



PROCOLOMBIA
EXPORTS TOURISM INVESTMENT COUNTRY BRAND



**Gobierno de
Colombia**

LEGAL GUIDE TO DO BUSINESS IN

COLOMBIA 

2023



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CHAPTER 10

*INTELLECTUAL
PROPERTY*

COLOMBIA 

INTELLECTUAL PROPERTY LAW

Intellectual property law seeks the protection of any creation derived from the human intellect; protection that is provided through special rules that grant its owner (mainly) an exclusive and excluding right of use.

Intellectual property is divided into two main categories: Industrial Property and Copyrights.

Industrial Property

- **Decision 486 of 2000 of the Commission of the Andean Community: Trademarks and new creations regulation.**
- **The Unique Circular of the Superintendence of Industry and Commerce (“SIC”): Trademarks and new creations regulation.**
- **Law 1455 of 2011 through which the “Protocol Concerning the Madrid Agreement Relating to the International Registration of Trademarks” and its “Regulations” is approved: Trademark regulation.**

Copyright

- **Decision 351 of 1993 of the Commission of the Andean Community**
- **Law 23 of 1982**

10.1. Industrial Property

Industrial property protects the following intellectual creations: inventions, utility models, industrial designs, and distinctive signs, among others.

Industrial property rights are recognized through their registration. In Colombia, the registration of intellectual creations before the SIC, competent authority for industrial property matters, is constitutive of the right, so this registration is essential for its effective protection. However, in the case of some distinctive signs, such as Trade Names and Commercial Signs, the registration is merely declaratory, and the right is acquired through the real, public, and effective use in the market.

The right granted has a territorial nature. For example, if registered in Colombia, it is only enforceable in Colombia.

Industrial Property is regulated by two types of rules:

Supranational regulations

Colombia, being part of the Andean Community of Nations (Colombia, Bolivia, Ecuador, and Peru), is obliged to comply with the rules issued by the Commission of the Andean Community, which are called Decisions and have the force of law and prevail over the internal rules of each member country.

Among these decisions is Decision 486 of 2000, which regulates industrial property, and is the rule that currently applies in Colombia.

International regulations

Colombian internal legislation includes the following regulations: i) the SIC's Unique Circular, ii) Law 1455 of 2011 through which the "Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks" and its "Regulations" is approved, iii) Decree 19 of 2012, iv) the Commercial Code and v) the Criminal Code, among other applicable regulations.

Distinctive signs

Distinctive signs are used in commerce by businesspeople to identify the products and/or services offered by them and to differentiate them from those offered by their competitors. These signs have several purposes, but the most important are to distinguish products and identify their business origin.

Distinctive signs are intangible goods, that is, things without corporeal existence, which are materialized through their

reproduction in different media, which must also be perceptible by any of the five human senses.

What are the types of distinctive signs?

Trademarks: are capable of distinguishing products or services in the market, which are susceptible of graphic representation. Words, images, figures, symbols, sounds, smells, letters, numbers, colors determined by a shape, the shape of the products, and in general any combination of these means, as long as it is distinctive of the products and/or services it seeks to identify, may be configured as a trademark.

Its protection is for a term of 10 years, renewable every 10 years, and allows the owner its exclusive use and commercial exploitation in relation to the products and/or services for which it was granted. It also allows the owner to prevent third parties from using or exploiting the sign without his authorization.

The slogan: are those signs composed of words, phrases or legends that are used as a complement of the trademarks and have the purpose of reinforcing its remembrance. It has the same protection and rights of the trademarks; its renewal is made at the time of requesting the renewal of the trademark to which it is complementary.

Trade name: are signs that identify an entrepreneur in the market with respect to its competitors. Unlike the trademark or commercial slogan, the trade name does not identify a product or service but the entrepreneur who markets or produces them. The trade name as a distinctive sign may or may not coincide with the corporate name of the company. The rights over a trade name are acquired and retained with its personal, serious, public, and consumer-oriented use in the

market. For this reason, a trade name that is not in use is, in principle, available in the commercial traffic.

Commercial sign: sign that identifies a commercial establishment, which, when found on its external part, allows consumers to identify it physically. Like the trade name, the rights are preserved through use in the commercial trade.

Geographical indications: sign that grants protection to the geographical origin of certain products that due to this have special characteristics and recognition by consumers. In Colombia, two types of geographical indications can be protected.

Indication of Origin: It consists of an expression, image or sign that designates or evokes a specific place. This is the right of any person or company to indicate the origin of its products or services, under the restriction that they be true or truthful. This sign is used when the indication of origin is not necessarily an indication of the quality of the products.

Denomination of Origin: Consists of a geographical indication, used to designate a product originating from a certain geographical area and whose quality, reputation or other characteristics are due exclusively to the geographical environment.

The validity of the Denomination of Origin will be determined by the subsistence of the conditions that make the product have the recognized qualities. It confers the right of exclusive use to the producers of a country, region, locality or determined

place that comply with the production procedures, preventing the usurpation of the product's reputation.

Trademarks

Considering that trademarks are the most popular distinctive sign, it is important to make two observations regarding: (i) distinctiveness; and (ii) the existence of different types of trademarks.

What is distinctiveness?

