

NEWSLETTER ON REGULATORY ISSUES /
COVID -19

No. 3

APRIL 14, 2020



This third Newsletter on Regulatory Issues / COVID-19 addresses the different mechanisms adopted by the National Government through entities such as the National Guarantees Fund (*Fondo Nacional de Garantías – FNG*) and Foreign Commerce Bank (*Banco de Comercio Exterior – Bancoldex*) to support the liquidity of businessmen during the current emergency.

Likewise, this newsletter addresses the new tax measures, updates on the infrastructure sector, and the status of the suspension of terms before the main Superintendencies.

If you wish to consult our previous newsletters regarding COVID-19, you can access our [website](#). Our team of lawyers is also available to solve any question about these and other subjects.

MATTERS OF THE NEWSLETTER

1. UPDATES ON FINANCIAL MATTERS AND LIQUIDITY RELIEFS
2. UPDATES ON TAX MATTERS
3. UPDATES ON INFRASTRUCTURE MATTERS
4. UPDATES ON THE PROCEEDINGS BEFORE SUPERINTENDENCIES

EXTENSION OF MANDATORY PREVENTIVE ISOLATION

On April 6, 2020, President Iván Duque announced that the mandatory preventive isolation would be extended until 11:59 pm of Sunday, April 26. Therefore, Decree 457 of March 22, 2020, which originally established that the mandatory isolation until April 13, 2020, was modified.

The Decree that extended the validity of the Mandatory Isolation is Decree 535 of April 8, 2020 which is available in the following [link](#). In this regulation, exceptions for free movement of people are established.

1. UPDATES ON FINANCIAL MATTERS AND LIQUIDITY RELIEFS

In addition to the measures adopted by the main financial conglomerates to relief the liquidity of their clients (please refer to our Newsletter No. 2 [here](#)), the National Government and some public entities adopted mechanisms to relief the liquidity of the Colombian entrepreneurial sector, which we summarize as follows:

1.1 MECHANISMS ESTABLISHED BY THE NATIONAL GUARANTEE FUND – FNG

NATIONAL GOVERNMENT ANNOUNCES NEW MEASURES TO COVER PAYROLL PAYMENTS

In addition to the measures described herein, in a press conference held on April 9, 2020, the National Government indicated that loans for payroll payments given to SMEs can be guaranteed up to 90% of their value by the National Guarantee Fund – FNG.

As of the date of this newsletter, no Decree or circular regarding this measure had been issued. Nevertheless, the Ministry of Finance and Public Credit issued a guide on the matter, which can be found on this [link](#).

By means of [External Circular No. 008 de 2020](#), the National Guarantee Fund – FNG, created the “United for Colombia” (“*Unidos por Colombia*”) Guarantees Program as a measure to counteract the economic impact generated by COVID-19 and allow the access to credit to SMEs.

The total amount of the program is \$12 trillion pesos in the form of credits that will be gradually made be available. The initial amount will be \$2 trillion pesos, which will be increased as the program is implemented.

To this effect, the FNG established three products, which slot reservation must be made until **September 30, 2020** or until the amount established for the program is exhausted. These are the general conditions of the three products.

- **SPECIAL GUARANTEE PRODUCT UNITED FOR COLOMBIA – PYMES 60%**
 - Maximum amount of 1.6 trillion pesos in credit value.
 - The beneficiaries are enterprises (legal entities or individuals) with sales of up to \$51.951 million pesos as at the most recent tax cut, domiciled in Colombia, within all economic sectors, provided that the destination of resources is other than the financing of the primary agricultural activity.
 - Financial intermediaries are permitted to make slot reservations to debtors that on February 29, 2020 were rated as: “AA” and “A” commercial portfolio, with a maximum arrears of 60 days on February 29, 2020. “A” microcredit portfolio with a maximum arrears of 30 days on February 29, 2020.

- Credits for each debtor may be guaranteed for up to COP \$3.316.000.000 in credit value. For preferential clients, the maximum amount is COP \$5.941.000.000 in credit value.
- 12-month minimum period and 36-month maximum period, with a minimum grace period for principal of 4 months.
- There will be an Annual Commission or a Unique in Advance Commission. The commission will be assumed 50% by the National Government and the remaining 50% must be assumed by the enterprise or the Financial Intermediary, with their own resources. The commission established is of 1.98% advanced yearly payment.

