Colombia

International Estate Planning Guide

IBA Private Client Tax Committee

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I. Wills and disability planning documents

A. Will formalities and enforceability of foreign wills

In Colombia, a testament is a solemn act that must comply with the formal requirements established by civil law in order to be valid and binding.

A will, like any other legal act, must fulfil the essential requirements for validity, which are that the testator has legal capacity to grant the will, that his or her consent is not impaired by vices, such as error, duress or fraud, and that the act has a lawful purpose and cause.

Depending on the type of will being drawn up, the law has established certain specific formalities that must be adhered to in order for it to be valid.

Under Colombian legislation, wills are classified as solemn or privileged. In turn, solemn wills may be open or sealed and privileged wills are classified as verbal, military or maritime wills.

A solemn will must always be recorded in writing and executed before competent witnesses. At least two of the witnesses must be domiciled in the place where the will is granted, and they must be able to read and write.

In regard to an open will, also known as a nuncupative or public will, the testator makes his or her dispositions public before three witnesses and a notary, when the latter is present. The witnesses must copy the words of the testator verbatim and, at the end of the proceeding, they must read and sign the will. On the other hand, when making a sealed will, the witnesses and notary are not required to know the content of the dispositions contained within the will. The sealed deed must be presented before a notary and five witnesses, who declare *viva voce* that the deed contains the will.

Privileged wills, however, may omit some of the formalities outlined above due to specific circumstances expressly determined by law.[1] Nevertheless, a privileged will must meet three requirements: (1) a *viva voce* statement by the testator must be made regarding his or her desire to make a will, which must be unequivocally declared; (2) the persons whose presence is necessary to grant the will must be met; and (3) the act must be continuous, in such a way that it may only be exceptionally interrupted for brief intervals, due to an accident. The validity of this type of will is provisional and, therefore, once the exceptional situation is overcome, the requirements of a solemn will must be complied with.[2]

In relation to the content of a will, the law provides that it must indicate the full name, place of birth, nationality, domicile and age of the testator, as well as whether they are of sound mind and the names of the testator's spouse and children, together with information on each

[1] A verbal will is only permitted to occur in cases of imminent danger to the life of the testator. Similarly, to make a military will, the testator must be part of a war expedition or campaign against an enemy or stationed at a garrison in a territory under siege. A maritime will is only allowed to be granted on board a Colombian warship at sea.

[2] A verbal will has no value if the testator dies 30 days after its execution or, if having died before, the will has not been set down in writing within 30 days following their death. In the case of a military will, if the testator dies within 90 days following the date on which the circumstances of war that enable a military will to be granted have ceased, his or her will is valid, but if the testator survives this term, then the will becomes invalid. A maritime will is not valid unless the testator has died before disembarking or during a period of 90 days following disembarkation.

of the witnesses and the notary, indicating the place, day, month and year of execution of the will. Errors made in regard to the required content do not cause the nullity of the testament, provided there is no uncertainty regarding the identity of the testator, notary or witnesses.

The allocations to be made must be determined or determinable, underlining the fact that the will of the testator is limited by the forced allocations established by Colombian law. These allocations are mandatory and, therefore, even where they contradict what is expressly provided in the will by the testator, they will be observed in practice.

Forced allocations include alimony due by law to certain persons. For example, the marital share, that is, the portion of the assets of the decedent that the law assigns to the surviving spouse who lacks the necessary means for a decent subsistence and any legitimes, which are compulsory portions of the assets assigned to certain persons known as legatees.[3]

Law 1934 of 2018 excludes the quarter portion of the estate for accretions to the inheritance of the legitimate heirs, which was compulsory prior to 2 August 2018.

In accordance with the above, only as of the third order of inheritance, that is, if no descendants or ascendants survive the testator, may the latter dispose freely of their entire estate. Otherwise, the testator may make allocations at their discretion in regard to a percentage equalling 50 per cent of his or her assets and must transfer 50 per cent of their estate to the legitimes in equal parts.

The validity of wills granted abroad is subject to them having been made in compliance with the laws of the state where they were executed, meaning that evidence is required in regard to proof of their authenticity and their legal translation, where applicable.

If the will is granted abroad in compliance with Colombian regulations, the following requirements must be met for a will to be deemed valid: (1) that the testator is a Colombian national or a foreigner domiciled in Colombia; (2) that the will is authorised before a Colombian consulate; (3) that the witnesses are Colombians or foreigners domiciled in the city where the will is being executed; and (4) that the rules of a solemn will are observed**.**

B. Will substitutes (revocable trusts or entities)

It is important to point out that while Colombian law does not contemplate a common law trust, there is an institution with similar characteristics, known as a civil law trust or fiduciae.

The establishment of a civil law trust implies the imposition of an encumbrance on all or part of the estate of the trustor. When this ownership is retained by the trustor or is transferred to another person, it is done on condition that it will be passed on to a third party upon the occurrence of a specific event.

As a substitute for the testament, the use of a civil trust is useful to transfer the assets of a future *de cujus*, through the designation of the spouse and other heirs as beneficiaries of the trust, once a condition is met, which in this specific case is the death of the trustor.

Therefore, a civil trust involves three parties: the trustor, the trustee and the beneficiary or beneficiaries. The trustor is the person who delivers the assets by way of a trust to the trustee; the trustee is the person to whom the property is entrusted until the condition is fulfilled, with the charge of transferring it to the beneficiary; and the beneficiary is the person in whose favour the restitution is to be made once the condition is fulfilled.

[3] The following are legitimes: descendants and ascendants.

The trustee holds the full right of ownership and usufruct of the assets for the duration of the trust, except as otherwise stipulated, bearing in mind that the trust ownership may be established on the bare title, reserving the proceeds for the beneficiaries. When the settlor dies, the ownership of his or her assets passes to the beneficiaries according to the proportion established in the document constituting the trust ownership, without the need for a probate hearing.

From a tax point of view, this mechanism is taxable, given that if the trust is gratuitous, at the time of occurrence of the condition, in every case, it generates a taxable occasional gain for the beneficiary.