Distinctiveness refers to the aptitude of the sign to identify on the market the goods or services produced or commercialized by an entrepreneur from other identical or similar ones, with the purpose that the consumer differentiates them and can make his purchase decisions without being confused about the quality or origin of the mentioned goods and services.

Thus, if a trademark is to be registered, it must not consist of generic names (e.g., oranges to identify oranges), nor directly describe the quality or characteristics of what it seeks to identify (price, units of measurement, etc.), neither be a term commonly used to identify the product. Likewise, the mark may not be the same or similar to the point of being confusingly similar to another mark already registered or in the process of registration to identify identical or related products in the market.

What are the types of trademarks?

Trademarks can be classified according to their (i) perceptibility, (ii) function and (iii) recognition.

FOR ITS PERCEPTIBILITY

- 1.** **Word:** it is composed of letters, numbers and words or combinations of them.
- 2.** **Device:** it consists of a graphic sign that cannot be transliterated or pronounced.
- 3.** **Tridimensional:** it consists of a novel 3-dimensional body perceptible by sight or touch.
- 4.** **Olfactory:** protects a particular odor. It must be (i) distinctive (ii) perceptible, (iii) capable of graphic representation.
- 5.** **Color:** integrated by a color delimited by a shape.
- 6.** **Sound:** it consists of a sound. It must be accompanied by a score, a sonogram, and a sound file.

FOR ITS FUNCTION

- 1.** **Commercial:** identify products and services with a specific corporate origin.
- 2.** **Certification:** identify the quality or a special characteristic of products or services certified by its holder.
- 3.** **Collective:** identify products and services of a community that, without having an entrepreneurial origin, have common characteristics.

FOR ITS RECOGNITION

- 1.** **Common:** trademarks that do not enjoy special recognition by the consumer public.
- 2.** **Well-known:** trademarks that enjoy greater awareness among consumers of the products or services they identify due to the diffusion they have had in the market.

FOR ITS PERCEPTIBILITY

What is the applicable procedure and fees for registration?

- 1.**
6 - 8
weeks
Filing the registration application: at this step, the registration of the distinctive sign is requested before the SIC, the application must identify the sign and the products and/or services it intends to identify and the power of attorney if it is made through a representative.
- 2.**
2 - 8
weeks
Formal examination: the SIC reviews the application and verifies that it is in compliance with the Law in order to admit the application. If any requirement or documents are missing, the Office issues an office action to rectify the irregularity or to submit the missing documentation and gives the applicant sixty working days for its response. Failure to comply with the office action leads to abandonment of the application.
- 3.**
Thirty
Business
Days
Publication: once the SIC verifies that the formal requirements are met, it issues the publication order and the trademark is published in the Intellectual Property Gazette so that third parties are aware of it and, if applicable, may file an opposition.
Opposition: interested third parties may file oppositions to the registration during the term of 30 working days following the publication, alleging that the requested sign is subject to any cause of unregistrability. If the applicant considers it appropriate, they may have an additional 30 working days to submit evidence, upon payment of an additional fee.
Opposition reply: this is the opportunity given to the applicant to express why its trademark should be registered, challenging the arguments of the opposing party. The applicant also has 30 working days to respond after being notified of the opposition.

4. Substantive examination: is the SIC's assessment of the trademark applied for. In such analysis, it considers the registrability requirements established by the Law.

5. Decision: once the substantive study has been carried out, the SIC issues a Resolution granting or denying registration indicating the reasons that lead to the decision. Also, if any oppositions have been filed, it pronounces on them stating whether they are founded or unfounded.

It is important to consider that, if the Resolution denies the sign or declares the opposition unfounded, an appeal may be filed by the interested party within 10 working days following the date of notification of the Resolution, which will be understood to have taken place one month after the date of mailing. Once the appeal has been filed, the Office analyzes the appeal and either confirms or revokes in whole or in part the first instance resolution. This resolution is not subject to appeal, it becomes final one month after its notification, and a simple nullity action or an action for annulment and reestablishment of rights may be filed before the Administrative Tribunal of Cundinamarca.

OFFICIAL ONLINE FEES 2023

CONCEPT	TRADEMARKS AND SLOGANS	TRADE NAMES AND COMMERCIAL SIGNS
Application for registration for each international class	COP \$ 1.116.500	COP \$ 792.500
Registration request for each additional class	COP \$ 558.000	**
Renovation request	COP \$ 608.500	**

NEW CREATIONS

Inventions are those human creations that provide solutions to technical problems and can be protected by invention patents or utility model patents. In addition, all those products created by human beings, whose differentiating element is their external appearance, can be protected by means of industrial designs.

What is not considered an invention in Colombia?

- Discoveries, scientific theories, and mathematical methods.
- The entirety or part of living things as found in nature.
- Biological material existing in nature or that which can be isolated, including genome

or germplasm of any natural living being.

- Literary and artistic works or any other works protected by copyright.
- Plans, rules, and methods for the exercise of intellectual activities, games, or economic-commercial activities
- Natural biological processes
- Computer programs or software, as such; and forms of presenting information

What is considered an invention, but is not patentable?

- Those that threaten public order.

- Those that must be prevented to protect the health or life of people, animals and living beings, plants, animals and biological procedures.
- Therapeutic and surgical methods and in vivo diagnostic methods.
- A use other than the one originally covered by an initial patent.