➤ **SPECIAL GUARANTEE PRODUCT UNITED FOR COLOMBIA – MICROEMPRESAS 60%**



- Maximum amount of \$300.000 million pesos in credit value.
- The beneficiaries are microenterprises, legal entities or individuals, with sales up to \$1.559 million pesos on the most recent tax period, established in Colombia, within all economic sectors, whenever the destination of resources is other than the financing of the primary agricultural activity.
- Financial intermediaries are permitted to make slot reservations to debtors that on February 29, 2020 were rated as: Microcredit portfolio “A” with a maximum arrears of 30 days on February 29, 2020.
- Credits for each debtor may be guaranteed up to 50 minimum monthly legal salaries – SMMLV – by Financial Intermediaries.
- 12-month minimum period and 36-month maximum period, with a minimum grace period of 4 months for credit capital.
- There will be an Annual Commission or a Unique in Advance Commission. The commission will be assumed 50% by the National Government and the remaining 50% must be assumed by the enterprise or the Financial Intermediary, with their own resources. Commissions for this product are excluded of sales tax – IVA. The commission established is of 2.58% advanced yearly payment.

- **SPECIAL GUARANTEE PRODUCT UNITED FOR COLOMBIA – MICROEMPRESAS 50%**
 - Maximum amount of \$100.000 million pesos in credit value.
 - The beneficiaries are microenterprises, legal entities or individuals, with sales of up to \$1.559 million pesos on the most recent tax period, established in Colombia, within all economic sectors, whenever the destination of resources is other than the financing of the primary agricultural activity.
 - Financial intermediaries are permitted to make slot reservations to debtors that on February 29, 2020 were rated as: Microcredit portfolio “A” with maximum arrears of 30 days up to February 29, 2020.
 - Credits for each debtor may be guaranteed up to 25 minimum monthly legal salaries – SMMLV – by Financial Intermediaries.
 - 12-month minimum period and 36-month maximum period, there is no grace period.
 - There will be an Annual Commission or a Unique in Advance Commission. The commission will be assumed 50% by the National Government and the remaining 50% must be assumed by the enterprise or the Financial Intermediary, with their own resources. Commissions for this product are excluded of sales tax – IVA. The commission established is of 1.98% advanced yearly payment.

1.2 MECHANISMS OFFERED BY BANCOLODEX



BancolDEX designed a new solution of preferential credit, named “Colombia Responds to All” (“*Colombia Responde Para Todos*”), which was introduced by means of [Circular No. 006 of April 2, 2020](#).

This line of credit consists of an amount of around \$350.000 million pesos, which

will be allocated in the following way:

- Microenterprises rediscounting mechanism: \$50.000 million pesos.
- Microenterprises microfinancing mechanism: \$50.000 million pesos.
- SMEs: \$175.000 million pesos.

- Big enterprises: \$75.000 million pesos.

Beneficiaries will be individuals and legal entities considered as micro, small, medium and big enterprises of all economic sectors, excluding the ones in the agricultural sector and the ones financed throughout the credit line Colombia Responds (*Colombia Responde*).

Destination will correspond to working capital, raw materials, supplies, payroll and other operation costs and expenses. Likewise, the resources may be used to generate liquidity by improving the financial conditions of the current liabilities of companies. Finally, liabilities with partners or shareholders and liabilities financed with resources from Bancoldex are excluded.

Interest rates can be defined by means of the Term Deposit Interest Rate (DTF) or by means of the Bank Reference Indicator (IBR).

For the operations indexed with DTF, interests will be accrued in its equivalent elapsed month, trimester or semester. The interest rate for the financial intermediary will be of DTF effective annual + 0% effective annual. In the case of operations indexed with IBR, interests will be accrued in its equivalent elapsed month. The interest rate for the financial intermediary will be of IBR elapsed month + 0% effective annual.

In both cases, the interest rate for the enterprise will be freely negotiable in the frame of the special program designed by each financial intermediary.