On the other hand, even if such a vehicle does not constitute a will substitute as such, in order to minimise the tax burden at the time of the succession and as an instrument for the administration of the estate of the decedent during the latter's lifetime and after the latter's death, certain corporate schemes may be used both in Colombia and abroad, namely the corporate forms contemplated in Colombian law for such purposes, such as limited partnerships and simplified stock companies (*Sociedad por Acciones Simplificada* or SAS).

The establishment of a limited partnership allows the testator to have control of the company, in the form of an administrating or managing partner, and to structure the assignment of their assets with new capitalisations, through which the heirs will gradually increase their rights or shares in the capital of the company.

Likewise, SAS benefit from a flexible and dynamic regulatory framework in which the autonomy of the shareholders prevails. This corporate form enables the establishment of types of shares that assign the control of the company to one of the shareholders, through multiple votes or the fractioning of vote stipulations for the election of boards of directors or other collegiate bodies of the company. In addition, SAS offer the possibility of establishing minimum or maximum amounts of corporate capital, which may be controlled by a specific shareholder, and the use of special restrictions regarding negotiations on the shares issued by the company.

The establishment of foreign companies also allows a testator to manage their wealth in the jurisdiction they consider to be most favourable for tax and corporate purposes. The transfer of funds abroad to invest in assets is permitted in the country, provided that the funds allocated for such purposes are channelled through the exchange market.

As is the case for Colombian companies, these offshore schemes allow the transfer to beneficiaries of the title to the assets that represent the estate of the testator, while the testator retains the power to manage the estate and to receive the profits thereof until their death.

C. Powers of attorney, directives and similar disability documents

Law 1996 of 2019 replaced the disabilities that were originally enforced by sections 1 to 48 in Law 1306 of 2009, with regulations on the dignity and rights of persons, including the provisions governing interdiction, incapacity, guardianship and the legal representation of adults with mental disabilities. In accordance with the abovementioned law, and as of the date of its enactment, it is forbidden to initiate interdiction or disability procedures or to apply for the declaration of interdiction or incapacity with the purpose of starting public or private proceedings.

Law 1996 of 2019 adopts the model established by the United Nations Convention on the Rights of Persons with Disabilities (CRPD), which Colombia has ratified. It is based on the principle that disability does not affect an individual's legal capacity.

All adults with disabilities are presumed to possess full legal capacity and remain entitled to making their own decisions. Assistance may be granted, if necessary, not through a replacement of their will, but by expressing preferences and intentions.

The final decision must remain the person's own decision, where possible, without declaring the person incapable. The purpose remains to provide assistance rather than representation. The person may advance expressions of will concerning their future decisions and support arrangements.

Financial institutions and public authorities must provide reasonable accommodation and accessible communication to allow the person to exercise their legal capacity directly on an equal basis with others.

All adult individuals with disabilities have a right to independently execute legal acts and to count on the necessary amendments and adaptations in order to do so. The capacity to execute legal acts is assumed.

According to Article 1502[4] of the Colombian Civil Code, for an individual to accept obligations under an act or declaration of will it is necessary that the individual is (1) legally capable; (2) that the individual consents with the said act or declaration of will and that the individual's consent is not impaired; (3) that the declaration of will has a licit purpose; and (4) that such a declaration has a licit cause.

Disabilities may be general or specific. General disabilities refer to all types of legal transactions, while specific disabilities only refer to certain acts and are expressly stipulated by the law. In accordance with Article 1504 of the Civil Code, general disabilities may in turn be absolute or relative. Thus, individuals with absolute mental disability,[5] children who have not reached puberty and those individuals who are deaf and non-verbal and who cannot make themselves understood are considered to be absolutely disabled and their acts are subject to absolute nullity. On the other hand, adult minors (under section 34 of the Colombian Civil Code, those children who are no longer pre-pubescent or those that are older than 14 but younger than 18 years old) and squanderers (defined as individuals who do not entirely lack discernment, but lack the capacity to administer their own property in an assertive way, according to Decision C-742 of 1998 by the Constitutional Court) who are subject to judicial interdiction are considered to be relatively incapable, given that their acts may be admissible under certain circumstances and in certain specific cases determined by law. This disability results in relative nullity.

[4] According to Art 1502 of the Civil Code, capacity may refer to enjoyment or action. The former consists of the general legal competence of every individual or legal entity to hold rights and assume obligations. The capacity to act consists of the ability recognised by law of a person to bind him or herself without the intervention or authorisation of another person.

[5] Persons suffering from a severe or profound learning or behavioural condition or pathology or mental impairment are considered to suffer from absolute mental disability.

Section 32 of Law 1996 consecrates a judiciary proceeding to designate formal support to an adult individual who is unable to exercise their legal capacity through one or various specific legal acts.

The law also establishes the right to dictate anticipated directives, whereby an adult individual may establish their express will in relation to one or various legal acts prior to the same. Directives may refer to health, financial or personal matters. Directives must be protocolised in a public deed before a notary or through a conciliation process before extra judiciary conciliators, as outlined by sections 16 and 17 of Law 1996.

II. Estate administration

A. Overview of administration procedures

In Colombia, a succession may be testate, intestate or mixed, that is, it may be governed by testamentary dispositions and in regard to all matters not provided for by the decedent, according to civil law.

When a testator dies, an unsettled succession arises and settlement may be carried out through a judicial proceeding or processed before a notary public. An unsettled succession only disappears from the legal world when the judgment approving the partition or the public deed is executed, or when it is recorded, in the case of the allocation of real property.

