DOING BUSINESS IN Colombia

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**Business Structures:**
What types of business structures are permitted?

There is a wide variety of business structures permitted in Colombia, however the most common types are:

**Simplified Stock Companies (abbreviated as “S.A.S.”):**
The S.A.S. is the structure most frequently used in Colombia. This is due to a variety of reasons, including, among others: its incorporation is less expensive and demanding in comparison with the incorporation of other type of entities, its operation -in legal terms- does not require many formalities and its shareholders’ liability is capped at the sum of their capital contributions.

Regularity our advice is to incorporate a S.A.S., however, there are specific cases in which other business vehicles are more suitable for the needs of our clients.

**Stock Corporations (abbreviated as “S.A.”):**
A Colombian S.A. must have a minimum of five (5) shareholders. Setting up a S.A. involves the execution of a public deed (subject to legal exceptions) and the filing of such, along with the appropriate documentation, at the Chamber of Commerce. Shareholders’ liability is generally capped at the value of their capital contributions and a majority vote is required for the approval of corporate decisions falling within the shareholders’ authority. S.A. must also incorporate a Board of Directors and have a Statutory Auditor.

**Limited Liability Companies: (abbreviated as “Ltda.”):**
Can have up to twenty-five (25) partners and these can face personal liability up to the value of their capital contributions. Setting up a Ltda. involves the execution of a public deed (subject to legal exceptions) and the filing of such, along with the appropriate documentation, at the Chamber of Commerce. It is not mandatory to incorporate a Board of Directors, however it is obligatory to have a Statutory Auditor whenever the gross assets or the past year are equal or superior to five thousand (5000) times the minimum legal monthly wage, or the gross income or the past year are equal or superior to three thousand times (3000) the minimum legal monthly wage.

**Foreign Company Branch:**
A Branch Office of a foreign corporation must operate under the rules applicable to Colombian corporations. The Parent Company will be responsible for the operations of the branch in Colombia. Registering a Branch Office involves the execution of a public deed and the filing of such, along with the appropriate documentation, at the Chamber of Commerce. No Board of Directors is required as it is a mere extension of the Parent Company.

**Taxation:**
Briefly explain the country’s tax regime including rates and how rates differ based on business structures.

The following are the principal taxes collected in Colombia:

1. The general income tax rate for Colombian companies, Permanent Establishments and Branch Offices is thirty three percent (33%) plus a four percent (4%) surcharge payable on 2018. Such surcharge only applies when the taxpayer has a taxable income equal or higher than COP$800.000.000 – approx. USD$266.000.00.
2. Income tax rate for companies established in Colombian Free Trade Zones is twenty percent (20%).
3. Tax regulations have incorporated tax benefits (exemptions, special credits, additional deductions, etc.) which seek to encourage priority sectors for the national economy.
4. Tax regulations incorporate tax incentives for the areas affected by the armed conflict (“ZOMAC” for its acronym in Spanish).
5. A Value Added Tax (VAT) must be paid at rates of nineteen percent (19%), five percent (5%) and cero percent (0%). This tax levies, among others:
Immigration: Summarize immigration laws, including visas available for foreign employees.

Resolution 6045 of 2017 issued by the Colombian Ministry of Foreign Relations establishes the following visa categories and immigration requirements:

1. Visitor visa: granted to visitors traveling for tourism, businesses, seminars, training, medical treatment, and short-term services. Visitor visas may be granted with validity of up to two (2) years for multiple entries.

2. Migrant visa: granted to foreigners planning to remain in Colombia for long periods of time. It can be requested by foreign nationals employed by a Colombian entity, investors, students, refugees or individuals subject to Mercosur based reciprocity agreements. Migrant visas may be granted with validity of up to three (3) years for multiple entries.

3. Resident visa: Granted to foreigners that intend to settle permanently in Colombia. It can be requested by certain qualifying family members that have resided in the country under Migrant Visa for two (2) years, foreigners who qualify under Mercosur reciprocity agreements or who have held Temporary Work visa status for five (5) years. Resident visas may be granted with an indefinite validity period for multiple entries.

