



# report on the implementation of the investment policy review



**COLOMBIA** 



UNITED NATIONS

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

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## Abbreviations

|                    |   |
|--------------------|---|
| <b>ANI</b>         | National Infrastructure Agency                                  |
| <b>ADR</b>         | alternative dispute resolution                                  |
| <b>BIT</b>         | bilateral investment treaty                                     |
| <b>CAN</b>         | Community of Andean Nations                                     |
| <b>Colciencias</b> | Administrative Department of Science, Technology and Innovation |
| <b>CONPES</b>      | National Economic and Social Policy Council                     |
| <b>CREE</b>        | Income Tax for Equality   |
| <b>CSR</b>         | corporate social responsibility                                 |
| <b>DAFP</b>        | Administrative Department of Civil Service                      |
| <b>DTT</b>         | double taxation treaty  |
| <b>EPZ</b>         | export processing zone  |
| <b>FDI</b>         | foreign direct investment                                       |
| <b>FTA</b>         | free trade agreement  |
| <b>GDP</b>         | gross domestic product  |
| <b>ICSID</b>       | International Centre for the Solution of Investment Disputes    |
| <b>IIA</b>         | international investment agreement                              |
| <b>iNNpulsa</b>    | National Innovation and Entrepreneurship Unit                   |
| <b>IPA</b>         | investment promotion agency                                     |
| <b>IPR</b>         | investment policy review  |
| <b>ICT</b>         | information and communications technology                       |
| <b>IT</b>          | information technology  |
| <b>LSC</b>         | legal stability contract  |
| <b>MinCIT</b>      | Ministry of Trade, Industry and Tourism                         |
| <b>PPP</b>         | public-private partnership                                      |
| <b>PTP</b>         | Productive Transformation Programme                             |
| <b>RIA</b>         | regulatory impact assessment                                    |
| <b>SUIN</b>        | Single Information System of Legislation                        |
| <b>SUIT</b>        | Single Information System of Procedures and Services            |
| <b>TNC</b>         | transnational corporation                                       |
| <b>VAT</b>         | value-added tax   |
| <b>WTO</b>         | World Trade Organization  |

# Investment Policy Review Series

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## 1. Introduction

The Investment Policy Review (IPR) of Colombia was published in 2006. The Review assessed the investment regulatory framework and outlined a foreign direct investment (FDI) strategy that was in line with the country's national competitiveness programme. The goal was to leverage foreign investment to upgrade the technological capacity of domestic industries, internationalize Colombian firms and also contribute to infrastructure development.

The FDI strategy proposed in the IPR recommended continuing the expansion of the country's preferential market access to consumer markets in developed economies, including through free-trade agreements (FTAs); raising the quality and availability of skilled labour; promoting investment in research and development through public and private funding; and improving transport infrastructure geared toward trade capacity with private sector participation. Specific recommendations to the investment promotion agency were also made.

The IPR also recommended strengthening the investment regulatory framework for national and foreign investment. In this regard, it solicited the authorities to improve on the legal certainty and the efficiency of the judicial system as ways to reduce the perception of high risk among investors. It also called for a more competitive corporate tax regime, more flexibility in labour laws and simplification of business regulations.

In 2013, the Government requested UNCTAD to review the progress made in implementing the recommendations set out in the IPR. This Implementation Report summarizes the main findings and proposes a number of areas where further reforms could be useful.<sup>1</sup>

## 2. Summary of findings

Since the mid-1990s, Colombia has adopted a coherent development strategy based on improving national competitiveness and integrating into the world economy. This strategy has been mainstreamed into policymaking across the board. FDI has been identified as a major component and driver of the overall competitiveness and internationalization strategy and, consequently, improving the investment climate has been a priority. After the completion of the IPR, in 2006, the Government has continued to review its FDI policy and regulation to reduce risks and unpredictability. Meanwhile, there have been considerable improvements in the wider business regulatory framework, including in strengthening alternative commercial justice institutions, promoting corporate social responsibility (CSR) and in simplifying business regulations.

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<sup>1</sup> This report was prepared by Hans Baumgarten and Kalman Kalotay under the direction of Chantal Dupasquier. Overall guidance was provided by Joerg Weber and James Zhan. Massimo Meloni made substantial comments and Irina Stanyukova provided statistical support.



Colombia has also advanced considerably in the implementation of the IPR recommendations. Out of 26 recommendations, it has substantially or fully implemented 16, partially implemented nine, while only one was not implemented (see section 4). In line with IPR recommendations, Colombia's strategy has strived to attract FDI that could serve as catalyst to industrial cluster formation and enable domestic firms to integrate into global value chains. Progress has been made to achieve this by expanding preferential market access through trade agreements, increasing the skilled workforce, pledging higher resources to research and development, and adopting a modern public-private partnership (PPP) regime for infrastructure development. Investment promotion institutions have also been strengthened to incorporate modern practices.

Sound policies and an improvement in the national security situation in recent years have contributed to the country's good economic performance, marked by sustained growth and poverty reduction.<sup>2</sup> It has also created a welcoming environment for investment that is reflected by increasing FDI inflows (see section 3).

#### *Key areas of progress*

**Access to markets:** Colombia has actively pursued regional economic integration, the latest iteration of which has been the creation of the Pacific Alliance.<sup>3</sup> Within the Community of Andean Nations, Colombia has consolidated its position as an exporter of medium and high technology goods. The country has also concluded FTAs with the largest developed economies to secure preferential access and improve its position as a regional export platform. These agreements, accompanied by an extended network of bilateral investment treaties (BITs) and double taxation treaties (DTTs), confirm Colombia's development agenda based on openness to trade and investment. However, some concerns have been raised by sectors of society that question the country's trade policy and its impact on the economy. In particular, some agricultural producers demand protection from imports. In order to address these concerns, the Government is currently reviewing how to better exploit its enlarged network of international agreements.