The following persons may take part in probate proceedings:[6]

- the surviving spouse or domestic partner for purposes of the liquidation of the community property or community estate;
- the heirs in matters related to inheritance rights;
- legatees for a testamentary disposition in their favour;
- assignees of the inheritance right;
- creditors, who may come forward until the inventory and appraisal hearing, as their legal interest in becoming a party is exhausted upon its occurrence;
- an executor, who is not entitled to a portion of the inheritance (their legitimation to intervene derives from their capacity as executor of the will by the testator); and
- the National Tax and Customs Authority (*Dirección de Impuestos y Aduanas Nacionales* or DIAN) will intervene in the proceedings when the amount of the assets exceeds 700 tax value units (*Unidad de Valor Tributario* or UVT),[7] which amounts to COP 36,661,800 (approximately $10,701) for the 2026 fiscal year.

Considering the existence in law of forced allocations that limit the will of the testator, during in testate and in intestate and mixed successions the estate (assessed after the liquidation of the community property, if any) is reduced by these allocations. Therefore, hereditary credits, any taxes that may be incurred, allocations for support and the marital share are deducted from the decedent's estate. This results in the net estate available for partition, which must be completed subject to any legitimes.

Generally, the stages of succession proceedings are as follows:

[6] Whoever requests recognition as a party must fully evidence such capacity through documentary proof.

[7] The value of a UVT for the year 2026 is COP 52,374 (approximately $15,29) at the rate of exchange in force on 26 June 2026, ie, $1 = COP 3.425.95.

1. An order is issued declaring that the liquidation proceedings open and recognising the interested parties therein. Notwithstanding the order, there may be future recognitions.[8]
2. The request for acceptance of the inheritance is formalised. It seeks to generate an act of acceptance or renunciation by the heirs. At this stage, the surviving spouse may opt for the conjugal share or for the property acquired during the marriage, as explained in the section on marital property below.
3. Inventory and appraisal of assets and liabilities. This stage may be lengthy, considering that objections to appraisals by the intervening parties are permitted.
4. The final stage involves the partition. Once the assets of the decedent have been cleared, a partition takes place, through which the distributions corresponding to each heir are made, in accordance with the will or the law. The executor may be designated by the parties by joint agreement, by the judge or by the testator themself, when there is a will. The judge must validate the partition and, if appropriate, issue a judgment approving it.

In cases where there is a single heir, the inheritance will be allotted to him or her. This allotment substitutes the partition.

If, after the succession proceedings have been concluded, new assets of the testator are discovered which were not included in the inventory or new assets of the community property or estate are found or in situations where the executor failed to distribute certain inventoried assets, there may be an additional partition if there are several interested legatees involved. At this stage, discussion may arise regarding the existence of persons with equal or better rights who did not come forward during the succession proceeding. In that case, they must file an action to claim their inheritance right against whoever holds it, through a proceeding known as a demand for probate of the decedent's estate.

The other procedure for the liquidation of the succession, namely the formalisation of the liquidation before a notary public, may be carried out in all cases, provided the heirs, legatees, surviving spouse or assignees thereof are fully capable and act by joint agreement.

B. Intestate succession and forced heirship

In cases where there is no testament or the will is invalid, intestate succession takes place, according to which the assets of the decedent are allocated to the persons whom the law has established as holders of the right to inherit, as per the order prescribed by civil law.

As previously mentioned, Colombian law establishes forced heirship in relation to alimony support, the marital share and legitimes. The law establishes the legatees, that is, the descendants, or if there are none, the ascendants of the deceased, as forced heirs.

The legatees are entitled to 50 per cent of the decedent's estate.

The order of succession is made up by the descendants in the first order, the ascendants of the second order, thirdly the siblings followed by their children, the surviving spouse in fifth place and, finally, in the absence of all the foregoing, the state, through the Colombian Family Welfare Institute (*Instituto Colombiano de Bienestar Familiar* or ICBF).

C. Marital property

[8] A request for an intervention may be filed until the decision approving the partition is issued.

In Colombia, there is a community property system. This community property exists from the moment of a marriage or declaration of domestic community,[9] and is dissolved by reason of death, divorce and/or mutual agreement. However, if there is a legal tie, the community property is not visible, in such a way that the civil, commercial and tax obligations of the spouses operate individually.

As provided in Article 1781 of the Civil Code, the assets of the community property include the salaries and emoluments of every nature arising from the holding of office or employment, obtained during the marriage by each of the spouses, as well as all of the proceeds, yields, pensions, interest and profits of any kind derived either from the community property or from the assets belonging to each of the spouses and which are earned during the marriage.

In addition to the foregoing, community property also includes:

- the money that either spouse or domestic partner contributes or acquires during the marriage, which must be restored at the same value from the community property;
- the fungible goods or movable property that either spouse or domestic partner brings to the marriage, or are acquired during it, and which must be restored from the community property according to the value they had at the time of the contribution or acquisition; and
- all assets which are acquired by either of the spouses or domestic partners, for valuable consideration, during the duration of the marriage or relationship.

The assets acquired before the marriage or domestic partnership, and those subsequently received by donation, inheritance or legacy, do not become part of the community property and are deemed to belong to each of the spouses or domestic partners. However, the proceeds, income, profits or value increases produced by these assets during the marriage or domestic partnership are part of the community property.

The liabilities of the community property include the external liabilities, consisting of the obligations chargeable to the unsettled estate and in favour of third parties, and the internal liabilities, which in turn consist of the obligations chargeable to the unsettled estate for the benefit of one of the spouses.

The spouses may exclude any assets that are part of their own wealth from the community property, by establishing specific provisions in the marriage articles (a prenuptial agreement).

Likewise, the community property may be liquidated without affecting the marital relationship or domestic partnership, by partitioning the assets as decided by the parties by mutual agreement. Third parties, who do not intervene in this process, are protected through the establishment of joint and several liability of the spouses or domestic partners, with respect to obligations vis-à-vis third parties.

Upon the death of one of the spouses or domestic partners, if there is community property, the surviving spouse may decide whether to participate in the succession proceedings as the surviving spouse or heir. The decision must be communicated prior to the inventory and appraisal stage, indicating whether he or she opts for a portion of the decedent's estate as

[9] The law presumes the existence of community property when there is a de facto marital union for a period of no less than two years. It should be highlighted that the Constitutional Court, in decision C-029 of 2009, stated that the expressions 'singular, permanent and continuous union', 'domestic partner' and 'domestic partnership' contained in Colombian regulations must be read and interpreted as also referring, all conditions being equal, to same-sex couples.

a legatee or in regard to the marital property. If he or she opts for the marital share, the unsettled assets of the inheritance and the community property are merged into a single unit.