- Industrial application: the product and/or process can be reproduced industrially.

Effects:

- Exclusive exploitation for 20 years.
- Possibility of granting licenses.
- Protection of the patent at national level.

What are the types of new creations?

INVENTION PATENTS

They are industrial property rights that allow the holder to prevent third parties from reproducing what the patent claims. Patents grant a right of exclusion derived from an agreement between the State and the applicant, in which the latter agrees to disclose the invention and makes it available to the former to determine whether the invention complies with the requirements determined by the standard to be patentable.

This right is territorial, so patent protection must be applied for independently in each country where exclusivity over the invention is sought, within the terms determined by law.

Requirements:

- Novelty: the product and/or process does not exist in the state of the art.
- Inventive step: the product and/or process is not obvious to a person with average knowledge in the field, or that it exhibits a surprising and unexpected technical effect.

UTILITY MODEL PATENTS

They protect those products (artifacts, tools, instruments, mechanisms, among others) that have shapes, configurations or arrangements of elements, which allow a better or different operation, use or manufacture of the product, providing some advantage that it did not have before.

They are frequently used to protect small improvements that provide advantages over existing products, and grant protection for a period of 10 years from the date on which the application is filed before the SIC. Through these patents it is only possible to obtain protection for products, but not for processes.

Requirements:

- Novelty: the product does not exist in the state of the art. Further, the differences with the closest prior art must provide a technical effect or advantage.
- Industrial applicability: the product can be industrially applied or reproduced.

Effects:

- Exclusive exploitation for 10 years.
- Possibility of granting licenses.
- Protection of the patent at national level.

What is the applicable procedure and fees for grant?

1.

Patent application filing: in this stage, the applicant submits the patent application, which will consist of a description, a claim chapter, figures (when required), an abstract and a title. If the applicant is a third party other than the inventors, they must provide a document of assignment of the inventors to the applicant. If the application is processed through an attorney, it is necessary to provide the power of attorney.

2.

1 - 2
months

Formal examination: the SIC reviews the application and checks that it is in compliance with the Law in order to admit the application. If any formal requirement is missing, the Office issues a requirement to correct the error or the missing document and gives the applicant two calendar months for its response. If the requirement is not complied with, the application is declared abandoned.

3.

Thirty
Business
Days

Publication: once the SIC verifies the fulfillment of the formal requirements, it issues the publication order and the patent is published in the Intellectual Property Gazette so that third parties may be aware of it and, if necessary, file an opposition.

Opposition: interested third parties may file oppositions to the grant during the term of 60 working days following the publication, alleging that the patent application does not meet patentability requirements. If the applicant considers it appropriate, they may have an additional 60 days to submit evidence, upon payment of an additional fee.

Opposition reply: this is the opportunity given to the applicant to express why its patent should be granted, challenging the arguments of the opposing party. The applicant also has 60 working days to respond after being notified of the opposition.

4.

Payment of the patentability examination fee: it is the payment of the fee that enables the substantive examination. Failure to pay within the deadline implies abandonment of the application.

5.

12 -18
months

Substantive examination: is the assessment made by the SIC on the application to determine whether it complies with the patentability requirements. If there are any objections regarding the clarity or the patentability of the invention, the Examiner will issue an office action at this stage, providing the applicant with a term of 60 working days, extendable for another 30 working days to file a response. Failure to file a response will imply the refusal of the application.

6.

Decision: once the substantive study has been carried out, the SIC issues a Resolution granting or denying the patent indicating the reasons that lead to the decision. Also, if any oppositions have been filed, it pronounces on them stating whether they are founded or unfounded.

It is important to consider that, if the Resolution refuses the patent or declares the opposition groundless, a reconsideration petition for invention patents or an appeal for utility model patents may be filed by the interested party within 10 working days following the date of notification of the Resolution, which will be understood to have taken place one month after the date of mailing. The Office will then analyze it and then will issue a final decision either confirming or revoking in whole or in part the first resolution. This resolution is not subject to appeal, it becomes final one month after its notification, and an action for annulment and reestablishment of rights may be filed before the Administrative Tribunal of Cundinamarca before a 4-month deadline after it becomes final.

The procedure for utility model patents is remarkably similar to the procedure for invention patents. However, all terms are reduced by half. Additionally, the remedy that proceeds against the first instance resolution is an appeal.

OFFICIAL ONLINE FEES 2023

CONCEPT	INVENTION PATENTS	UTILITY MODEL PATENTS
Filing Patent application (up to ten claims)	COP \$ 98.000	COP \$ 87.000
Additional claim	COP \$ 49.500	COP \$ 27.500
Patentability examination	COP \$ 1.516.000	COP \$ 857.000
Annuity payment	COP \$322.000 a COP \$1.545.500, depending on the year	COP \$299.000

INDUSTRIAL DESIGN

According to Decision 486 of 2000, an industrial design is the particular appearance of a product resulting from any meeting of lines or combination of colors, or from any two-dimensional or three-dimensional external shape, line, contour, configuration, texture or material, without changing the destination or purpose of said product.

Requirements:

- The industrial design must be new, so, it must not have

been made available to the public, at any place or time, by description, use, marketing or any other means, prior to the date of application.