**Skills and innovation:** Expanding and improving the pool of skills, and strengthening the technological capacity of domestic firms are key components of Colombia's national competitiveness programme. Although the demand gap for technical skilled labour is not closed, there has been a notable increase in the number of science and technical graduates per year.<sup>4</sup>

<sup>2</sup> According to World Bank data, in the period 2006–2012, GDP growth averaged 5 per cent and inflation 4 per cent. The poverty headcount below the national poverty line has fallen from 45 per cent in 2005 to 34 in 2012.

<sup>3</sup> The Pacific Alliance is a regional trade bloc that seeks to promote free trade between Latin America and Asia-Pacific. Founded in 2011, it has Chile, Colombia, Mexico and Peru as member States. Beyond reducing barriers to trade, members have pursued further economic integration with the creation of an integrated stock market and the use of joint embassies abroad.

<sup>4</sup> According to Ministry of Education statistics, the number of higher education graduates in engineering went from 35,806 in 2005 to 55,932 in 2011, a 56.2 per cent growth. Meanwhile, the number of graduates in mathematics and natural sciences went from 2,641 in 2005 to 4,456 in 2011, a 68.7 per cent growth. However, the share of engineering and math and natural sciences graduates to total higher education graduates have actually decreased from 25.6 per cent to 20.9 per cent, and from 1.9 per cent to 1.7 per cent, respectively.

The professionalism of Colombian workers is well regarded by the private sector. The Government has also taken steps to increase investment in research and development. Under the 2010–2014 National Development Plan, innovation was recognized as a growth engine for the first time and a special Science, Technology and Innovation Fund was created. The Fund is to receive 10 per cent of all mining and oil royalties to finance research and development projects. In addition, Colombia also offers tax incentives to foster private investment in research and development.

**Infrastructure:** Poor infrastructure remains one of Colombia's main competitiveness weaknesses and attracting private investment in infrastructure development is a priority. Law 1508 of 2012 has introduced a modern PPP framework, opening infrastructure development initiatives to the private sector. The capacity of the National Infrastructure Agency's (ANI) to evaluate, prepare and tender the country's ambitious PPP project pipeline has also been upgraded. After careful examination, the first wave of PPP projects have been selected based on their potential economic/developmental impact and should be ready for tender in early 2014.

**FDI-specific regulations:** Already considered non-discriminatory and open in 2006, the investment regulatory framework specific to FDI has continued to improve in recent years. The negative list approach to FDI entry has been formalized. Access to international arbitration and enforcement of awards, a major concern found in the IPR, have also improved with the introduction of new legislation (law 1563 of 2012). No changes to the rules of compensation for expropriation have been made in the national law, although some new international investment agreements (IIAs) have adopted the prompt, adequate and effective payment approach.<sup>5</sup>

The legal stability contracts (LSCs) have been abolished by the latest tax reform (law 1607 of 2012). The LSCs were devised to attract foreign investment by locking in favourable regulatory conditions and protecting them from future changes. However, as highlighted in the IPR, their tailored case-by-case nature left the Government vulnerable to litigation. They also generated controversy over the preferential treatment of companies that managed to negotiate a contract vis-à-vis those that were not successful, including new entrants who could not retroactively obtain the same treatment as established competitors. The private sector has expressed concern regarding the elimination of the LSC scheme and its impact on business. The Government, however, has indicated that all LSCs in force will be honoured and that it will consider pending applications.

**Commercial disputes resolution:** In commercial justice, alternative dispute resolution (ADRs) systems have been created to meet demand and provide an alternative to the traditional court system, characterized by low levels of efficiency and commercial expertise. The Superintendencia de Sociedades (or SuperSociedades), a public agency of the executive branch, has been given the role of arbiter in commercial justice and its jurisdiction gradually expanded. Private arbitration is also available through the Bogotá Chamber of Commerce's Centre for Arbitration and Conciliation and other regional chambers of commerce from the country's main cities.

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<sup>5</sup> There have been no cases of direct or indirect expropriation of companies by domestic or international courts.

**Commercial laws and the public administration:** Another area that has been given impetus in recent years is the improvement of the efficiency of public administration, including in the simplification and rationalization of business regulations. As part of a wider e-governance programme, the Government has created a single online repository of all national regulatory procedures known as SUIT which facilitates and expedites application processes, yielding important transparency and efficiency gains. Much effort has also gone in the rationalization and reduction of procedures and licences that are deemed unnecessary, and restraint has been exercised in the creation of new ones. In addition, the Ministry of Justice is creating an online repository of national legislation known as SUIN. Although it is at its early stages of implementation, the SUIN already allows access to 20,000 laws and decrees, and more than 8,000 decisions by national courts. Once completed, all laws and decrees since 1886 should be accessible.

The Government's capacity to limit unfair competition in the market has improved, as the capacity and functions of the *Superintendencia de Industria y Comercio*, have significantly expanded. Bankruptcy regulations have adopted virtually all international standards and the Government has also made important efforts to promote international standards of corporate governance and raise awareness about CSR issues among the private sector (see section 4 for details). In addition, law 1676 of 2013 facilitated access to credit by allowing the use of movable goods as a guarantee for any debt obligation. This should reduce lending risks, give creditors more flexibility and eventually reduce lending rates. The new regime will come into force in February 2014.

**Investment promotion:** The national investment promotion agency – Proexport – has implemented most of the recommendations the IPR set out for it. The investment promotion division of Proexport is focused toward FDI generation and has no regulatory role. It has professional and performance-oriented staff that performs targeted promotion at the sector level. It has also been successful in attracting transnational corporations (TNCs) that act as leaders of value chains and that have acted as catalyst for cluster formation in some cases. Following the formulation of the Government's outward FDI policy, Proexport has just recently begun to provide services for Colombian companies looking to invest abroad.