In cases where the surviving spouse opts for the marital property, he or she may carry out the administration of the assets of the community property until the partition is made.

Within the same succession proceedings there may be a combination of liquidations, namely the liquidation of the succession and that of the community property or community estate between domestic partners. However, the relevant inventories and appraisals must be made separately in order to identify the assets and liabilities corresponding to each of the estates.

The assets of the community property must be distributed among the parties in equal shares, as established in civil legislation, or as stipulated in the prenuptial agreement, where applicable.

D. Tenancies, survivorship accounts and payable on death accounts

As of the moment of death, the assets of the decedent become part of the estate. The administration of that estate may be carried out through different procedures, depending on whether the succession is testate or intestate, or whether the assets belong to the community property.

In the first case, the administration and tenancy of the assets of the decedent's estate correspond to the executor, or if there is no executor, to the heirs who have accepted the inheritance.[10]

The executor may only refuse the designation for a justified cause. Otherwise, the person designated as the executor will provide grounds for the disqualification from inheritance. This designation cannot be delegated, except in those cases where the testator has so provided, and it is not transferrable to the heirs of the executor.[11] It should be pointed out that the executor is liable with respect to their administration for ordinary negligence, and the heirs or legatees shall likewise be entitled to demand guarantees from the executor regarding the security of the assets, when the executor has possession thereof.

In regard to an intestate succession, the heirs acquire the possession of the inheritance from the moment of its denouncement.[12] This legal fiction is known as lawful possession of the inheritance. The purpose of lawful possession is for the inheritance not to be considered heirless or with no apparent owner, as well as to allow the heirs time to exercise their option right (inventory benefit), that is, their right to accept or renounce the inheritance or legacy or to accept it only up to the value of the liabilities, and to exercise the joint administration of the estate.[13]

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[10] One or several executors may be appointed, in which case the judge may divide the administrative powers corresponding to each, at the request of the executors themselves or of a party with an interest in the succession proceedings. If there are any executors with common powers, they must authorise all acts and contracts related to the administration of the decedent's estate. All executors are jointly and severally liable, except when the testator has divided their powers or exempted them from such joint and several liability or when the judge approves the segmentation of functions.

[11] The prohibition to delegate does not prevent the executor from entering into mandate agreements for the proper administration of the decedent's estate.

[12] The denouncement of the inheritance is the call made by law to an heir or legatee to state his or her acceptance or renunciation of the inheritance at the time of death of the deceased.

[13] Where discrepancies arise regarding the administration of the estate, the receivership, namely the judicial administration of the assets, may be ordered at the request of any interested party. If there is

Where there is community property involved, the assets that are included are administered jointly by the surviving spouse and the executor.[14]

Before the formal inventory is taken and completed, the administrators of the estate are required to hold the assets representing the decedent's estate under deposit (the law indicates that any personal property must be kept under lock and key). When the inventory and appraisals become final, the administrators may dispose of the assets in order to pay the liabilities of the decedent, and if the available funds are insufficient to cover the liabilities of the inheritance or legacy, the spouse, the executor or any of the heirs may request the sale of certain assets via a public auction or through a stock exchange, where applicable. If there is real estate property involved, any of the heirs may ask the judge to issue a decree of effective possession in favour of all the heirs and to order its recording in the Registry of Public Instruments. This recording grants the heirs the power to dispose of the real estate.

Likewise, considering the fact that an unsettled estate is subject to income taxes from the date of the death of the individual until the execution of the decision approving the partition or of the issuance of the public deed, the executor or the heirs who have accepted the inheritance must act as representatives of the succession before the state in order to comply with the relevant formal tax obligations, such as the filing of tax returns, and to make the corresponding payments at the estate's expense.

There are certain regulations in Colombia that are similar to the tenancy systems used by other countries. Among them is the system contemplated in Law 258 of 1996, known as encumbrance as a family dwelling. This encumbrance applies to real estate properties acquired in full by one or both spouses, either before or after the marriage, and intended as a place of abode for the family. The main consequences of the encumbrance as a family dwelling are, on the one hand, the non-attachability of the property that is designated as such,[15] and, on the other hand, that in order to sell the property, the encumbrance must be lifted through the creation of a public deed signed by both spouses.

Upon the death of one of the spouses or domestic partners, the encumbrance as a family dwelling is extinguished, unless any under-age heirs that are inhabiting the property request that the judge, for a justified cause, maintains the encumbrance for as long as necessary, although this term may not extend beyond the date on which the under-age heirs reach the age of 18 or become emancipated.

Similarly, Law 70 of 1931 consecrates the institution named the unattachable family property, which may be established in favour of designated beneficiaries based on the full ownership of a real estate property that is not held jointly and severally, is not subject to an encumbrance by mortgage, is not subject to a security for payment of an annuity or to antichresis and the value of which at the time of the imposition of the family property restriction is not greater than 250 monthly minimum wages (ie, COP 437,726,250 ($127,768) for 2026). In the event of the settlor's death, the family property subsists in favour of the

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no request for receivership, the judge may settle any conflicts between the spouse, heirs and executors through an incidental proceeding or a simple judiciary order. Once the performance of their duties has ended, the administrator of the succession must hand over the assets as appropriate, according to the relevant partition judgment or public deed and submit a report on their administration by presenting the relevant accounts to the judge for approval, under penalty of commencement of a separate proceeding for the rendering of accounts.

[14] Article 496 of the Colombian Code of Civil Procedure.

[15] The attachment is enforceable if the asset was mortgaged prior to the date of recording of the encumbrance as a family dwelling or after that date if the mortgage was created in order to acquire, build or improve the dwelling subject to the family encumbrance.

surviving spouse. In the event of the death of both spouses, the family property restriction subsists in favour of their children, until they reach the age of 18.