Effects:

- Exclusive exploitation for 10 years.
- Possibility of granting licenses.
- Blocking similar design applications in the world.
- Protection of the design at national level.

What is the applicable procedure and fees for grant?

- Filing of the registration application:** at this stage the registration application is filed with the SIC, the views of the product that allow the clear and complete illustration of the design, documents of assignment of the designers to the applicant (if applicable) and the power of attorney, if done through an attorney, must be provided.
- Formal examination:** the SIC reviews the application and checks that it is in compliance with the Law in order to admit the application. If any formal requirement is missing, the Office issues a requirement to correct the error or complete the application, and gives the applicant 30 working days (extendable for the same amount of time) for its response. If the requirement is not complied with, the application is declared abandoned.

3.

Thirty
Business
Days

Publication: once the SIC verifies the fulfillment of the formal requirements, it issues the publication order and the patent is published in the Intellectual Property Gazette so that third parties may be aware of it and, if necessary, file an opposition.

Opposition: interested third parties may file oppositions to the registration during the term of 30 days following the publication, alleging that the requested sign is subject to any cause of unregistrability. If the applicant considers it appropriate, they may have an additional 30 days to submit evidence, upon payment of an additional fee.

Opposition reply: this is the opportunity given to the applicant to express why its trademark should be registered, challenging the arguments of the opposing party. The applicant also has 30 working days to respond after being notified of the opposition.

4.

3-6
months

Substantive examination: is the SIC's assessment of the design applied for. In such analysis, it considers the registrability requirements established by the Law.

5.

Decision: once the substantive study has been carried out, the SIC issues a Resolution granting or denying registration indicating the reasons that lead to the decision. Also, if any oppositions have been filed, it pronounces on them stating whether they are founded or unfounded.

It is important to consider that, if the Resolution denies the design or declares the opposition unfounded, an appeal may be filed by the interested party within 10 working days following the date of notification of the Resolution, which will be understood to have taken place one month after the date of mailing. Once the appeal has been filed, the Office analyzes the appeal and either confirms or revokes in whole or in part the first instance resolution. This resolution is not subject to appeal, it becomes final one month after its notification, and an action for annulment and reestablishment of rights may be filed before the Administrative Tribunal of Cundinamarca

OFFICIAL ONLINE FEES 2023

CONCEPT	INDUSTRIAL DESIGN
Industrial design application	COP \$ 781.000

Claiming priority of trademarks, patents, and industrial designs.

Priority rights provide the applicant of an invention or utility model patent, industrial design, trademark or slogan with an additional term to apply in several countries for the protection of its industrial property right, preserving the filing date of the first application.

The priority system is established in article 4 of the Paris Convention of 1883 and incorporated in the Andean legislation in article 9 of Decision 486, which establishes that whoever has applied for a patent of invention or utility model, an industrial design or a trademark, will enjoy a priority

right at a later time than this application. Thus, if the holder of an application filed in one of the countries of the Union (Paris Convention) wishes to extend this application to one of the other countries, they may invoke the priority and the new application will have the same filing date as the first one.

In order to benefit from the right of priority, the application invoking it must be filed within the following time limits, counted from the filing date of the application whose priority is invoked:

- **12 months for invention and utility model patents; and,**
- **6 months for industrial design and trademark registrations.**

For invention patents and utility models, it is possible to use the priority claim of the Paris Convention to file an international application under the Patent Cooperation Treaty (PCT). By means of this international application, it is possible to extend the term of a patent application to PCT member countries up to 30 or 31 months (depending on the country) after the filing date of the application whose priority would be invoked by the international application.

Characteristics of Industrial Property Rights

As rights, they are available and transferable through various forms, such as assignment contracts, licenses and liens.

The value of these agreements lies in increasing the value of the company, since through them companies can expand, increase their profits and even, in the case of liens, obtain sources of financing backed by industrial property rights. The following.

LICENSE

It is necessary to have an agreement in which the parties consent to the assignment. This legislation establishes that a granted or pending application may be transferred by inter vivos act or by succession, also establishing the duty to register the assignment document before the patent and trademark office, in this case the SIC, so that it may be enforceable against third parties, so that its effects transcend the parties.

Agreements in which the holder of an industrial property right (distinctive sign-new creation) authorizes another person known as a licensee to validly use these industrial property rights in accordance with the terms contained in the license agreement, whether or not in exchange for payment, a license in which the rights to be licensed must be clearly specified. In the case of licenses, the holder or licensor does not transfer the ownership of his rights, but simply authorizes their use to a third party. As in the case of assignments, licensing agreements must be registered with the SIC in order to be effective before third parties.

LIENS AND FORCED SALES

It is necessary to bear in mind that an industrial property asset is a movable asset that is part of a company, and therefore it can be used as warrant to support obligations and, if necessary, it can be seized and auctioned by court order.

REGULATION OF INDUSTRIAL OR TRADE SECRETS

What is it?

It is any secret information (i.e. not disclosed or easily accessible to third parties) that can be used in commercial activities and that gives some competitive advantage over competitors.

It is protected by Decision 486 of 2000 of the Andean Community Commission, Law 256 of 1996, which establishes rules on unfair competition, the Substantive Labor Code, the Penal Code and the General Procedural Code, among other applicable laws.

What is it protecting?