**Export Processing Zones (EPZs):** The Government adopted law 1004 in 2005, which increased flexibility in the definition of EPZs by allowing a single company to apply for this status. While the EPZ regime was not extensively reviewed in the IPR, it is important to note that since then the number of active EPZs has grown from 11 in 2005 to 102 in 2013.<sup>6</sup> Contrary to the experiences of other countries, there are no export requirements and companies operating under the EPZ regime are subject to corporate income tax at 15 per cent, with the addition of the “income equality tax” (see below) for those that entered the regime after the adoption of law 1607. EPZ companies are, however, exempt from import duties and only goods and services sold to the domestic market are subject to customs duties. Law 1004 has already had significant impact and it is estimated that the EPZ regime has generated \$7.3 billion in investment, 40,318 direct and 89,462 indirect jobs.

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<sup>6</sup> Out of the total number of 102 EPZs, 69 are “single company” zones and 33 are the traditional “multiple company” zones.

## Areas for further reform

Despite the overall high implementation rate, there are some issues that need further attention. Also, there have been developments in some policy areas that affect the investment climate that were not covered by the IPR recommendations but would deserve further attention.

**International trade and investment strategy:** Nearing the conclusion of a cycle of FTAs, it will be a good time to take stock of the situation. Colombia has concluded FTAs with its main traditional trading partners and should capitalize on this; it should concentrate on strategizing and communicating ways to reap the benefits from trade opportunities generated by these agreements. With regards to IIAs, the Government may consider carrying out a double task consisting of a revision of existing treaty texts whenever appropriate, and initiating a number of new treaties with key trader and investment partners and other fast growing emerging economies, taking also into consideration the interests of the rising outward investing firms of Colombia. UNCTAD can provide assistance in these areas.

**Investment promotion:** Proexport is a modern and professional investment promotion agency that has fulfilled its mandate and it is well regarded by the private sector as well. An additional step the agency could take to further improve its targeted promotion is to develop off-the-shelf projects for potential investors. This would entail creating a repository where investment project proposals, submitted by government or the private sector, can be archived and made publicly available. While some level of scrutiny will be required before accepting proposals, Proexport could have a disclaimer stating it is not responsible for their formulation and could still facilitate the interaction between project proponents and potential investors. In addition, Proexport should also be assisted in its new role of promoting outward FDI.

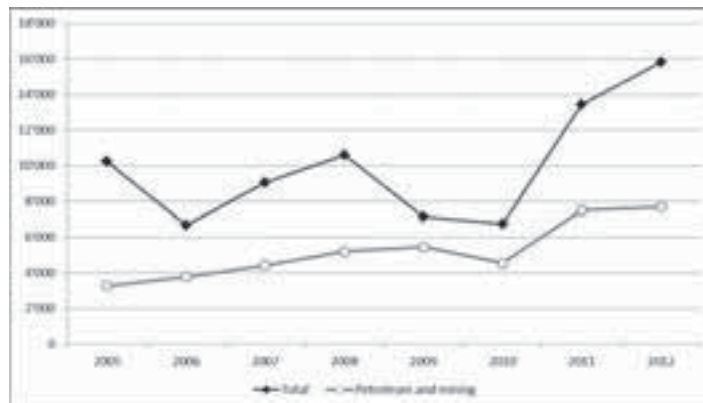
**LSC phase-out:** The Government needs to find a timely and satisfactory solution to the remaining pipeline of LSCs. It may need to expedite the treatment of outstanding requests, and find innovative solutions which ensure the application of LSCs without creating a major competition distortion between LSC beneficiaries and other firms. It is also important to find satisfactory answers to all open questions surrounding the legal interpretation of LSC clauses, including clarifying which fiscal changes brought on by the latest reform can be stabilized and which ones cannot.

## 3. Foreign direct investment trends

Since the publication of the IPR in 2006, FDI inflows to Colombia have increased significantly (see figure). Over the last decade, Colombia has been a top performer in FDI attraction in Latin America (see table). Average FDI inflows have dramatically increased, nearly fourfold, since 2001 and the FDI stock, at \$112 billion in 2012, is only behind those of Brazil, Mexico and Chile (UNCTAD Intrastat, 2014). This is impressive considering that Brazil and Mexico

are much larger economies.<sup>7</sup> In terms of relative performance, Colombia has been able to close the gap with the best performers in the region and is more or less at par with them in all measures. The country's FDI stock stood at 30.6 per cent of GDP in 2012, indicating that FDI has indeed become an important component of the economy.

### FDI inflows to Colombia, 2005–2012 (Million dollars)



Source: UNCTAD and Banco de la República de Colombia.

While investment in extractive industries has been a major driver, Colombia has successfully maintained its diversified FDI base, with non-extractive investment recovering from the lower levels of 2009–2010.<sup>8</sup> Over the 2006–2012 period, the main recipient sectors of FDI were: petroleum<sup>9</sup> (35 per cent), mining (21 per cent), manufacturing (12 per cent), trade, restaurants and hotels (10 per cent), and financial and business services (10 per cent). Meanwhile, looking at the distribution of FDI inflows by country of origin for that same period, the main investors were: the United States (25 per cent), Panama (14.3 per cent), the United Kingdom of Great Britain and Northern Ireland (13.1 per cent), Spain and the British overseas territory of Anguilla (7 per cent each) (Banco de la Republica de Colombia, 2014).

<sup>7</sup> Brazil with a population of 201 million and nominal GDP estimated at 2.3 trillion is the 7th largest economy according to the World Bank. Meanwhile, Mexico with a population of 118 million and nominal GDP of \$1.2 trillion, is the 14th largest. By comparison, Colombia is ranked 30th with a population of 47 million and nominal GDP of \$370 billion.

<sup>8</sup> Notwithstanding the surge of FDI to the oil sector during the 2006–2012 period, other sectors, in particular services, have retained or increased their share. While FDI inflows to manufacturing have increased in absolute values, the share of the sector was mostly affected (it represented about 32 per cent in period 2000–2005).

<sup>9</sup> The petroleum sector includes the extraction of oil and natural gas.