Regarding survivorship accounts and payable on death accounts, under Colombian legislation, for the decedent to designate the individuals they choose as beneficiaries of their bank deposits, a collective deposit must be set up.

The foregoing, given that although it is feasible for bank deposits (checking or savings) to have multiple holders through collective or joint accounts, in the case of joint accounts, namely those held in the name of two or more individuals acting jointly to dispose of the funds deposited, the signatures of all the account holders are necessary in order to make withdrawals and, therefore, upon the death of one of the account holders no withdrawals may be made and the portion of the funds corresponding to the deceased account holder must be determined in the inventory during the appraisal stage of the succession proceedings.

In regard to collective deposits, on the other hand, when one of the holders of a savings or checking account dies, the balance may be reimbursed to the other account holders. The same applies to time deposit certificates established in favour of several persons containing the clause 'and/or'. When the principal dies and at the time of maturity of the certificate, the financial institution may pay the relevant amount to the other beneficiaries.

Regarding funds held by the *de cujus* in financial institutions, there is a special benefit that allows banking institutions to release, up to a specified amount, the balance of funds deposited in savings accounts, checking accounts or amounts represented in time deposits or cashier's cheques without demanding proof of the succession proceedings. The maximum amount that may be released by a bank without requiring proof of a succession proceeding is published annually by the Financial Superintendency and equals the sum of COP 91,832,170 (approximately $26,805) for the period between 1 October 2025 and 30 September 2026, as outlined in Circular 0058/2025.

The Colombian pension system provides for the extension of the pension of the decedent to the heirs. Under the pertinent legislation, the spouse or domestic partner of a deceased pensioner or affiliate to the pension system is entitled to receive the survivor's pension, until their death.[16] Children under the age of 25 who are financially dependent on the deceased at the time of their death are also considered beneficiaries, provided they are unable to work due to their studies, as well as any disabled children of any age if they were economically dependent on the deceased, for as long as their disability continues. If a pension is assigned only to the surviving spouse, the latter will be entitled to the full amount thereof, but if there are also children that are entitled to it, the pension will be distributed between them, 50 per cent to the spouse and 50 per cent to the children.

In the absence of a spouse, domestic partner and entitled children, the parents of the deceased or any disabled siblings may be the beneficiaries, but only if they depended economically on the deceased.

III. Trusts, foundations and other planning structures

A. Common techniques

[16] The members of the family group of the beneficiary of an old age or disability from common risk pension who dies and the members of the family group of a person affiliated with the system (not yet pensioned) who dies are entitled to the survivors' pension provided the deceased has contributed to the system for 50 weeks during the last three years immediately preceding their death.

As mentioned above, the most widely used mechanisms for family estate planning purposes consist of corporate structures in Colombia and abroad and the use of civil and commercial fiduciae. Foreign trusts are used by Colombian nationals, in the case of persons who own assets and/or business abroad. Likewise, nationals who own assets abroad frequently establish private foundations, notwithstanding that, as discussed below, these foundations are treated as limited liability companies for Colombian income tax purposes and founders and beneficiaries are treated as partners in commercial companies or as fiduciary agreements for equity tax purposes and beneficiaries as fiduciae beneficiaries. In situations where the beneficiaries have not been determined, the settlor will be deemed liable for income and equity tax.

B. Fiduciary duties (trustees, board members, directors, etc)

It is important to mention that, in addition to the civil fiduciae described above, Colombian law regulates commercial or mercantile fiduciae and escrow accounts (*encargos fiduciarios*).

The existence of a commercial trust agreement implies the transfer of the assets allocated for the fulfilment of a specific purpose to a free-standing trust fund, separated from the rest of the assets of the trustee and assigned for the said purpose.[17] Only banking institutions and trust companies authorised by the Financial Superintendence may act as trustees.

Regarding the duties of the trustee, it should be noted that as long as the commercial trust agreement is in force, the trustee may not assign the assets to any purpose other than that provided in the constitutive document, except in circumstances where the settlor decides otherwise, when the trust is not irrevocable. Therefore, the purpose established by the settlor in the trust agreement is the basis for determining the main tasks that the trustee is required to perform.

Article 1234 of the Commercial Code imposes a duty on the trustee to fulfil certain non-transferable obligations, namely to:

- diligently perform all of the necessary acts to achieve the purpose of the trust;
- hold legal capacity for the protection and defence of the assets assigned to the trust against acts by third parties of the beneficiaries and even the settlor themself;
- invest the earnings obtained from the trust in the manner and according to the requirements established in the constitutive documents;
- seek the highest profitability from the assets used in the fiduciary business, except for a determination to the contrary that is contained within the constitutive document; and
- render verified accounts of management every six months and transfer the assets to the appropriate person according to the constitutive documents or to the law upon expiry of the term of duration.

According to commercial legislation, the trustee shall be liable for ordinary negligence in regard to the fulfilment of their duties.

In this respect, the Colombian Financial Superintendency has ruled[18] that a trustee is required 'to act diligently and prudently, always seeking to fulfil the purpose established in the constitutive document, being required, in order to attain the said purpose, to observe the non-assignable duties imposed both by the law and by the Trust Agreement, a duty which

[17] Article 1227 of the Commercial Code provides 'the assets subject to the trust are not part of the general security of the creditors of the trustee and only secure obligations contracted in furtherance of the intended purpose'.
[18] Opinion No 2003018295-1, 23 May 2003.

must correspond to that required from every professional in relation to the administration of third-party affairs'.

Furthermore, in regard to the matter of taxes applying to the funds of the trust, trustees must pay any value-added and withholding taxes that may be incurred because of the transactions of the trust, as well as the corresponding default interest, penalties and indexation, where applicable.

In regard to the matter of income taxes, trust companies are authorised to file a single tax return for all the free-standing trust funds they manage.[19] The national government will specify which individual trusts are to be dealt with separately, in which case the trustee will be required to file a separate tax return for those specific trusts.