Any type of knowledge is protected regardless of its purpose, nature or field of application. For example, an industrial or business secret may relate to: (i) specifications on the nature, characteristics or purposes of products, (ii) formulas for preparing food, (iii) marketing strategies, (iv) research results, among others.

What are the requirements?

- **The information must be secret, i.e. it must not have been disclosed or be generally known or easily accessible to third parties.**
- **The information must have some commercial value, i.e. it must offer some competitive advantage.**
- **Necessary and/or reasonable measures have been taken to keep the information secret.**

What rights do they grant?

The industrial or business secret is protected against disclosure, acquisition, or use of such secret in a manner contrary to fair trade practices by third parties. The duration of such secrets is determined by whether they continue to meet the requirements to be considered secrets.

COPYRIGHT AND RELATED RIGHTS

Copyright protects any original creation (meaning by original, that the author puts his personal stamp on it) of an artistic, literary or scientific nature, susceptible of being disclosed or disseminated in any form.

Who enjoys the quality of an author?

According to Decision 351 of 2000, an author can only be an individual, since he/she is the only subject with the capacity to think, create, reproduce. Consequently, legal persons, such as corporations, cannot be considered as authors.

What are the types of works?

Original: It is a work in whose realization no adaptations or modifications of other existing works were made.

Derivative: these are works that are the result of the modification of a pre-existing work, in which the author adds other intellectual elements. The main derivative works are: i) translations, ii) adaptations and iii) compilations.

Collaborative: they are those in which two or more persons produce the work at their own initiative and risk. It is understood then that each author is the owner of the work as a whole and any intended use of the work requires the prior and express authorization of each of its authors.

Collective: They are those made by several authors, under the initiative and guidance of a natural or legal person who coordinates, discloses and publishes them under his name. This person will be the one who has the economic rights generated by the work.

Is there a duration for the rights?

In Colombia, economic rights are not unlimited in time, i.e., the holder of the rights has a term of protection during which he/she can exploit its rights in an exclusive manner and obtain an economic benefit for the use of his works.

When the work is within the term of protection, it is understood that the work is in the private domain, which means that the prior and express authorization of the owner must be obtained in case anyone wishes to use his work. Once the term of protection has passed, the work enters the public domain, and it is not necessary to have the authorization of the owner in case the work is wanted to be used.

- The term of protection of the natural person is the life of the author plus 80 years after his death.
- The term of protection of the legal person is 70 years from the first authorized publication of the work.

What rights are granted to authors and owners?

In accordance with Colombian legislation, copyright protects a series of moral and economic/patrimonial rights, which are primarily held by the original author or creator.

MORAL RIGHTS

Rights through which the author's personal interests in the work are protected.

Right types:

- Paternity
- Integrity
- Disclosure
- Modification
- Retract

Characteristics: cannot be sold, waived and are perpetual.

ECONOMIC RIGHTS

Rights by means of which the author or owner of the rights may authorize or prohibit third parties from exploiting his work.

Right types:

- Reproduction.
- Public communication
- Distribution
- Public transformation

Characteristics: they can be sold, resigned, have a duration and are independent.

RIGHTS GRANTED TO PERFORMERS AND PHONOGRAM PRODUCERS - RELATED RIGHTS

Before analyzing what rights are granted to performers and phonographic producers, it should be mentioned that the media on which musical works are recorded are not copyrighted works since they are not the result of the human intellect.

Notwithstanding the foregoing, some copyrighted works, particularly musical works, require artists to perform them and phonographic producers for their dissemination. This contribution of performers and phonogram producers is recognized through the so-called rights related to copyright.

With the aforementioned in mind, we will now mention the rights granted to artists and producers of phonograms:

- Interpreter artists or performers: authorize or prohibit the public communication of their live performances; authorize

or prohibit the recording of their performances; obtain remuneration for the public communication of their interpretation.

- Phonographic producers: authorize or prohibit the reproduction of their discs; authorize or prohibit the distribution of your records; and receive remuneration for the use of disks.

What is the applicable procedure and fees for registration?

The authority in charge of registering works or contracts related to copyright is the National Directorate of Copyright.

The registration made before the National Directorate of Copyrights is not constitutive of rights but is merely declaratory, therefore, it is not mandatory, and its main function is evidentiary in case of litigation.

Currently, the registration can be done in person or online at no cost.

The form corresponding to the type of work to be registered must be filled out, a copy of the work must be submitted, in case the applicant for registration is a legal entity, the corresponding certificate of existence and legal representation must be submitted, in case the applicant acts through an attorney, the corresponding power of attorney and in case there have been transfers of economic rights, the corresponding contracts supporting them must be submitted.

All documents, except the form, must be submitted to the National

Directorate of Copyright in digital media, either in a USB memory or CD.

A user and password must be created. Then, choose the type of work to be registered and follow the step-by-step instructions on the page. At the end of the registration process, the same documents mentioned in the on-site registration must be provided.

Negotiability

Although moral rights cannot be transferred, economic rights can be transferred by an inter vivos act, by succession or by legal provision.

Among the different forms of transfer of economic rights, there are two that are of particular relevance for entrepreneurs: **i) the contract for the assignment of economic rights and ii) the work for hire.**

The author or holder of the rights disposes of his/her economic rights, converting the new holder, by virtue of the transfer, into the derivative holder. This type of contract must be in writing to be valid.