## Comparative FDI flows to Colombia and selected comparator countries, 2001–2012

(Dollars and percentages)

| Country                                  | Absolute performance |           |           |           | Relative performance |           |           |                 |           |           |              |           |           |                 |       |
|--|----------------------|-----------|-----------|-----------|----------------------|-----------|-----------|-----------------|-----------|-----------|--------------|-----------|-----------|-----------------|-------|
|  | Average FDI inflows  |           |           | FDI Stock | Average FDI inflows  |           |           |                 |           |           |              |           |           | FDI Stock       |       |
|  | Millions of dollars  |           |           |           | Per capita (Dollars) |           |           | Per \$ 1000 GDP |           |           | As % of GFCF |           |           | Per capita (\$) | % GDP |
|  | 2001-2005            | 2006-2010 | 2011-2012 | 2012      | 2001-2005            | 2006-2010 | 2011-2012 | 2001-2005       | 2006-2010 | 2011-2012 | 2001-2005    | 2006-2010 | 2011-2012 | 2012            | 2012  |
| Colombia                                 | 3'933                | 8'039     | 14'630    | 111'924   | 87.8                 | 169.0     | 293.1     | 32.3            | 36.4      | 41.8      | 17.8         | 16.3      | 18.2      | 2'228.9         | 30.6  |
| Argentina                                | 3'071                | 6'720     | 11'216    | 110'704   | 80.4                 | 168.2     | 271.2     | 19.5            | 22.9      | 24.2      | 11.8         | 10.0      | 11.0      | 2'665.9         | 23.2  |
| Bolivia,<br>Plurinational<br>State of    | 275                  | 445       | 959       | 8'809     | 32.3                 | 45.7      | 93.2      | 35.3            | 28.1      | 37.5      | 24.3         | 17.4      | 19.7      | 849.9           | 32.5  |
| Brazil                                   | 16'481               | 34'584    | 65'966    | 702'208   | 91.1                 | 177.9     | 326.8     | 27.2            | 21.7      | 27.9      | 16.7         | 12.0      | 14.5      | 3'459.0         | 31.2  |
| Chile                                    | 5'084                | 12'755    | 26'627    | 206'594   | 317.4                | 757.4     | 1'531.3   | 56.8            | 70.6      | 103.1     | 26.9         | 32.7      | 42.9      | 11'833.7        | 77.7  |
| Ecuador                                  | 705                  | 398       | 613       | 13'079    | 54.9                 | 28.9      | 42.3      | 25.3            | 7.8       | 8.8       | 11.5         | 3.3       | 3.1       | 897.2           | 17.8  |
| Mexico                                   | 24'368               | 23'492    | 17'082    | 314'968   | 234.0                | 212.3     | 148.7     | 33.2            | 23.4      | 14.7      | 16.9         | 11.1      | 7.2       | 2'723.3         | 26.8  |
| Peru                                     | 1'763                | 6'153     | 10'236    | 63'448    | 64.7                 | 209.6     | 333.0     | 27.3            | 49.1      | 53.1      | 15.1         | 20.9      | 19.5      | 2'052.8         | 31.4  |
| Venezuela,<br>Bolivarian<br>Republic of  | 2'115                | 484       | 3'497     | 49'079    | 82.2                 | 17.1      | 117.6     | 18.8            | 1.5       | 10.2      | 9.6          | 0.7       | 5.5       | 1'636.5         | 12.9  |
| Latin<br>America<br>and the<br>Caribbean | 72'306               | 164'181   | 246'646   | 2'310'630 | 136.4                | 288.5     | 416.1     | 32.2            | 38.8      | 42.6      | 18.5         | 19.8      | 21.4      | 3'876.7         | 41.2  |





Source: UNCTAD.

## 4. IPR implementation matrix

| Colombia IPR implementation matrix   |   |   |  |   |
|--|---|---|--|---|
| What   | Why   | How   | Status   | Findings  |
| <b>I. Review investment policy and FDI-specific regulations to reduce investor's risk and unpredictability</b> | Colombia has steadily improved its openness to FDI and its standards of treatment of foreign investors. However, given the internal security situation and perceived high levels of risk, Colombia should make greater efforts to reduce controllable investment risk perceptions and unpredictability. | I.1 Strengthen the investment law by consolidating the existing decrees into a single, comprehensive code and formalize the de facto negative list approach to FDI entry. |   | The investment law has not been consolidated into a single comprehensive code. The investment law adopted in 2000 (decree 2080) remains valid. Some small amendments (the last of which was in 2010) have been made but the general trust of the regulatory framework for investment, which was already considered open and fair by the IPR, remains essentially the same. The negative list approach to FDI entry has been formalized. The power attributed to CONPES to identify sectors restricted to FDI was abolished in 2007 (article 6, decree 2080). In practice, CONPES never exercised its powers under this article 6 while it was in force. |
|  |   | I.2 Update regularly the model BIT with modern provisions to negotiate new agreements.  |   | The model BIT is reviewed periodically to incorporate modern provisions and evolving best practices. Colombia used the model to expand its IIA network. Since 2006, the country has signed 8 BITs and 10 FTAs with investment clauses.  |
|  |   | I.3 Widen access to international arbitration.  |  | The expansion of the IIA network has widened access to international arbitration. All BITs negotiated since 2006 have an international arbitration clause; treaties negotiated with the European Union and the European Free Trade Association only dispute settlement between States. Law 1563 of 2012 also allows access to international arbitration without distinguishing the matter of arbitration, whether it is commercial or investment. International arbitration does not apply to dispute settlement provisions in LSCs. Article 166 of law 1607 of 2012 abolishes LSCs.  |