6. Consumption Tax must be paid at rates of sixteen percent (16%), eight percent (8%) and four percent (4%). This tax levies the following services or goods:

- The sale of corporal assets (personal property and real estate)
- The sale or assignment of rights over intangible assets related to intellectual property.
- The rendering of services within the country or services provided from abroad.
- The importation of tangible goods.
- Gambling operations.

7. Financial Transaction Tax (GMF): levies financial transactions, including the withdrawal of funds from savings and checking (regular) accounts, and the issue of cashier’s checks. This tax has a general rate of cero point four percent (0.4%) per operation.

8. Real Estate Tax or Property Tax: owners, possessors or usufructuaries of real estate are levied with this tax. Applicable rates range between cero point three percent (0.3%) to three-point three percent (3.3%) of the property value and must be paid to the municipal jurisdiction where the property is located and the activity to which such property is devoted. Tax rate between 0.3% to 3.3% of the value of property, depending on the municipality.

9. Registration tax: a tax levied on all acts, contracts or legal transactions that must be registered at the Chamber of Commerce. Applicable rates range between cero point one percent (0.1%) and one percent (1%) depending on the act that its being subject to registration.
**Foreign Investment Review and Issues:** Does the government review and approve foreign investments? What factors are considered?

Foreign investment brought into Colombia must be channeled and legalized through the Central Bank. Registration of foreign investment is carried out by the filling and signing of an Exchange Declaration with the local bank. No governmental review or approval is required.

**Dispute Resolution and Court Systems:** Summarize the court system, including the use of juries and arbitration.

Colombian private-law court system has a hierarchical structure. On the top there is the Supreme Court of Justice as the highest authority of the jurisdiction, with a civil chamber that concentrates on civil matters, a criminal chamber and a labor chamber that concentrate on their respective matters. The Supreme Court of Justice unifies the national jurisprudence and issues definite decisions over certain decisions that have passed through inferior bodies and have been appealed through an exceptional legal action by a party involved.

Located below, and regarding civil and labor matters, the different Superior Tribunals of the Judicial District appear. Each Tribunal exerts jurisdiction over a specific region in Colombia and has a civil chamber. Superior Tribunals of the Judicial District issue decisions over certain cases that decisions that have passed through Circuit Courts and appealed by a party involved.

Finally, regarding civil matters, the lowest bodies are the Civil Municipal and Circuit Courts. Each Court exerts jurisdiction over Colombian cities and municipalities. Disputes must be resolved at Municipal or Circuit courts depending upon the amount of the claim.

Appeals of decisions issued by Civil Municipal Courts will be raised before a Circuit Court and finally before a Superior Tribunal of the Judicial District. Appeals of decisions issued by Circuit Courts will be raised before a Superior Tribunal of the Judicial District and, exceptionally, before the Supreme Court of Justice. It is not possible to use juries in Colombia.

It is possible for the Parties to agree on arbitration through an arbitral clause provision that must be included on the agreement executed by the parties or through a separate document where the parties agree to resolve a dispute through arbitration.

International arbitration is only possible when: (i) the Parties, at the moment of the agreement, are domiciled on different jurisdictions; (ii) the performance of the obligations of the agreement must be carried out in another country; (iii) the purpose of the litigation has a closer relation with another country, or; (iv) the dispute affects the interests of international commerce.

**Competition Law:** How do laws impact competition?

Law 256 of 1996 and Law 1340 of 2009 set forth rules regarding anti-competitive agreements, unilateral anti-competitive conducts, abuse of dominance, merger control and the abusive exploitation of a dominant position.

In general terms, price fixing, minimum and maximum price sales, market segmentation regarding territories, market segmentation regarding customers, market segmentation regarding consumer groups may be deemed anti-competitive. A case-by-case analysis must always be performed.