The time and territory of the assignment must be specified. Failure to mention the time limits the transfer to 5 years and the territory to the country in which the transfer takes place. It is recommended to specify the rights assigned to ensure that they are being transferred.

WORK FOR HIRE

It originates when a natural or legal person, either in compliance with an employment or service contract, commissions a natural person to create a work protected by copyright.

It is presumed, unless otherwise agreed, that the economic rights over the work have been transferred to the commissioner or employer (article 28 of Law 1450 of 2011).

In order for the presumption to apply, the following conditions must be met: i) there must be a contract for the provision of services or an employment contract between the author and the person who commissions the creation of the work, ii) the employment contract or contract for the provision of services must be in writing and iii) the transfer of economic rights in favor of the commissioner, are understood to be granted “to the extent necessary for the exercise of their usual activities at the time of creation of the work”.

PLANT BREEDERS’ RIGHTS FOR NEW PLANT VARIETIES

The plant breeder’s right is the exclusive right granted to the person who develops and completes a new plant variety for its exploitation. A plant variety is the set of plants that are cultivated, which are distinguished by different morphological, physiological, cytological, or chemical characteristics and which can be reproduced, multiplied or propagated for several generations.

In Colombia, the competent national authority responsible for applying the plant variety protection regime is the Colombian Agricultural Institute (ICA). This regime is regulated by CAN Decision 345 of 1993 and was adopted in Colombia with Decree 533 of 1994. Law 243 of 1995 approved the International Convention for the Protection of New Varieties of Plants, UPOV, and Resolution 1893 of

1995 of the ICA establishes the national registry of protected plant varieties and the procedure for obtaining the breeder’s certificate.

What are the requirements to obtain protection?

Breeders’ certificates are granted to natural or legal persons who have (i) created plant varieties, when these are new, uniform, distinguishable and stable, and (ii) have been assigned an appropriate generic denomination.

NEW VARIETY

When the propagating material, or a product of its harvest, has not been sold or otherwise lawfully disposed of to third parties, by or with the consent of the breeder or his successor in title, for purposes of commercial exploitation.

DIFFERENT VARIETY

It is complied with if the plant variety is clearly different from any other whose existence was commonly known, at the date of filing of the application or of the priority claimed. If the application for the right of the variety has already been filed in another country, it shall be understood as commonly known.

HOMOGENEOUS VARIETY

It is complied with if the variety is sufficiently uniform in its essential characteristics, taking into account the foreseeable variations according to its method of reproduction, multiplication or propagation.

STABLE VARIETY

When the essential characteristics of the variety remain unchanged from generation to generation and at the end of each particular cycle of reproduction, multiplication or propagation.

APPROPRIATE GENERIC DENOMINATION

It is the designation that allows the identification of the plant variety, which must be proposed by the applicant in compliance with the specifications established in articles 34 to 39 of Resolution 1893 of 1995 of the ICA.

If the plant variety had already been filed in another country, and the priority of the same is claimed, the same denomination previously used must be used, provided that it complies with the guidelines of the national legislation.

The ICA will analyze whether the variety complies with the condition of novelty, and may directly carry out the tests of distinguishability, uniformity and stability, or may homologate the results of tests already developed, provided that they have been carried out and certified by the competent national authority of the respective country. In order to obtain such homologation, the applicant must submit the payment of the respective fee.

What rights does the breeder's certificate grant?

The grant of a breeder's right shall confer on its owner the right to prevent third parties from performing the following acts without its consent in respect of the propagating material of the protected variety:

- Production, reproduction, multiplication or propagation.
- The preparation for the purpose of reproduction, multiplication, or propagation.
- The offer for sale.
- The sale or any other act that implies the introduction in the market of the material for reproduction, propagation, or multiplication with commercial purposes.
- The exportation.
- The importation.
- The possession for any of the purposes mentioned in the previous numerals.
- The commercial use of ornamental plants or parts of plants as multiplication material, with the purpose of producing ornamental and fruit plants or parts of ornamental plants, fruit plants or cut flowers.

If any of the aforementioned rights of the holder are threatened or infringed, the holder may take legal action before the competent authority, in order to prevent the infringement or prevent its continuation. The right granted by the ICA is valid for 20 to 25 years in the case of vines, forest trees, fruit trees including their rootstocks, and for 15 to 20 years for other species. In addition, the right holder may license the right to exploit the protected variety.

1. Filing of the application for the grant of a plant variety breeder's right: the application is filed with the Seeds Division of the ICA. It must contain:

- Plant Breeder's Right Application Form
- Technical Questionnaire Form
- Declaration of novelty of the plant variety
- Certificate of existence and legal representation
- Copy of the ICA invoice with the payment of the corresponding fees.
- Photograph of the plant variety
- Table of UPOV characteristics
- Power of attorney in case of being a foreign applicant
- Assignment in case the holder is different from the breeder.

All documents must be submitted in Spanish, or with an official translation. Likewise, all documents of foreign origin must have Colombian consular certification in the country of origin and their pertinent legalization.

2.
Fifteen
business
Days

Pronouncement on the application: ICA has 15 working days to pronounce on the acceptance or rejection of the application.