**Status:**  Not implemented  partially implemented  Substantially implemented  Implemented





## Colombia IPR implementation matrix

| What   | Why | How   | Status  | Findings  |
|--|-----|---|---|---|
| <b>I. Review investment policy and FDI-specific regulations to reduce investor's risk and unpredictability</b> |     | 1.4 Guarantee the enforceability of international arbitration.  |    | The enforceability of international arbitration awards has improved with the introduction of law 1563 of 2012. The new arbitration law is based on the United Nations Commission on International Trade Law's Model Arbitration Law and adopts most of its provisions. It stipulates that an international arbitral award granted by a tribunal sitting in Colombia is treated as a national award and does not require recognition for enforcement. Meanwhile, for an international award from a tribunal sitting outside Colombia it replaces the exequatur with a recognition procedure that should take no more than 30 days. In this case, the only grounds to oppose recognition are limited to those found in the New York Convention. The defendant, however, can still contest enforcement, and this may lead to legal procedures in the local courts that may potentially take over a year. No cases under the new regulation have taken place yet so its effectiveness in practice is untested. As before, ICSID arbitral awards are automatically binding without review. |
|  |     | 1.5 Adopt standard language and scope in LSCs to limit the risk of litigation.  |    | Colombia has de facto adopted a standard format in terms of clauses (scope) it generally covers in LSCs. However, the formulation of the language and conditions under each clause are still being negotiated on a case-by-case basis. Law 1450 of 2011 limited the scope of LSCs to stabilize only direct taxes. This means that companies with LSCs are subject to new indirect taxes. Article 166 of law 1607 of 2012 abolishes LSCs.  |
|  |     | 1.6 Consider reviewing the cost of the premium for LSCs so that they reflect the duration of the contract.  |    | The cost of the premium has been revised to reflect the duration of the contract and the risks the Government assumes. Law 1450 of 2011 amends article 5 of law 963 that stipulates the cost of the premium for LSCs. The Ministry of Finance Resolution 1732 of 2012 presents the detailed methodology used in calculating the premium based on the investor's taxable income.   |
|  |     | 1.7 Improve the compensation for expropriation rules in terms of adequacy, form and timeliness in the national law so that they reflect modern best practice. |  | The rules for compensation for expropriation have not changed in the national law since the IPR. Article 58 of the Constitution still governs the conditions for compensation in case of expropriation as regulated by laws 9 of 1989 and 388 of 1997. There are different methods to calculate the value of the compensation depending on whether expropriation is done through judicial or administrative processes. In both cases the amount of compensation may be contested by the affected party. It is worth noting that there have been no cases of expropriation of companies in Colombia. Expropriation has only occurred under legal terms in urban development and infrastructure projects.   |

Status:  Not implemented  partially implemented  Substantially implemented  Implemented





**Colombia IPR implementation matrix**

| What   | Why   | How   | Status  | Findings   |
|--|---|---|---|--|
| <b>II. Improve the general business regulatory framework to create an investment-conducive environment</b> | Improvements in the wider business regulatory framework will be necessary in order for Colombia to create an environment conducive for investment. The tax regime is uncompetitive and its reform should be a priority. There should also be more flexibility in the labour laws, greater independence in utilities regulation and in mandatory standards of corporate governance. The commercial code should also be consolidated and better enforced. | II.1 Lower the standard corporate income rate to a more competitive level and rely less on long-term tax holidays.  |    | Within the context of a significant tax reform brought on by law 1607 of 2012, the standard corporate tax rate has been reduced to 25 per cent (down from 33 per cent). This reduction has, however, been at least partially offset by the introduction of a new tax on income, the “equality tax” also known as CREE (see II.4). Whether the new regime is more competitive to businesses can only be determined on a case by case basis and will largely depend on the type and number of workers the company employs. A full review of the impact on business of this reform and the long-term tax holiday regime should be undertaken. |
|  |   | II.2 Remove the minimum tax rate or enable investment tax credits to also be used against the minimum tax.  |    | The minimum tax rate has been reduced from 6 per cent to 3 per cent but still applies. Tax credits can be used against the minimum tax to a certain point. The amount of income tax payable after tax credits may not be less than 75 per cent of the presumptive income before tax credits. The excess of the presumptive income tax over ordinary net income may be amortized over the following five years. Non-profit organizations, mutual funds, cooperatives and public service enterprises, among others, are exempt from the minimum presumptive tax.   |
|  |   | II.3 Abolish the withholding tax on dividends paid from untaxed income and the remittance tax in favour of a low flat-rate tax on dividends paid to both residents and non-residents. |    | The 7 per cent remittance tax has been reduced to 0 per cent but not abolished. The withholding tax on dividends paid from untaxed income that applies to both residents and non-residents remains in place. This tax cannot be avoided if the payment of dividends is deferred to a future date but, under some DTTs, the withholding tax can be zero rated if it is reinvested within the following two years.   |
|  |   | II.4 Reduce social contributions, severance payments and overtime supplements.  |  | The introduction of the new “equality tax” on income, known as CREE, changes the way social contributions are paid. CREE, which is 9 per cent for 2013–2015 and 8 per cent thereafter, supplants payroll taxes for workers earning less than 10 minimum wages. It could thus lower the effective tax burden for labour-intensive companies. However, capital-intensive companies will proportionally have to increase their share of social contributions through the new tax. Since the IPR, there has been no change in the law concerning the terms of severance payments and overtime supplements.                                     |