Furthermore, non-compete provisions and restrictions on competing products may be deemed illegal if they restrict competition on the market. A case-by-case analysis must always be performed.
Employment Relations: Briefly summarize major laws impacting employment and employee relations.

Major laws impacting employment and employee relations are set forth in the Labor Code, which regulates relations between employers and employees. Among others, the Labor Code states that there is an employment agreement, regardless of the name given to the relationship, when the following elements concur:

- A personal service provided by an individual to the employer;
- Subordination of the employee, which allows the employer to demand that such employee to 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
- Payment of a remuneration.

This implies that even if a relationship is labeled as a "service agreement", if the elements above meet, there will be an employment agreement.

Types of transaction: How may businesses combine?

In Colombia, there are multiple ways in which businesses can combine. Among others, the following are the most frequent:

- Share purchases;
- Asset purchases;
- Mergers, that is, absorption of a company by another, or the amalgamation of companies;
- Purchases of commercial establishments;
- Public tender offers ("OPA" by its acronym in Spanish);
- Incorporation of a joint company by a competitor;
- Acquisition of control;
- Spin-off of a section of a company that is later merged into another; and
- Certain joint venture or collaboration agreements.

Statutes and regulations: What are the main laws and regulations governing business combinations?

Colombia has issued the following regulations governing business combinations:

- Commercial Code and Law 222 of 1995: regarding, among others, share purchases, asset purchases, mergers, spin-offs and purchases of commercial establishments;
- Law 1258 of 2008: regarding special merger procedures for S.A.S. companies;
- Organic Statute for the Financial System: regarding the different business combinations available for financial institutions;
- Decree 2555 of 2010: regarding the combinations of public listed companies;
In principle, business combinations do not require any clearance procedure with the Superintendence of Industry and Commerce. However, if a business combination involves at least one (1) of the subjective and one (1) of the objective requirements (outlined below), but the combined market share held by the parties involved is less than twenty percent (20%) of the relevant market, the business combination only needs to be notified in advance to the Superintendence of Industry and Commerce.

Finally, an authorization for a business combination must be filed at the Superintendence of Industry and Commerce for a prior antitrust analysis whenever there is a business combination under which at least one of the following requirements are met:

**Subjective requirements:**
- The companies involved develop the same economic activity (horizontal combinations), or;
- The companies involved are part of the same value chain (vertical combinations).

**Objective requirements:**
- The combined annual operational income of the companies involved is equivalent or superior to the amount established by the Superintendence of Industry and Commerce. For year 2018, such figure must be sixty thousand (60.000) times the minimum legal monthly wage in Colombia. This is COP$46,874,520,000.00 - approx. USD15,600,000.00, or;
- The total combined assets of the companies involved is equivalent or superior to the amount established by the Superintendence of Industry and Commerce. For year 2018, such figure must be sixty thousand (60.000) times the minimum legal monthly wage in Colombia. This is COP$46,874,520,000.00 - approx. USD15,600,000.00.

Information to be disclosed depends on the structure used. If the business combination is a merger, spin-off or sale of a commercial establishment, an advertisement including the particulars of the companies and the amount of their assets and liabilities must be published in a national newspaper, plus a written notice must be sent to the creditors of the companies involved.

Mergers and spin-offs under the general authorization regime shall prepare, and post at the companies’ domicile, a special report addressed to the creditors disclosing the following information:

- Financial statements of the companies;
- Appraisal of their assets;
- Status and amount of existing pledges or encumbrances over assets;
- Judicial proceedings actually pending against the companies and the amounts of their respective provisions;
- Description of the assets and liabilities to be transferred; and
- Description of the methodology used to appraise the companies and the

### Governing Law: What law typically governs the transaction agreements?

In Colombia, the general rule states that all agreements that are performed in Colombia, must be governed under Colombian law. The same rule applies to contracts executed abroad but performed in Colombia. Notwithstanding the above, foreign law agreements are valid only if there is a clause setting forth on international arbitration for resolving disputes.