Taking into account that Bancoldex is a second-tier financial institution, to access this credit, the person interested must seek a financial intermediary.

The credit will have grace period for the payment of principal of up to 6 months and a rediscounting mechanism up to 3 years.

It is important to note that by means of Decree 468 of 2020, Bancoldex was given the faculty to award direct credit with a compensation fee directed to the financing of projects and activities in the sectors eligible to fight the crisis on a national level. Nevertheless, the Government announced in past days that it authorized Bancoldex and the Banco Agrario to grant direct credits for general activities.

1.3 MEASURES ADOPTED BY FINAGRO

The Fund for the Financing of the Agricultural Sector (*Fondo para el Financiamiento del Sector Agropecuario – Finagro*), through special lines of credit

with subsidized rate – LEC Colombia Agro, small, medium and large producers (natural or legal persons) will be able to access financing of:

- Rural activities, support services for agricultural production, planting of short-cycle crops, support of perennial crops and agricultural production, commercialization and processing of agricultural production.
- Transport and commercialization costs

This is for a maximum period of 3 years and a grace period for principal and interest of up to 1 year.

Any questions or additional information you may require on financial matters can be channeled through the following members of our team:

- Diego Muñoz Tamayo – diego.munoz@mtalegal.co
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2. TAX AND LEGAL UPDATES

2.1 MODIFICATION OF THE TAX SCHEDULE FOR THE PAYMENT OF INCOME TAX AND SUPPLEMENTARY INCOME TAX BY LARGE TAXPAYERS AND LEGAL PERSONS

The Ministry of Finance and Public Credit issued [Decree 520 of April 6, 2020](#), amending the cut-off dates for the payment of income tax and supplementary tax for large taxpayers and legal persons who are not large taxpayers. In the case of large contributors, it set the following dates:

- They shall submit the income statement for the taxable year 2019 between 9 and 24 June 2020, depending on the last digit of the Tax Identity Number (NIT).
- Payment of the first instalment of the tax will be made between April 21 and May 5, depending on the last digit of the NIT.
- In addition, the payment of the second instalment of the tax will be paid between the same dates as the first instalment (between 21 April and 5 May 2020, depending on the last digit of the NIT).
- The presentation of the income statement will be postponed and will be combined with the contribution of the third instalment, which must be paid between 9 and 24 June.

In relation to legal entities that are not large taxpayers, the following dates were modified:

- Between April 21 and May 19, they only have to pay the first installment.
- The filing of the declaration, like the payment of the second installment, was postponed to comply between June 1 and July 1, according to the last two digits of the NIT.
- The annual declaration of assets abroad will have to be filed by legal entities that are not large taxpayers from June 1 to July 1, 2020.

The tables with information on the payment of the respective fees according to the last digit of the NIT may be consulted in the Decree, which can be accessed at the link provided above.

2.2 AN ABBREVIATED PROCEDURE IS ESTABLISHED FOR THE REFUND OF BALANCES IN FAVOR OF INCOME TAX AND SALES TAX TAXPAYERS – VAT

Through [Decree 535 of April 10, 2020](#), the Ministry of Finance and Public Credit established, as a measure to alleviate the cash flow of tax payers of income tax and sales tax – VAT, an abbreviated procedure for the return of credit balance.



The measure will be effective while the health emergency declared by the National Government remains in force and will allow the refund of balances within 15 days of the request for return and/or compensation presented in an appropriate and adequate manner.

For this purpose, the requirements established in paragraph 5 of article 855 of the Tax Statute will not be required. Likewise, the request for return and/or compensation with related with the costs, expenses and deductions, which must be delivered within 30 calendar days following the end of the health emergency.

The Decree clarifies that the measure will not be applicable to taxpayers who are classified as high risk in tax matters.