The trust company is required to keep a disaggregated listing in case the tax administration requests certain specific information.

When it is not possible to identify the beneficiary of a trust because, for instance, the trust is subject to certain conditions precedent or subsequent, the relevant earnings must be declared by the settlor for income tax purposes.

Beneficiaries or trustors, on the other hand, must report the earnings obtained during the same tax year in which they accrue in favour of the free-standing trust fund, retaining their nature as taxable or non-taxable, using the same description and tax conditions that would apply if they were received directly by the beneficiary or the trustor for income tax purposes.

An escrow, however, is characterised by the delivery of the assets without a transfer of ownership by the settlor to the trustee to fulfil the purpose established for the benefit of a third party or the settlor themself. In this regard, the Financial Superintendence in its Basic Legal Circular Communication, distinguished between a commercial trust and an escrow, covering the latter using the rules applicable to a mandate agreement.

In accordance with the foregoing, from a tax point of view, the trustee of an escrow complies with the duties of an agent and, therefore, must identify any income received on behalf of the principal and the payments made in his or her name in its accounts and must perform all tax withholdings derived from the transactions carried out based on the trustor's instructions, but it will be the latter, in his or her capacity as the principal who is required to declare the income and to apply for the respective costs, deductions and deductible taxes, according to the information provided by the trustee.

In the case of a civil fiduciae, the law provides that the trustee will have free management of the assets, given that until the condition is met, he or she is the owner of the assets in the trust. Nevertheless, the trustee is responsible for any impairments or deteriorations derived from actions taken or negligence. For tax purposes, bearing in mind that the trustee holds the ownership and possession of the assets until the condition occurs, the obligation to declare the assets and the earnings of a civil trust applies to the trustee, unless it is provided that the proceeds of the assets belong to the trustor. In this case, these must be reported by the latter.

C. Exchange control treatment of foreign trusts and foundations

Pursuant to Colombian exchange regulations, Colombian residents may set up trusts abroad, which is regarded as capital investments in the financial sector.

[19] It is provided for this purpose that the tax administration must assign a tax identification number different from that of the trust company, which identifies all of the trusts administered as a whole.

The amounts to be contributed to such trusts must be channelled through the exchange market in the form of foreign currency and amounts entitled to reimbursement. The investment is deemed registered upon the filing of the pertinent exchange declaration with the central bank, namely the Banco de la República, in accordance with the regulations of that entity.[20]

IV. Taxation

A. Domicile and residency

As provided in Articles 9, 12 and 20 of the Tax Code, individuals, both national or foreign, who qualify as non-Colombian residents, are only subject to income and complementary taxes on income or capital gains with a national source. In the case of foreign investors with a permanent establishment (PE) in Colombia, Article 20-2 established that income tax is assessed on the national and foreign income that is attributable to the PE.

Colombian residents are subject to taxes on global-source income, so Colombian residents must report their earnings on a worldwide basis. Foreigners residing in Colombia are only subject to taxation on their domestic and foreign income after being present in Colombia for 183 days, either continuous or discontinuous, which includes days of arrival and departure, during any 365 consecutive calendar-day period.

In regard to foreign individuals residing in Colombia, net worth taxes on a global basis will be applicable as of the first year of their residence in the country.

Likewise, nationals who meet one of the following conditions, are considered residents of Colombia, even if they themselves remain abroad:

- when the spouse or domestic partner or minor dependent children are tax resident in Colombia;
- when 50 per cent or more of their income is from a national source;
- when 50 per cent or more of their assets are managed in the country;
- when 50 per cent or more of their assets are deemed to be located in the country; or
- when having been required by the tax authorities, they have not proved their residency status abroad for tax purposes; or
- when the individual is a tax resident in a country qualified by the national government as a low-tax jurisdiction, non-cooperative jurisdiction or preferential tax regime.[21]

Nevertheless, nationals who meet any of the conditions referred to above are not considered Colombian tax residents if, and when, they comply with one of the following requirements:

- that 50 per cent or more of their annual income has its source in the jurisdiction of their domicile; or
- that 50 per cent or more of the national's assets are located in the jurisdiction of their domicile.

[20] Exchange registration is not necessary when the transactions are carried out abroad with foreign currency, which do not need to be channelled through the exchange market.

[21] It is worth noting that since the coming into force of Law 1819 of 2016, the Colombian tax system has substituted the notion of 'tax havens' for low-tax and non-cooperative jurisdictions, as well as preferential tax regimes. The Government has the task of listing the jurisdictions that fall within those categories. However, the Tax Office has stated that regarding preferential tax regimes, the taxpayer is required to verify whether the estate where the relevant economic activities take place meets the conditions to qualify as a preferential tax regime, as per Article 260-7.

As previously noted, Colombian law establishes that unsettled successions are subject to income tax and, therefore, earnings, revenue and assets previously belonging to the decedent and which are part of the succession proceedings must be declared during the succession. Likewise, unsettled successions of deceased persons who were not residing in the country at the time of their death do not qualify as Colombian residents and are only subject to income tax on revenue and capital gains with a local source and to equity tax with respect to any assets held in the country.

Inheritances, legacies and donations and funds received as a marital share will be considered earnings subject to inheritance tax, regardless of the location of the assets making up part of the estate, in the case of a Colombian succession.[22]

Tax accrues on the date of execution of the partition or distribution decision. The amount of capital gains received by reason of inheritances, legacies, donations and marital shares is the value of the property and rights on 31 December of the year immediately preceding the date of the settlement of the estate or upon execution of the donation or the legal act inter vivos, whereby the assets are transferred gratuitously, as applicable.