Typically, when the transaction agreements involve a foreign party, a foreign law governs the transaction.

### Filings & Fees: Which government or stock exchange filings are necessary in connection with a business combination? Are there stamp taxes or other government fees payable in connection with a business combination?

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### Information to be Disclosed: What information must be made public in a business combination? Does this depend on the structure used?

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- Financial statements of the companies;
- Appraisal of their assets;
- Status and amount of existing pledges or encumbrances over assets;
- Judicial proceedings actually pending against the companies and the amounts of their respective provisions;
- Description of the assets and liabilities to be transferred; and
- Description of the methodology used to appraise the companies and the
synergies that will result from the merger or spin-off.

Under the applicable Securities Regulation, listed companies are generally required to inform the market through the Finance Superintendence of all material information in a truthfully, clearly and in good time. Any events related to the merger or acquisition of a company must be reported.

As mentioned above, business combinations that entail a market integration, in which the companies hold less than 20 per cent of the relevant market, need only be notified in advance to the Superintendence of Industry and Commerce, and the following information must be provided:

- The parties of the business combination;
- The structure of the transaction;
- The definition of the relevant market (product and geographical markets) or the affected markets and the criteria used for such definition;
- The competitors in the relevant market;
- The market share in the relevant markets of the parties of the business combination and its competitors, and the methodology and sources used for such calculation. The complete calculations or studies used should be filed before the Superintendence of Industry and Commerce;
- The indication of the specific legal provisions that set forth maximum market shares in the relevant market or that restrict a party involved in the transaction; and
- The certificates of incorporation, good standing and incumbency of the company and the corresponding powers of attorney, in case the filing is made through attorneys in fact.

Disclosure of substantial shareholdings: What are the disclosure requirements for owners of large shareholdings in a company? Are the requirements affected if the company is a party to a business combination?

In all mergers and spin-offs, all shareholders have an inspection right to review the basis of the operation, such as the merger agreement, the spin-off project, the appraisal of the companies and the financial statements.

Individuals or group of individuals representing one (1) beneficial owner who intends to acquire the twenty five percent (25%) or more of any given listed company are required to make a public disclosure of their intent through an OPA.

Likewise, a beneficial owner that holds twenty five percent (25%) or more of a listed company is required to make a public disclosure of the intent to acquire five percent (5%) or more of such company through an OPA. During the six (6) six months following the disclosure of an OPA, any stockholder may solicit the offeror to provide information pertaining to the proposal and request the offeror to acquire their stock.

Duties of directors and controlling shareholders: What duties do the directors or managers of a company owe to the company’s shareholders, creditors and other stakeholders in connection with a business combination?

According to the Commercial Code, directors and managers have the legal representation of the company, with the limitations and powers established in the by-laws. Their duty is to act with loyalty, good faith and due diligence.

Further, directors or managers shall guarantee that shareholders have the right to inspect the company’s records before a shareholders’ meeting in order to approve the above-mentioned business combinations or whenever financial statements of the company must be approved.