**Status:**  Not implemented  partially implemented  Substantially implemented  Implemented

## Colombia IPR implementation matrix

| What  | Why | How  | Status  | Findings   |
|---|-----|--|---|--|
| II. Improve the general business regulatory framework to create an investment-conducive environment |     | II.5 Separate the role of the government as a regulator of utilities from that of a commercial operator and competitor. Prevent vertical integration in the provision of public utilities. |  | The Government has privatized most of its State-owned enterprises that provide private services. In the energy sector, the Government still has a majority stake in some of the largest generation and transmission companies – ISAGEN and ISA, respectively – although there are plans to privatize the former. The institutional and budgetary independence of the regulatory commissions are guaranteed and no differentiation between operators is made in regulatory decisions. Vertical integration is still allowed in the electricity subsector for integrated companies that existed before 1994 but it is restricted for entrants thereafter. In telecommunications, integration of services is allowed.   |
|   |     | II.6 Mandate higher standards of corporate governance and continue the work to improve disclosure to shareholders in listed companies.   |  | Government has taken various initiatives to promote higher standards of corporate governance. Efforts are still mostly focused on the familiarization and dissemination of CSR standards among stakeholders. It has adopted the Organization for Economic Cooperation and Development guidelines for multinational enterprises and has created a “national contact point” in the Ministry of Commerce to oversee its implementation. Moreover, SuperSociedades is aligned to the United Nations Global Compact and it prepares workshops, seminars and reports to disseminate its principles of good corporate governance among the enterprises it supervises (more than 400 companies have adhered to the United Nations Global Compact). Colombia is also part of the Government Advisory Group of the Global Reporting Initiative and plans to open a focal point office in 2014 that would promote better and integrated business reporting practices. By law, companies are required to only disclose financial information at present, but more companies are voluntarily reporting on their social and environmental practices as well. Colombia has adopted the International Accounting Standards Board’s International Financial Reporting Standards and all firms will be required to use them by 2016. |



Status:  Not implemented  partially implemented  Substantially implemented  Implemented

**Colombia IPR implementation matrix**

| What  | Why | How   | Status  | Findings   |
|---|-----|---|---|--|
| <p><b>II. Improve the general business regulatory framework to create an investment-conducive environment</b></p> |     | <p>II.7 Simplify and exercise restraint in the laws and regulations that apply to business. Law 962 should be implemented.</p>                      |  | <p>Colombia has come a long way in simplifying, reducing and rationalizing the administrative procedures that business has to comply with. It has successfully implemented law 962 of 2005, notably creating a single online repository of all national procedures known as SUIT which simplifies them, reduces their costs and increases their transparency. The Administrative Department of Civil Service (DAFP), which administers the SUIT, is in charge of rationalizing all procedures (over 700 since 2006) and of approving new ones (41 since 2006). The DAFP is now compiling all procedures from governments at the provincial and district levels in SUIT and expects to further reduce and rationalize them. Colombia's SUIT has been touted as a model e-governance tool to improve public administration for other countries in the region to emulate. In addition, Colombia has taken further steps to improve business regulation with the adoption of law 19 of 2012, which extends the gratuity of public application forms, prohibits public entities to demand documentation from users that already exist in the entity's archives and seeks to increase inter-agency information-sharing, among other things. The Ministry of Justice is also building an online repository of national legislation known as SUIN that will complement the SUIT.</p>   |
|   |     | <p>II.8 Strengthen institutions in the commercial justice system in order to improve service delivery and compliance, including in arbitration.</p> |  | <p>The lack of specialization in commercial justice within the ordinary court circuit has led to the creation of effective alternatives. Starting with law 1258 of 2008 and subsequently with laws 1450 of 2011 and 1564 of 2012, SuperSociedades has gradually been given the role of arbiter in commercial justice and has jurisdiction over cases arising from disputes within or between companies, including bankruptcy, noncompliance with contracts and protection of stakeholders' rights. Arbiters from SuperSociedades are deemed to be far better technically prepared to rule over a commercial case than judges from the ordinary courts and are also much more efficient as they normally deliver a sentence within six months. Although SuperSociedades is a respected institution in commercial justice, most investors still prefer to sign contracts with recourse to arbitration. In this respect, Colombia's Chambers of Commerce still play a key and active role in commercial dispute resolution. The Bogota Chamber of Commerce's Centre for Arbitration and Conciliation, in particular, is an institution with long tradition in arbitration that even hears international cases. In 2011, it signed an agreement with ICSID that authorizes the Centre to carry out arbitration procedures under the ICSID Convention, the only institution authorized to do so in Latin America (although they have yet to receive an ICSID case).</p> |



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Colombia IPR implementation matrix

| What  | Why  | How  | Status  | Findings  |
|---|--|--|---|---|
| <b>III. Adopt an investment strategy that targets quality FDI attraction and complements the country's wider competitiveness objectives</b> | Colombia needs a more developed FDI strategy to complement its competitiveness and internationalization goals. Such a strategy will focus on attracting quality FDI with the capability of transferring technology and know-how to insert Colombian firms into international value chains. To this end, Colombia will need to systematically address the requirements of foreign investors in the areas of skills, science and technology, trade and infrastructure. | <b>III.1</b> Improve quality control of private higher education institutions in order to maintain quality in the expansion of the skilled workforce.                            |  | All higher education institutions, both private and public, must meet minimum requirements set by the State to obtain a "qualified registration" to operate (the National University, an autonomous institution, is the sole exception but it is accredited). However, Colombia has not adopted compulsory accreditation for higher education. The country continues to have a dual system of compulsory registration and voluntary accreditation that was introduced in 2003. Higher education institutions that wish to be accredited undergo periodic self-assessment and external evaluations. At present about 11 per cent of institutions are accredited but the Ministry of Education is working with those institutions that would like to receive accreditation but are lacking the infrastructure or faculty capacity to do so.   |
|   |  | <b>III.2</b> Build local science and technology capacity by promoting research and development. Widen incentives in research and development to include medium technology goods. |  | Investment in research and development is still low at only 0.2 per cent of GDP (2010 World Bank estimate) and below the regional average of 0.8 per cent. However, Colombia has taken steps to build science and technology capacity, and recently created a more ambitious public funding scheme for research and development. The Government recognized innovation as a growth engine and key component to its development strategy, raising the issue of promoting research and development to the top of its policy agenda. Legislative Act 05 of 2011 created the General System of Royalties and, within it, the Science, Technology and Innovation Fund which was assigned 10 per cent of total revenues from royalties deriving from oil and mining. This effectively injects large amounts of resources ear-tagged for research and development. As a recent development, the success of this research and development funding scheme is too early to evaluate, although it could have a sizeable impact. Aside from this fund, Colciencias manages the more modest National Science, Technology and Innovation System (already in place at the time of the IPR) which can only fund about 30 per cent of approved projects. Meanwhile, a separate institution, iNNpulsa (operating since 2012), is working to promote innovation/entrepreneurship through grants and other forms of finance and has already seen some success stories. These three public research and development finance schemes are open to projects of all technology levels, including medium technology goods. In terms of incentives, 5-year tax holidays are offered to software development with "high content of national scientific and technological research" as certified by Colciencias. Moreover, taxpayers who directly or indirectly invest in or give grants to projects qualified as "technological R&D" can deduct up to 175 per cent of the amount invested from their net income as long as it does not exceed 40 per cent of taxable income. |