In cases where the following types of goods and rights are involved, the succession value is determined as follows:

- the value of cash deposits will be assessed at the nominal value;
- the value of gold and other precious metals will be assessed at the market value;
- the value of vehicles shall equal the annual commercial assessment made by the Ministry of Transport;
- the value of shares, contributions and other rights in companies will be determined at the cost value;
- the value of credits will be assessed according to the nominal value;
- the value of assets and loans in foreign currencies will be assessed as per the market value, expressed in national currency;
- the value of securities, bonds, certificates and other negotiable instruments which generate interest and financial income will be assessed according to the cost plus discounts or returns accrued and not paid on the last day of the taxable period;
- the value of fiduciary and trust interests will be deemed to be 80 per cent of the net worth value;
- the net worth value of the rights in the trusts for the beneficiaries is that corresponding to their participation in the liquid assets of the trust at the end of the year or on the date of the statement of account (for beneficiaries, these assets retain the condition of mobilised or immobilised, monetary or non-monetary assets, that they have in the trust);
- the value of the real estate shall be the higher value of the acquisition cost and the fiscal cost;
- the value of income or periodical payments from trusts, private foundations and other similar vehicles, established in Colombia or abroad, to individuals residing in the country will be the total value of the respective income or periodical payments; and
- the value of a temporary usufruct must be determined in proportion to the total value of the asset given in usufruct, at a rate of five per cent of the value for each year of

[22] From a tax compliance perspective, it is worth noting that Colombia has entered into agreements with different countries for the automatic exchange of information, as per the Common Reporting Standard (CRS). Colombia has also executed an exchange of information agreement with the US under the Foreign Account Tax Compliance Act (FATCA).

the usufruct without exceeding 70 per cent of the value of the asset. The value of a life usufruct is 70 per cent of the total value of the asset given in usufruct.

If the assets were acquired by the decedent during the year of their death, the value of the asset may not be assessed for less than the cost.

The current legislation determines that the transfer of marital property does not constitute income generating a net increase in the value of the individual's net worth and, consequently, is not taxed.

The assets listed below are exempt from capital gains tax, as per the amounts described:

- the first 13,000 UVT (COP 680,862,000/$198,737) of the value of the real estate that forms the dwelling owned by the taxpayer;
- the first 6,500 UVT (COP 340,431,000/$99,368) of real property other than the dwelling owned by the taxpayer;
- the first 3,250 UVT (COP 170,215,000/$49,684) of the value of the allocations received by the surviving spouse and each one of the heirs or legatees, as the case may be, on account of a marital portion or an inheritance or a legacy;
- twenty per cent of the value of the goods and rights received by persons other than the legitimates and/or the surviving spouse on account of inheritances and legacies; and
- twenty per cent of the goods and rights received on account of donations and other legal acts inter vivos celebrated free of charge, without such sum exceeding the equivalent of 1,625 UVT (COP 85,107,750/$24,842).

B. Equity tax

Section 35 of Law 2277 of 2022 introduced a permanent equity tax (previously this tax had been established on a temporary basis), which is generated by the possession of equity as of 1 January of each year, which is valued equal or higher than 72,000 UVT (COP 3,770,928,000/$1,100,696).

For tax purposes, the concept of equity is equivalent to net assets, assessed as the total gross equity of the taxpayer owned on 1 January of each year, minus the debts payable by the taxpayer applicable on the same day.

The following assets are subject to equity tax:

- individuals and unsettled successions, which are subject to income tax or income tax substitute regimes;
- individuals, national or foreign, who do not have residence in the country, with respect to their assets owned directly in the country, except for situations where exemptions apply under international treaties and domestic law;
- individuals, national or foreign, who do not have residence in the country, with respect to their assets held indirectly through PEs in the country, except for situations where exceptions apply under international treaties and domestic law;
- the unsettled successions of deceased persons without residence in the country at the time of death with respect to their patrimony owned in the country; and
- foreign companies or entities that are not income taxpayers in the country and that own assets located in Colombia other than shares, accounts receivable and/or portfolio investments, in accordance with section 2.17.2.2.1.2 of Decree 1068 of 2015 and section 18-1 of the Colombian Tax Statute, such as real estate, yachts, boats, motorboats, works of art, aircrafts or mining or oil rights. Foreign companies or entities that are not income taxpayers in the country and which enter into financial

UVT RANGES		*Marginal Rate*	
FROM	*TO*		*TAX*
>0	72,000	Zero per cent	Zero per cent
>72,000	122.000	0.50 per cent	(Taxable base in UVT minus 72,000 UVT) * 0.5 per cent
>122,000	239.000	One per cent	(Taxable base in UVT minus 122,000 UVT) * one per cent + 250 UVT
>239,000	Onwards	1.50 per cent*	(Taxable base in UVT minus 239,000 UVT) * 1.5 per cent + 1.420 UVT

leasing contracts with entities or persons who are residents in Colombia will not be subject to equity tax.

Equity tax rates are progressive and apply as follows:

*The rate of 1.5 per cent will only apply on a temporary basis during the years 2023, 2024, 2025 and 2026.

THE RULES ON ADJUSTING THE TAXABLE BASIS

In regard to individuals, the first 12,000 UVT (COP 628,488,000/$183,449,26) of the net value of their home or apartment are excluded. This exclusion applies only with respect to the house or apartment where the individual lives most of the time. Therefore, recreational properties, second homes or any other property that does not meet the condition of being the place where the individual lives are not covered by this exclusion.

The value of the shares in national companies or entities that are not listed on the Colombian Stock Exchange or one of recognised international standing, as determined by DIAN, corresponds to the fiscal cost determined according to the provisions of the Colombian Tax Statute. The share purchase price is updated annually under the terms of Article 73 of the Tax Statute as of the year of acquisition. The shares or quotas of corporate interest acquired before 1 January 2006 shall be deemed to have been acquired in the year 2006.

If the value of the updated fiscal cost is greater than the intrinsic value (book value) of the shares, the latter may be taken into account.

The intrinsic value shall be calculated by dividing the book value of the net assets of the company as of 1 January of each year by the number of outstanding shares or quotas of corporate interest.