3.
60
days

Deadline for complying with the Office: the ICA will give the applicant a deadline for compliance with any Office, if this is necessary for the examination of the variety. If no response is given, the application will be rejected. It is important to consider that an extension of the term may be requested, paying the corresponding fee.

4. Novelty Analysis: the ICA will analyze whether or not the variety complies with the novelty requirement, thereby accepting or rejecting the application.

5. Publication: once the application is accepted, it will be published in the Gazette of Protected Plant Varieties.

6. Evidence: the ICA will indicate to the interested party the amount, date and place where the live sample must be deposited for the performance of distinguishability, homogeneity and stability tests, or will analyze the approved tests.

7. ICA's concept on the requirements: within a period of 3 years for short-cycle varieties and 10 years for medium and long-cycle varieties, counted from the filing date of the application for protection, the ICA must issue its concept on the requirements of novelty, distinguishability, uniformity and stability.

8. Grant or denial of the plant variety:

- If the ICA finds that the plant variety does not meet the requirements, it will deny the application. In the face of this denial, the applicant will proceed with the re-evaluation of the plant variety.
- If the ICA corroborates that the requirements are met, it will issue an official letter requesting the payment of the fee for publication of the grant in the Gazette of Protected Plant Varieties and for the issuance of the certificate. Once the applicant makes the payments, the ICA will issue a resolution of grant and the breeder's certificate.
- During each year of protection, the holder must pay the fees for the maintenance of the breeder's registration, in accordance with the rates in force. The first year of renewal must be paid within the year following the grant. Thereafter, each maintenance payment must be made between January 1 and March 31 of each year. If the renewal payment is not made, the ICA will understand that the holder renounces the protection.

Within three months of the publication of the application or grant of the breeder's right, third parties have the possibility of filing an objection justifying non-compliance with the requirements or alleging that the applicant is not the owner of the variety. The challenge will be studied by the ICA, and it will consult the applicant of the variety, who will be able to respond to the allegations. Once the applicant responds, the ICA will revoke the granting decision if the third party's justification is admissible, or continue with the process, or maintain the decision to grant the variety.

HEALTH REGISTRATIONS

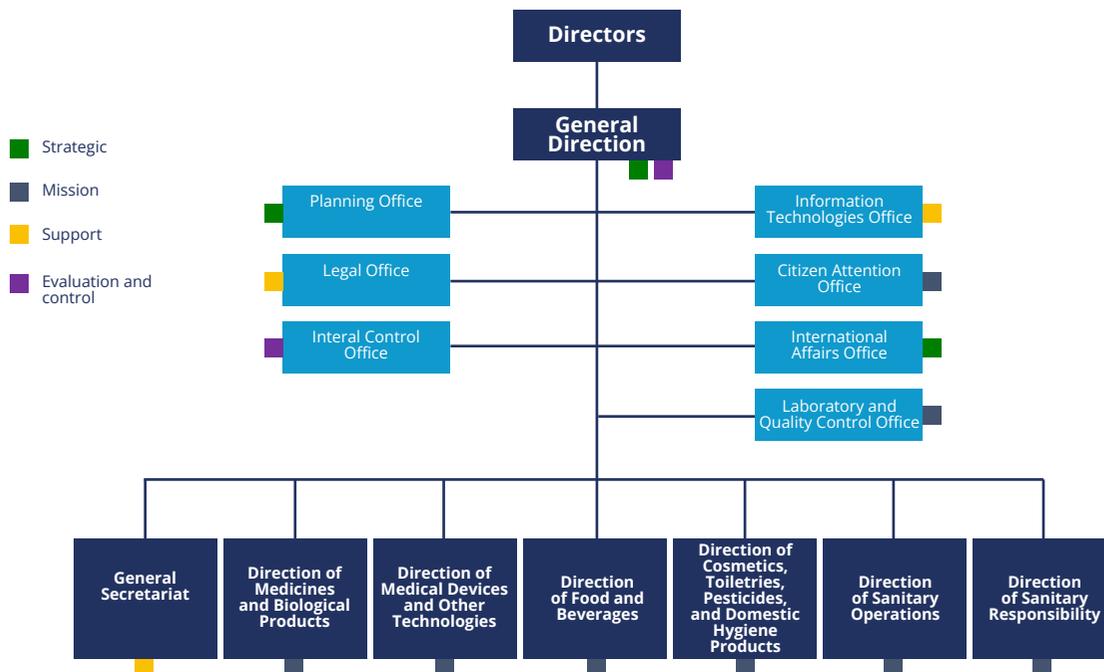
The products imported into Colombia such as pharmaceutical products and Biological Products; Cosmetics, Toiletries, Pesticides and household hygiene products; Food and alcoholic and non-alcoholic beverages and medical devices which are monitored by the Health Authority; National Institute for Drug and Food Surveillance "Invima", require for their manufacture, importation and marketing in the country of Registration, permit and / or sanitary notification (authorizations) issued by this entity.

What is the nature of Invima?

The National Institute for Drug and Food Surveillance (Invima) is a national public entity of scientific and technological nature, with legal personality, administrative autonomy and independent assets, belonging to the Health System, adscripted to the Ministry of Health and Social Protection and subject to the general provisions that regulate its operation. It executes the policies formulated in matters of sanitary surveillance and quality control of the products under its competence.