**Status:**
 Not implemented
  partially implemented
  Substantially implemented
  Implemented

**Colombia IPR implementation matrix**

| What   | Why   | How  | Status  | Findings   |
|--|---|--|---|--|
| <p><b>III. Adopt an investment strategy that targets quality FDI attraction and complements the country's wider competitiveness objectives</b></p> | <p>Colombia needs a more developed FDI strategy to complement its competitiveness and internationalization goals. Such a strategy will focus on attracting quality FDI with the capability of transferring technology and know-how to insert Colombian firms into international value chains. To this end, Colombia will need to systematically address the requirements of foreign investors in the areas of skills, science and technology, trade and infrastructure.</p> | <p>III.3 Continue to seek preferential market access to large consumer markets in developed economies through trade agreements.</p>  |  | <p>Since the IPR, Colombia has concluded FTAs that guarantee preferential market access to the world's largest consumer markets in developed economies namely, the United States, Canada, the European Union and the European Free Trade Association. Colombia has also signed FTAs with Israel and the Republic of Korea, and is negotiating an agreement with Japan.</p>   |
|  |   | <p>III.4 Consolidate the country's position as an exporter of medium and high technology goods within the Community of Andean Nations (CAN), including through the expansion of national brands.</p> |  | <p>Statistics show that Colombia has consolidated its position as an exporter of medium- and high-technology goods within CAN. In 2005, 13 per cent of Colombian manufactured exports to CAN countries were medium-technology goods while 25 per cent were high-technology; in the 2006–2012 period, medium-technology exports averaged 15 per cent while high-technology ones averaged 31 per cent. Part of this expansion and consolidation has been through the expansion of national brands.</p> |



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## Colombia IPR implementation matrix

| What   | Why   | How  | Status  | Findings   |
|--|---|--|---|--|
| <p><b>III. Adopt an investment strategy that targets quality FDI attraction and complements the country's wider competitiveness objectives</b></p> | <p>Colombia needs a more developed FDI strategy to complement its competitiveness and internationalization goals. Such a strategy will focus on attracting quality FDI with the capability of transferring technology and know-how to insert Colombian firms into international value chains. To this end, Colombia will need to systematically address the requirements of foreign investors in the areas of skills, science and technology, trade and infrastructure.</p> | <p>III.5 Improve transport infrastructure with a priority to facilitate trade and aim to attract private investment in ports and airports.</p> |  | <p>Colombia has been successful in attracting private investment in transport infrastructure development through concessions. It however still lags behind in this area compared to other emerging economies, including those in the region. The Government recognizes the need to increase investment in transport infrastructure, which has been historically low. It has thus set the goal to reach a sustained 3 per cent of GDP in infrastructure investment through 2020 and to increase the participation of the private sector. To this end, Colombia has created a modern PPP regulatory framework (law 1508 in 2012) that incorporates international best practices, including allowing for the private sector to initiate project proposals. It has also upgraded the National Concessions Institute into the National Infrastructure Agency (ANI) in 2010, giving the public entity a wider mandate backed by more resources, both technical and financial. As part of a 10-year transportation master plan, ANI is in charge of managing an ambitious PPP project pipeline that has identified priority roads (8,000 km) to be developed for an estimated cost of \$23 billion over the next 20 to 30 years. It has taken two years to do the feasibility studies and prepare the first wave of the so-called fourth-generation projects for public tender in early 2014. Some of the major international developers and financiers are among the 90 pre-qualified bidding consortiums attesting to the favourable environment and healthy competition for investment. To improve the transportation inter-modality, there are also PPP projects for the rehabilitation and construction of new railways as well as the dredging of the Magdalena river to make it navigable year round. Colombia has put in place a carefully prepared portfolio of PPP projects that has attracted the interest of the private sector and should have an important competitiveness impact. It is however too early to determine success in implementation. Finally, it is worth noting that most ports and airports are operated by private companies and air transport infrastructure is among the best in Latin America. There are concerns over saturated capacity in some ports and airports and here too Colombia is seeking private investment to finance expansion through concessions and PPPs.</p> |



**Status:**  Not implemented  partially implemented  Substantially implemented  Implemented

**Colombia IPR implementation matrix**

| What   | Why   | How   | Status  | Findings   |
|--|---|---|---|--|
| <b>IV. Develop a focused and efficient investment promotion agency</b> | The merger of the IPA with the export promotion agency could sideline investment promotion efforts. To make sure this is not the case; the IPA should be reorganized into a small but high-powered and focused modern agency with few specific promotion roles aimed at investment-generation and image-building. Other functions normally attributed to modern IPAs, such as aftercare, policy advocacy and linkages could be deferred to partner institutions that make up Colombia's national competitiveness programme. | IV.1 Mandate the IPA to focus only on FDI generation and image-building. The Government should fund the agency's core activities. |  | Proexport's mandate is geared toward FDI promotion and generation. It has no regulatory role. It plays a complementary role in image-building, although since 2010 a separate institution under the Presidency and MinCIT, Marca País Colombia, is charged with coordinating the country's holistic country-branding and promotion campaign whose slogan is "Colombia is the answer". Proexport also performs aftercare and policy advocacy duties as part of its investment promotion mandate. Proexport is funded by the Government through the State-owned trust fund Fiducoldex. This covers all the agency's core activities. |
|  |   | IV.2 Attract TNCs that can become value chain leaders to give a cutting edge to local supplier development.                       |  | Proexport has been successful in attracting some TNCs that have become value-chain leaders and have catalysed the development of local suppliers. Examples of industries where lead TNCs have acted as catalysers of value chains in manufacturing include cosmetics and toiletries; automotive and autoparts; and construction materials. Examples of services include retail, ICT, business process outsourcing and tourism.   |