In the case of shares or quotas of corporate interest in national companies or entities listed on the Colombian Stock Exchange or on another exchange of recognised international standing, as determined by DIAN, the value of the shares shall correspond to the average market quotation for the year or fraction of the year immediately prior to the date of taxation.

The rules outlined above are used to assess the equity value of rights in investment vehicles, such as mercantile trusts or fiduciae or collective investment funds holding shares or quotas of social interest in national companies or entities, in accordance with Article 271-1 of the Tax Statute, as far as these comply with the following:

- The participation in private interest foundations, trusts, insurance with a material savings component, investment funds or any other fiduciary business abroad, shall be assimilated to fiduciary rights and in this case the provisions in sections 271-1 (patrimonial value of fiduciary rights) and 288 (adjustments for exchange rates) of the Tax Statute shall be applied.[23]
- The fiscal cost of the shares in national companies shall not be adjusted provided that the company issuing the shares fulfils the following requirements:
  - that the company is an innovative emerging company, meaning that its incorporation occurred in the last four years and that its purpose is the development of an innovative and scalable business and involves within its main economic activity the intensive use of digital technologies;
  - that the company has received at least 105,000 UVT (COP 5,499,270,000/$1,605,181) of capital investment during the current taxable year or in the four years immediately preceding the taxable years, in exchange for at least five per cent of the participation in the capital of the company;
  - that the company had no taxable net income as of 31 December of the immediately preceding taxable year; and
  - that the fiscal cost of the shares of one or more of the non-founding or initial shareholders of the corporation is at least three times the book value based on the net worth of the corporation as of 31 December of the immediately preceding taxable year.

C. Taxes on income and capital

Income deriving from an increase in value in the taxpayer's net worth is subject to income tax in Colombia. Income may be in the form of cash or kind, ordinary or extraordinary and from a domestic or foreign source. As mentioned, individuals who qualify as Colombian residents are subject to tax on earnings from both domestic and foreign sources. Non-residents are subject to tax only on their income from domestic sources.

Income from a domestic source is considered to include earnings derived from the exploitation of both tangible and intangible assets in the country and from the provision of services in Colombia, either permanently or transitorily, with or without a commercial

[23] Sections 271-1 of the Colombian Tax Code establishes that the value of fiduciary interest for the settlor is valued in accordance with their share in the net assets of the fiducia or the trust on the last day of the taxable year or on the date the tax return is filed. Section 288 establishes that earnings, costs, deductions, assets and liabilities in foreign currency will be valued at the market rate of exchange on the date of initial registration. Fluctuations in the exchange rate will have no fiscal consequences until the assets are transferred or the liabilities paid.

establishment. The following, among others, are deemed to be earnings from a domestic source:

- capital income derived from real estate properties located in the country, such as rentals or encumbrances to secure the payment of annuities;
- profits derived from the sale of real estate property located within the country;
- earnings derived from real estate property exploited within the country;
- interest derived from credits held in the country or economically related to it (exempt from income tax are interest derived from transitory credits originating from the import of goods and bank overdrafts);
- services rendered within Colombian territory; and
- profits from the exploitation of intangible assets within the country.

The income tax basis ordinarily is assessed by subtracting from the sum of all of the ordinary and extraordinary income realised during the tax period, the costs attributable to such income and the pertinent deductions, thereby obtaining the net income which, except for any applicable exemptions, will be the taxable income.

Income tax is generally assessed on the ordinary net income and, as an exception, on the increase in the value of the net worth from one year to the other, when such increase is not justified by valorisations or capital gains.

The applicable income tax for individuals is established progressively, with the maximum income tax rate for individuals being 39 per cent. Any unsettled successions will be taxed on the aforementioned basis.

Under the commercial regulations currently in force, trust agreements will be governed for contractual purposes by the rules of the country where the agreement is entered into and performed.

Settlors of foreign trusts will be required to report the investment abroad as long as they keep their share in the trust or as long as the beneficiaries are conditioned or indetermined.

For income and complimentary tax purposes, any Colombian residents receiving periodical rentals from foreign trusts or private foundations are subject to capital gains taxes at a rate of 15 per cent.

Private interest foundations are the equivalent of limited liability companies for income tax purposes. As per that qualification, these entities are taxed on their Colombian-source income at the general rate of 35 per cent.

Founders are required to report the value of their contribution as an investment abroad for the purposes of Colombian income tax. These assets will also be part of the basis for the assessment for net worth tax purposes.

For equity tax purposes, private interest foundations will be treated as trusts and other fiduciary agreements.

It should be noted that in Colombia, non-profit foundations and associations are subject to a special tax system.[24] For such purpose, Decree 2150 of 2017 (currently Decree 1625 of

[24] Entities belonging to this system are subject to income tax but have the benefit of assessing the tax at the special rate of 20 per cent on the net profit or surplus, which shall be exempt in regard to the portion reinvested for the fulfilment of the corporate purpose. Likewise, they will not be required to calculate the tax on the presumptive income system (minimum alternate

2016) introduced the conditions that must be met by an entity to qualify as a non-profit corporation, foundation or association under the special tax regulations, as follows:

- the main corporate purpose of the entity and any funds raised by the entity must be invested in health, sports, formal education, cultural, scientific or technological research, ecological or environmental protection activities or social development programmes;
- the said activities must be of general interest; and
- any surplus must be totally reinvested in activities that correspond to the corporate purpose. Non-profit entities may not distribute earnings to the founders, managers, directors, etc. If that occurs, the entity will be excluded from the special tax system and will be taxed as a commercial entity.[25]

This system applies to foreign entities that comply with the three requirements established in the regulation, as stated by the Council of State in decision 16467 of 2010.

To be covered by the special tax system, non-profit entities must file a request to the tax authority, demonstrating their compliance with all of the substantial and formal requirements stated above.

income tax system), nor will they be subject to withholding taxes, except for income obtained from financial yields or industrial and marketing activities.

[25] Article 1.2.1.5.1.41 of Decree 2516 of 2016 consecrates the events where there is a deemed indirect distribution of earnings by entities covered by the special tax regime.