The directors and managers must protect the rights of the minority shareholders whenever a shareholders’ meeting decision may unjustly affect
| **Do controlling shareholders have similar duties?** | As a rule, only mergers, spin-offs, capital reductions and changes in the type of the corporate structure and the financial statements required for initial public offers must be approved at a shareholders’ meeting. In these cases, the general principle is that the quorum and majorities are the following:  
**-Quorum:** two or more shareholders jointly accounting for over fifty percent (50%) of the company’s shares must be present or represented at the shareholders’ meeting in order to validly undertake any discussion pertaining to the company’s affairs. Except for listed companies, the by-laws may establish a higher quorum for the approval of such decisions; and  
**-Majority:** shareholders may approve a business combination when the majority of the votes at the meeting are affirmative.  
Nevertheless, the by-laws or shareholders’ agreements may require the shareholders’ approval for other types of business combinations. |
| **Approval and appraisal rights: What approval rights do shareholders have over business combinations? Do shareholders have appraisal or similar rights in business combinations?** | Their rights. The same duty is imposed on the controlling shareholders. Corporate decisions, which may be considered as an abusive exercise of the majority or minority rights, can be voided by the Companies Superintendence. Controlling shareholders have the duty to register either the situation of control or the entrepreneurial group before the corresponding chamber of commerce within thirty days (30) days after control is acquired. |
| **Hostile transactions: What are the special considerations for unsolicited transactions?** | Hostile takeovers are not common since Colombian companies, even listed companies, have highly concentrated share participations by one (1) or a few beneficial owners. |
| **Break-up fees – frustration of additional bidders:** Which types of break-up and reverse break-up fees are allowed? What are the limitations on a company’s ability to protect deals from third-party bidders? | Under public policy principles, no actions against the securities market’s transparency are allowed. Thus, any attempt to frustrate additional bidders must be undertaken in accordance with concurrent OPA. |
| **Government influence:** Other than through relevant competition regulations, or in specific industries in which business combinations are regulated, may government agencies influence or restrict the completion of business combinations, including for reasons of national security? | The Companies or Finance Superintendence, as applicable, may restrict a merger or a spin-off whenever the applicable procedures are not abided by, and creditors or minority shareholders rights are affected. Under securities regulations, the Finance Superintendence may influence or restrict the completion of a business combination whenever market transparency may be affected. Furthermore, the Finance Superintendence may block mergers among financial institutions if such transaction affects the public interest or the financial system’s stability.  
Pursuant to antitrust law, the Superintendence of Industry and Commerce may block or impose behavioural or structural conditions on any business combination if it may create a monopoly, foster an eventual abuse of a dominant position, foreclose markets, affect competition, or allow cartelisation in the specific market of the combining companies. |
### Conditional offers: What conditions to a tender offer, exchange offer or other form of business combination are allowed? In a cash acquisition, may the financing be conditional?

OPAs shall be addressed to all the shareholders of the same class of shares of the target company in equal conditions. The only condition for the acceptance of the OPA that can be imposed is that the acceptance is made for 'all or none of the shares', in which case, the acceptance of the OPA is made only if all of the shares from the offeree are acquired by the offeror.

Acquisitions through an OPA may be paid in cash, in foreign currency (subject to Colombian foreign exchange regulations) or with securities.

Pursuant to Decree 2,555 of 2010, when the consideration for the acquisition (through an OPA) consists of securities, they must be free of any liens or limitations of ownership and must be pledged as collateral for satisfaction of the payment. Further, in these cases in which the payment of the acquisition is to be made with securities, at least 30 per cent of the shares to be acquired through the OPA must be offered to be paid in cash.

### Financing: If a buyer needs to obtain financing for a transaction, how is this dealt with in the transaction documents? What are the typical obligations of the seller to assist in the buyer’s financing?

As a rule, financing comes from third parties such as banks and would, most of the time, come down to the negotiation and execution of a credit agreement. When a credit agreement is executed by the purchaser of assets or shares, the purchaser may agree to lien the assets of the target company or the assets acquired, or to pledge the shares.

The financing of the acquisition of shares of Colombian companies may be made either by foreign financial institutions or by Colombian financial institutions pursuant to Colombian exchange regulations. If the financing is made by Colombian financial institution for the acquisition of shares of the same financial institution or of a third financial institution, it can only be made provided that the shares are offered in an initial public offer or in a privatization process and that the financing is made over other securities which hold a value of at least 125 per cent of the financed amount.

Considering that financing is generally regulated by contract, the obligations that may be agreed by the seller to assist the buyer’s financing must also be included as contractual matters. As a general practice, parties agree that the seller must collaborate with the buyer to obtain the financing by supplying the information of the target company or of the assets that may be required by the financial entity.

