedness, which corresponds with the amortization of the debt and reporting the exchange rate that applies to the return of the money (amortization to the capital or payment of interests).

## **e. Conciliation of patrimonial accounts**

- Previously, the companies and branches of the general regime that on December 31st of each annuity were recipients of capital investment from abroad, were obliged to transmit Form 15 “Equity conciliation – companies and branches of the general regime” to the Central Bank. The Central Bank eliminated this obligation on September 24, 2018. Thus, for the fiscal year of 2019 it will not be mandatory to file in 2020 the Form No. 15.
- Regarding branches of the special regime with the obligation to transmit Form No. 13 “Registration of supplementary investment to the assigned capital and updating of equity accounts - branches of the special regime” the period to inform the updating of the equity accounts and the procedure for electronic transmission is six (6) months counted as of the closing date of December 31st, that is, June 30th of the year following the closing of the fiscal year.

## **External indebtedness**

- The operations of external indebtedness carried out by residents of Colombia, whether passive (in case of being receivers) or active (in the case of being lenders) must be reported to the Central Bank prior or concomitant to the disbursement of resources submit an external indebtedness form through a foreign exchange market intermediary.
- Taking into account that the registration of the debt must be processed before a foreign exchange market intermediary, it is pertinent to evaluate with it, in advance, the requirements required for the procedure. From our experience, we could indicate that the supporting documents required 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 indicates the agreed characteristics, including:
  1. - Loaned amount.
  2. - Interest rate agree by the parties.
  3. - Debt repayment plan.
  4. - Creditor or debtor data (company name, country of origin, type of lender or creditor).
  5. - Purpose of the loan
- Once the registration of the foreign indebtedness is done, the amount to be channelized should be informed before the same foreign exchange market intermediary or through the Company's clearing account through the presentation of a declaration of exchange for external indebtedness.

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## 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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