Organigramme

What are the principal modalities?



PRODUCT UNDER THE COMPETENCE OF INVIMA

Food and Beverages	<ul style="list-style-type: none"> • Meat • Alcoholic beverages • Fishing and aquaculture • Other
Medicines and biological products	<ul style="list-style-type: none"> • Medicines of chemical synthesis • Biological products (including vaccines) • Homeopathic medicines • Phytotherapeutics • Dietary Supplements • Hemoderivatives • Cannabis
Cosmetics	Any product of local application for the purpose of cleaning, perfuming or modifying the appearance and protecting, preventing or correcting body odors.
Pesticides of domestic use	Any agent of a chemical, physical or biological nature which alone, in mixture or in combination, is used for the prevention, suppression, attraction or control of insects, mites, pathogens, nematodes, weeds, rodents or other organisms harmful to animals, plants, their products, health of beneficial fauna.
Domestic hygiene and personal hygiene absorbents	<ul style="list-style-type: none"> • Products whose main function is to remove dirt, disinfect, aromatize the environment and promote the care of utensils, objects, clothes of areas that will later be in contact with human beings. • It does not include toilet paper, napkins or kitchen towels.
Medical devices	<ul style="list-style-type: none"> • Medical devices and biomedical • Diagnostic reagents and invitro reagents • Tissues and gametes

WHAT ARE THE MOST COMMON MODALITIES?

1. Importing and selling
2. Manufacturing and exporting
3. Manufacturing and selling
4. Importing, semi-processing and selling
5. Importing, Packing and selling

WHAT ARE THE MOST COMMON PROCEDURES AND THEIR VALIDITY?

Health Registration

Foods: 5 years

Pharmaceutical products: 5 years

Medical devices: 10 years

Dietary supplements: 5 years

Biological and vaccines: 5 years

Sanitary Notification

Foods: 10 years

Cosmetics: 7 years

Hygiene Products: 7 years

Personal hygiene products and absorbent: 7 years

Health Permit

Foods: 7 years

Medical devices: 10 years

RENEWALS

The time required to apply for the renewal of health registrations; mandatory health notifications; sanitary permits; and/or marketing permits is specific for each product under Invima's competence:

- **Pharmaceutical products:** 90 days before expiration.

If automatic renewal is requested, the application must be submitted one month prior to expiration.

- **Cosmetics:** 60 days before expiration.
- **Household hygiene products and absorbent products:** 60 days before expiration date.

- **Food:** 90 days prior to expiration.
- **Medical devices and biomedical equipment:** 90 days prior to expire.

REQUIREMENTS

Requirements vary according to the nature of the product.

In general, the legal requirements refer to the certificate of free sale; to good manufacturing practices and/or production capacity certificate and to ownership and import authorizations. Among the technical requirements are mainly those related to product composition; clinical studies; stabilities and labeling requirements.

Normative Framework

Medicines	Decree 677 of 1995 / Decree 334 of 2022 / Resolution 1124 of 2016.
	Bioavailability and Bioequivalence: Decree 1782 of 2014.
	Biological Products/Cannabis: Law 1787 of 2016 / Decree 613 of 2017 / Decree 2467 of 2015/Decree 811 of 2021, Resolution 227 of 2022/Resolution 315 of 2020
Suplementos dietarios	Decree 3249 of 2006. Decree 3863 of 2008.
Homeopathic	Decree 3554 of 2004, Decree 1861 of 2006
	Decree 335 of 2022, Resolution 4594 of 2007 (Manual), Resolution 3665 of 2009 (Guide)
Phytotherapeutic	Decree 2266 of 2004
Foods	Law 09 of 1979 - By which sanitary measures are dictated (National Sanitary Code) regulated specially by Decree 60 of 2002, Resolutions 00730 of 1998, 5109 of 2005 and 333 of 2011, Resolution 2492 of 2022.
	For meats, Resolution 2021043230 of 2021, Resolution 2020037814 of 2020, Resolution 2020012659 of 2020, Resolution 2019055962 of 2019, 1500 of 2007, 2270 of 2012, Resolutions 240, 241 and 242 of 2013, among others, must be taken into account.
	Pisciculture Document 561 of 1984; Resolution 776 of 2008; Resolution 2674 of 2013; Resolution 719 of 2015; Resolution 810 of 2021; Resolution 2492 of 2022; Circular DG 1000-002-23.
Alcoholic Beverages	Decree 1686 of 2012, Decree 162 of 2021.
Cosmetics	Decision 516 of 2002 / Decision 783 of 2013 - labeling - / Resolution 1905 of 2017 / Resolution 1906 of 2017 / Resolution 3773 of 2004 / Law 5 CAN.
	Decision 833 of 2008.

Cleaning Products	Decision 706 of 2008 / Resolution 3113 of 1998 / Resolution 689 of 2016.
Pesticides	Decree 2092 of 1986, Decree 1843 of 1991.
Medical Devices	Decree 4725 of 2005 / Decree 582 of 2017 / Resolution 4002 of 2007.
Invitro diagnostic reagents	Decree 3770 of 2004 / Decree 581 of 2017 / Resolution 132 of 2006.

Gómez-Pinzón

DESDE 1992

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EXPORTS TOURISM INVESTMENT COUNTRY BRAND



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