### Minority squeeze-out: May minority stockholders be squeezed out? If so, what steps must be taken and what is the time frame for the process?

Simplified corporations regulated by Law 1258 of 2008 may include events for the exclusion of shareholders in the by-laws. In such events, reimbursement of their investment must follow the general rules set forth in Law 222 of 1995 for the withdrawal right.

Colombian law does not contemplate specific squeeze-out procedures. However, pursuant to Law 222 of 1995, in business combinations structured by means of a merger, transformation or spin-off, dissident and absent shareholders may withdraw from the company, provided that the transaction entails a higher liability for the shareholders or implies that it lessens their economic rights. The shares of the withdrawing shareholders will be offered to the remaining shareholders at pro rata of their share participation. If the shares are not fully acquired, the company shall acquire them as long as there are liquid profits or a special reserve created for such purpose. The price of the shares shall be agreed between the parties and if no agreement is reached, it will be set forth by an expert.
**Cross-border transactions:**

How are cross-border transactions structured? Do specific laws and regulations apply to cross-border transactions?

Cross-border transactions have the same benefits and may be structured with the same flexibility as local business combinations.

Foreign Investment and Exchange Regulations provide the respective legal framework. Foreign investors in general are allowed to enter into transactions in Colombia by investing in all industries, except for activities related to defense and national security; processing and disposal of toxic, hazardous or radioactive waste not originated in the country; and private security and legal entities operating open television services. Certain regulatory conditions or approvals may apply.

The following industries are subject to additional regulations:

- **Financial, insurance and banking:** Decrees 633 of 1993 and 2555 of 2010 and the regulations from the Treasury Ministry and the Finance Superintendence;
- **Aviation industry:** Commerce Code and Colombian Aeronautical Regulations;
- **Health services:** Laws 100 of 1993, 1122 of 2007 and 1,438 of 2011 and the regulations from the Ministry of Health and Social Protection;
- **Agricultural industry:** Laws 101 of 1993 and 811 of 2003 and the regulations from the Agriculture Ministry;
- **Public utilities services:** Laws 142 of 1994, 143 of 1994 (electricity) and 689 of 2001 and the regulations from Public Utilities Superintendence; and
- **Telecommunication:** (other than the television industry): Law 1341 of 2009 and the regulations from the Information and Communication Technologies Ministry and the Communications Regulation Commission.

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**Waiting or notification periods:** Other than as set forth in the competition laws, what are the relevant waiting or notification periods for completing business combinations?

In addition to the waiting period for obtaining antitrust clearance, under merger, spin-off and changes in the type of the corporate structure, shareholders shall be convened to a meeting with at least fifteen (15) business days' notice to inspect the documents to approve the transaction.

Approval of the amendment of the by-laws due to the merger or spin-off after the approval by the shareholders’ meeting is subject to an authorization by the applicable Superintendence (Finance or Companies).

Bondholders will be convened to a meeting with at least eight (8) business days’ notice to consider the merger. A notification period of thirty (30) business days to creditors is mandatory.

The whole merger or spin-off process may take between three (3) and six (6) months. If no authorization is required by the applicable Superintendence, a special report addressed to the creditors and shareholders shall be prepared and posted at the company’s domicile (General Authorization Regime) for thirty (30) business days as of the date on which the merger advertisement is published in a newspaper.

In the event of going concern transfers, a two-month notification period for creditors is necessary to terminate the joint and several liability of the transferor with the transferee. In OPAs, a minimum period of ten (10) business days and a maximum of thirty (30) business days should be granted to stockholders for the acceptance of the OPA.

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**Sector-specific rules:** Are companies in specific industries subject to additional regulations and statutes?