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## Colombia IPR implementation matrix

| What  | Why | How   | Status  | Findings  |
|---|-----|---|---|---|
| IV. Develop a focused and efficient investment promotion agency |     | IV.3 Target market-seeking investors in domestically concentrated industries to increase competitiveness and foster the creation of clusters. |  | Proexport has developed a modern, targeted investment promotion strategy. The strategy identifies investment opportunities by sector and region where Colombia has a competitive advantage and could potentially develop clusters. Sector experts among the staff in headquarters analyse investment opportunities in the country. At the same time sector experts in some of the 28 Proexport's foreign offices do targeted promotion in the major FDI home countries. Colombia has attracted significant market-seeking FDI geared towards not only the domestic market but also the regional market, taking advantage of the country's network of FTAs. In this regard, in 2011 Colombia created the Productive Transformation Programme under the MinCIT to foster productivity and competitiveness of industries with a high export potential and to bring them to international standards. The Programme has identified 16 sectors in agro-industry, manufacturing and services to be developed into world-class export industries which coincide with Proexport's priority investment target sectors (some are mentioned above). |
|   |     | IV.4 Assist domestic firms with investment-related aspects of expansion to consolidate Colombia's brand presence abroad.                      |  | Proexport has implemented the Government's policy of promoting outward direct investment (CONPES 3771 of 2013) through the establishment of a new division in its Investment Vice-Presidency. The Colombian Investment Division has developed a number of services that include, among others, providing tailored information on sectoral investment opportunities in the country of interest, country profiles, legal advice and investment incentives. In order to cater to investor needs, Proexport has also developed a web page ( <a href="http://www.colombiainvierte.com.co">www.colombiainvierte.com.co</a> ) in which information on investment opportunities by sector and country is compiled. By the time of closing this report, the Colombian Investment Division had assisted more than 76 Colombian companies in their outward investment activities.  |

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**Colombia IPR implementation matrix**

| What  | Why | How  | Status  | Findings  |
|---|-----|--|---|---|
| <p><b>IV. Develop a focused and efficient investment promotion agency</b></p> |     | <p>IV.5 Build Colombia's image emphasizing the country's science and technology capabilities as a destination for FDI to offset the negative security image.</p>           |  | <p>Image-building is not a core function of Proexport. However, in its promotion material, it does emphasize Colombia's science and technology capabilities as one of the main reasons to invest in the country. Proexport highlights the country's growing skilled labour force, the quality of its universities and its advanced ICT infrastructure. Moreover, the promotion of investment projects that will bring about innovation and research and development into the country are considered a priority to the agency and software and IT services are identified as one of the key potential sectors. Finally, Proexport reports that security is no longer a major concern for the majority of potential investors.</p>  |
|   |     | <p>IV.6 Create formal partnership arrangements with provincial and regional institutions to assist in investment promotion functions including aftercare and linkages.</p> |  | <p>Proexport has not gone as far as creating formal arrangements (for example, signing memorandums of understanding) with regional investment promotion agencies, but it does collaborate and work closely with them. An information committee has been created to coordinate investment promotion between Proexport and the regional agencies. Proexport is also active in training staff of other IPAs and jointly organizes various promotion events. While there is a certain degree of competition amongst regional IPAs, since Proexport must develop a portfolio of investment opportunities at the national level, it happily liaises with the pertinent agency when an investor is interested in doing business in a particular region of the country. An area where perhaps more collaboration could be done is in business linkages.</p> |

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## 5. Conclusions and way forward

The Government of Colombia has transformed the IPR recommendations to national policy priorities and has implemented a large majority of them. Its reforms have been particularly fast and profound in terms of adopting modern legislation in line with international best practices in various policy areas. While the country has achieved tangible improvements in some areas of the investment climate, such as simplifying and rationalizing business regulations, in others – notably judicial system reform, research and development promotion policy and PPPs in infrastructure – it is too early to gauge success. However, through its policies, it is clear that the country is committed to improving its investment environment and continues to work towards this goal as part of its wider national competitiveness programme. In this regard, the substantial progress achieved thus far is reflected in its positive FDI performance.

Building on the success of recent reforms, the country will need to address some systemic issues in the near future. The main ones are the following:

- **Consolidating policy reforms.** There have been important successes in recent policy reforms but the number and frequency in which they are made may jeopardize their effective implementation and make it difficult for investors to follow. The Government should consider reducing the number of new laws adopted, including the frequency of the fiscal changes, and focus on the implementation of recently adopted reforms through capacity-building in public administration, and through the reallocation of human and financial resources to priority areas of implementation.
- **Ensuring policy coherence.** The Government may also wish to fine-tune its reforms by ensuring further coherence between individual reforms and the long-term national development plan. In this regard, comprehensive regulatory impact assessments (RIAs) could prove useful. They could, for example, be used to assess the impact of the recent and significant fiscal reform adopted by the Government. The RIAs could also help in clarifying the rules and requirements that apply during the transition period when a regulatory regime is being phased out and replaced by new legislation. It is also important to ensure widespread consultations and national consensus when adopting the direction of long-term policy goals. In this regard, the CONPES policy papers can play an important role in informing long-term decisions. Once long-term goals have been endorsed, they should be shielded from political pressures.

- **Strengthening inter-institutional coordination.** The mechanisms and channels for inter-institutional coordination are in place but these may need to be further strengthened to ensure efficiency in public administration. In particular, the execution of large investment projects – like those in the infrastructure PPP pipeline – will represent an important challenge to the coordination capacity of public institutions. For example, coordinating the work of the institutions that are responsible for doing community consultations, land clearance and environmental impact assessment will be essential in avoiding the delays and excessive costs that have occurred in the past.

# IPPR

Visit the website on IPRs <http://unctad.org/ipr>