Any questions or additional information that you require on financial matters can be channeled through the following members of our team:

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3. UPDATES ON INFRASTRUCTURE MATTERS

3.1 SUSPENSION OF TERMS OF THE ADMINISTRATIVE AND CONTRACTUAL PROCEEDINGS BEFORE THE NACIONAL INFRASTRUCTURE AGENCY – ANI

The National Infrastructure Agency – ANI issued Resolution No. 471 of March 22, 2020, and established the suspension, until **April 13, 2020**, of: the administrative sanctioning proceedings, several obligations of the concession contracts such as work plans, transfer of networks, property and environmental management, capital transfers, the liquidation of contracts and, the review and evaluation of Public Private Association projects, among others

In the public contractual proceedings brought before the ANI, the following rules must be fulfilled:

- If there is a public hearing within the selection process scheduled during the mandatory isolation period, it may be reschedule, for which the terms indicated by law must be respected or the terms of the process must be suspended.
- If an evaluation of proposals is scheduled in any selection process, the evaluation will be carried out digitally using the SECOP II platform and in accordance with the instructions made by the Coordination of the Contracts Internal Working Group (*Coordinación del Grupo Interno de trabajo de Contratos*).

3.2 UPDATES ON THE ROAD AND PORT INFRASTRUCTURE MATTERS

The Ministry of Transport, through [Decree No. 482 of March 26, 2020](#) established various measures for the transportation sector. Among them, we highlight the following measures:

- As an exceptional measure, the works on transport infrastructure will continue by reasons of operational or technical necessity, provided that all the biosecurity rules required by the Ministry of Health are fulfilled.
- The tolls located throughout the national territory will not be able to make any charge to vehicles that are excepted in accordance with Decree No. 457 of March 22, 2020.

- Due to the measures adopted by the National Government, that lead to a reduction in the collection of projects under the Public Private Partnership scheme, time extensions may be made that:
 - Added, surpass twenty percent (20%) of initial value of the contract.
 - For private initiative projects, the contracts may be extended beyond twenty percentage (20%) of the initial amount.
- Public entities will have the faculty to unilaterally suspend State transportation infrastructure contracts, in the event that such suspension is necessary for the compliance of the measures derived from the national health emergency.
- As regards ports, the terms of port concessions may be extended for the time deemed necessary, throughout the duration of the national health emergency

Should you have any question or require additional information regarding infrastructure matters, it can be channeled through the following members of our team:

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4. UPDATE ON THE PROCEEDINGS BEFORE SUPERINTENDENCIES

The terms of the proceedings before the principal superintendencies have resumed or its suspension extended as following:



SUPERINTENDENCE	SUSPENSION OF TERMS		RESOLUTION
	BEGINNING	END	
Superintendence of Companies – Administrative Procedures	March 18, 2020	April 1, 2020 From that date the terms were resumed	Resolution No. 2020-01-001101
Superintendence of Companies – Judicial Procedures of Mercantile and Insolvency and Disciplinary Procedures	March 17, 2020	April 1, 2020 From that date the terms were resumed ¹	Resolution No. 2020-01-001101
Superintendence of Industry and Commerce – Administrative and Sanctioning Proceedings	March 16, 2020	Until the effectiveness of the State of Economic, Social and Ecological Emergency ²	Resolution 12169 of March 31, 2020
Superintendence of Industry and Commerce – Judicial procedures	March 17, 2020	April 30, 2020	Resolution 11790 of March 16, 2020
Financial Superintendence –Administrative Procedures	March 17, 2020	April 2, 2020 From that date the terms were resumed	Resolución No. 0368 de 1 de abril de 2020
Financial Superintendence – Delegation of Jurisdictional Functions	March 17, 2020	April 13, 2020 From that date the terms were resumed	Resolution No. 0368 de 1 of April 1, 2020

Please do not doubt to get in touch with us if you have any inquiry or comment.

- ¹ The following procedures will be exempt from the resumption of terms:
- The disciplinary procedures that currently are held in first and second instance.
 - The personal notifications of the administrative acts that recognizes the lawsuit, as the respective term of the process.
 - The presentation of the agreement of reorganization and other proceedings derivate from this.
- ² The administrative procedures, that in context of the State of Economic, Social and Ecological Emergency, related to the effectiveness of the human rights, especially those referred to the guaranty of habeas data included in article 15 of the Constitution, the adoption of precautionary measures and the beginning of procedures of Consumer Protection, Technical Regulations and Legal Metrology, as the adoption of precautionary measures and the beginning of procedures of restrictive practices related to goods and services, will be exempted of the suspension of terms.

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