The following industries are subject to additional regulations:

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- **Health services:** Laws 100 of 1993, 1122 of 2007 and 1,438 of 2011 and the regulations from the Ministry of Health and Social Protection;
- **Agricultural industry:** Laws 101 of 1993 and 811 of 2003 and the regulations from the Agriculture Ministry;
- **Public utilities services:** Laws 142 of 1994, 143 of 1994 (electricity) and 689 of 2001 and the regulations from Public Utilities Superintendence; and
- **Telecommunication:** (other than the television industry): Law 1341 of 2009 and the regulations from the Information and Communication Technologies Ministry and the Communications Regulation Commission.
# Tax issues: What basic tax issues are involved in business combinations?

A case-by-case analysis regarding the specifics of the transaction must always be performed, however, in general terms, the following taxes, among others, may be generated: (i) income tax, on a rate of ten (10) or twenty-five (25) percent; (ii) VAT, on a general rate of nineteen percent (19%); (iii) Industry and Trade Tax, on a rate that depends on each municipality, and; (iv) stamp tax, on a rate of one point five percent (1.5%) over the value of private and public documents.

# Labor and employee benefits: What is the basic regulatory framework governing labour and employee benefits in a business combination?

According to the Labor Code, once a share purchase takes place, the employees may continue as employees of the resulting company. In the case of a merger, spin-off and purchase of commercial establishments, there is a mechanism called the employer’s substitution by means of which the former employer may be substituted by the new employer (transfer of undertaking). Employees may claim their rights and benefits from the former or new employer, which are jointly and severally liable to the employees until the moment of the employer’s substitution is completed, and thereafter, the new employer shall bear the labor liabilities. Nevertheless, among employers of the companies involved, as a general rule, the former employer is only responsible for the labor obligations prior to the employer’s substitution, and the new employer only is responsible for the labor obligations after the employer’s substitution, unless the employers agree in different terms in writing.

# Restructuring, bankruptcy or receivership: What are the special considerations for business combinations involving a target company that is in bankruptcy or receivership or engaged in a similar restructuring?

Pursuant to Law 1116 of 2006, if the target company is undergoing restructuring proceedings, no sale of assets, going concerns, spin-offs or mergers are allowed without the previous authorization from the relevant Superintendence.

Once the restructuring agreement is in force, it shall be reviewed to ascertain whether there are limitations to carrying out business combinations. Special consideration must be given in the case of a merger, as the resulting company will be responsible for all the obligations under the agreement with the target’s creditors.

# Anti-corruption and sanctions: What are the anti-corruption, anti-bribery and economic sanctions considerations in connection with business combinations?

According to the anti-corruption statute (Law 1474 of 2011) there are several provisions sanctioning corrupt practices. This statute created the criminal offence of ‘private corruption’ that sanctions any person that bribes a director, employee or adviser of a company, in order to favor itself or a third party, against the interest of the company, with four to eight years of prison and a fine of ten (10) to one thousand (1000) minimum legal monthly wages.

In addition, the director, employee or adviser who accepts the bribe will be sanctioned with the same penalty and fine. In the case of the conduct representing economic damage to the company, the crime may be punished with prison terms of between six (6) and ten (10) years.

Furthermore, pursuant to the anti-corruption statute, the criminal offence of ‘disloyal management’ for the director, shareholder, employee or adviser of a company that for its own benefit or benefit of a third party, abuses its duties, and commits fraud in order to dispose of the assets of the company or to create obligations for the company, shall be sanctioned with four (4) to eight (8) years in prison and a fine of ten (10) to one thousand (1000) minimum legal monthly wages.
In addition, the Anticorruption Statute provides an absolute prohibition on former public officials managing private interests.

In early 2016, Colombia enacted Law 1778 of 2016 by which the OECD standards against bribery and corruption were adopted. Under this new law, bribery (including transnational bribery) and corrupt acts can be punishable not only as a criminal offence, but also through an administrative proceeding conducted by the Companies Superintendence. The new sanctions provide for fines to companies involved in local and transnational acts of corruption of up to two-hundred thousand (200.000) times the minimum monthly wage and can even lead to the suspension or the cancellation of the corporate chart.