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NEW FOREIGN-EXCHANGE STATUTE
LAW 9 OF 1991 (JANUARY 17)

Whereby general provisions are laid down to be observed by the Government in regulating foreign exchange, and supplementary measures are adopted

The Congress of Colombia ENACTS AS FOLLOWS:

TITLE I
ON GENERAL RULES REGARDING FOREIGN EXCHANGE

CHAPTER I
GENERAL PROVISIONS

Article 1. Foreign-exchange matters shall be regulated subject to the criteria, purposes and functions contained herein, by the Government acting directly or through the bodies envisaged herein.

Note: The text in italics was declared unconstitutional by the Constitutional Court in Decision C-455 of 1993.

Article 2. Purposes of the exchange-rate regime. The aim of the exchange-rate regime is to promote economic and social development and exchange-rate equilibrium, on the basis of the following objectives, which are to guide the regulations issued under this Law.

a) To foster the internationalization of the Colombian economy in order to make it more competitive in external markets.

- b) To promote, boost and encourage foreign trade in goods and services, particularly exports, and greater freedom of action for economic agents in such transactions.
- c) To facilitate the development of current external transactions and establish appropriate control and oversight mechanisms.
- d) To encourage capital investment from abroad in Colombia.
- e) To apply appropriate controls on capital movements.
- f) To ensure a sufficient level of international reserves for the normal course of external transactions.
- g) To coordinate foreign-exchange policies and regulations with the other macroeconomic policies.

The above criteria shall be applied in accordance with the principles of economy, speed, effectiveness, impartiality, publicity and contradiction, which are the guiding principles of administrative acts.

Article 3. Regulatory functions. The functions laid down in this Title shall be performed by the Government through the Monetary Board in the cases envisaged in Articles 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 and through the National Council on Economic and Social Policy in the case of the functions provided for in Article 13.¹

Note: The text in italics was declared unconstitutional by the Constitutional Court in Decision C-455 of 1993.

Paragraph 1. The Government may, subject to the general principles and other provisions of this Title and of Law 6 of 1971, issue special foreign-exchange and customs regulations appropriate to the specific needs of the Atlantic- and Pacific- Coast Regions in a strip of land not to exceed in any event 100 kilometers from the shoreline, and of the Intendancy of San Andrés and Providencia.

Paragraph 2. The Government is hereby empowered to create a special fund, with money from the National Budget, to be used to foster new exporting companies during the period 1991-95, extended for five years more at the discretion of the Government.

¹ In the last line of Article 3 the reference to Article 13, with regard to the National Council on Economic and Social Policy, Conpes, should be understood to be a reference to Article 15 hereof.

CHAPTER II ON FOREIGN EXCHANGE

Article 4. Operations subject to the foreign-exchange regime. The Government shall determine the different foreign-exchange operations that shall be subject to the provisions of this Law, on the basis of the following categories:

- a) The acts, contracts and operations of acquiring, holding or disposing of goods or rights abroad carried out by residents, and the acts, contracts and operations of acquiring, holding or disposing of goods or rights in Colombia by non-residents.
- b) The act, contracts and operations whereby a resident becomes or may become a creditor or debtor of a non-resident, and the acts of disposition of rights or obligations arising thereunder.
- c) The holding, acquiring or disposing of assets in foreign exchange by residents, or in the case of non-residents the holding, acquiring or disposing of assets in Colombian legal tender.
- d) Inflows into or outflows from Colombia of foreign exchange or Colombian legal tender and of instruments representing same.
- e) Acts whereby obligations become extinct between residents and non-residents.

Article 5. Regulation of foreign-exchange operations. Foreign-exchange operations may be regulated by the Government. To this end, the Government may only establish controls or administrative actions to verify the nature of the transaction and compliance with the relevant regulations.

Article 6. Foreign-exchange market. The foreign-exchange market shall comprise all such currencies as must be transferred or traded through intermediaries authorized under this Law. The Government shall set the rules for organizing and regulating the functioning of this market. It shall, moreover, establish the foreign-exchange operations the proceeds of which do not have to be transferred or traded through the foreign-exchange market and the mechanisms that may be used for possessing or trading the respective currencies in Colombia.

Paragraph. Foreign-currency earnings for services rendered by residents in Colombia shall be exempt from the obligation of being transferred or traded through the foreign-exchange market. Without prejudice to the foregoing, such earnings may be regulated by the Monetary Board. The provisions of this Paragraph shall not be applicable in the event of the international reserves falling below three months' imports.

Article 7. Holding of foreign exchange by residents in Colombia. Residents shall be free to hold, own and trade in foreign exchange not required to be transferred or traded through the currency market. These operations may, at all events, be regulated by the Government within the authorized freedom, subject to the purposes laid down in Article 2 hereof.

Article 8. Currency-market intermediaries. The Government shall designate currency-market intermediaries on the basis of either of the following criteria:

a) That the entities in question are under the supervision of the Banking Superintendency or the Securities Superintendency.

Note: Point a) was modified by Law 510 of 1999, Article 72.

b) That the entities in question have as their sole purpose the conduct of foreign-exchange operations.

The Government shall establish the requirements and conditions for the foreign-exchange operations permitted to be carried out by the different types of currency-market intermediary, and also the requirements to be met by the intermediaries for operating in the market.

Currency-market intermediaries shall have the duty of cooperating actively with the foreign-currency and the foreign-trade authorities.

Article 9. Foreign-currency receipts and payments. In accordance with the provisions of this Law, foreign-currency receipts and payments, in particular those arising from foreign-trade operations, external borrowing, investments, technology services-transfers-and purchase and sale, and profit remittances and transfers by residents, may be regulated by the Government. Pursuant to the foregoing, the operations that can result in the purchase and sale of foreign exchange in the currency market shall be determined, as shall the requirements and conditions to be met in this respect.

Article 10. For the operations required to be channeled through the currency market, foreign exchange may be allowed to be directly traded and held abroad through such mechanisms as settlement or current accounts, for which the necessary regulations shall be prescribed.

Article 11. External-borrowing regime. The regulations that the Government establishes on public or private external borrowing shall be designed to ensure that the agreements are entered into on commercial terms and do not put in inappropriate or inordinate pressure on the foreign-exchange and money market.

To this end, regulations of a general nature may be issued on the maturities, interest, purpose and other conditions of external borrowing.

Article 12. Participation by the Banco de la República. The Banco de la República's international reserves shall be administered according to the criteria of security, liquidity and profitability, for the purpose of contributing to currency-market equilibrium.

The Banco de la República's foreign-exchange and external-funding operations shall be subject to such special regulations as the Government shall adopt pursuant hereto or by virtue of its constitutional authority. Said regulations shall cover the nature and manner of intervention by the Banco de la República in the currency market and may provide that this entity shall act as a currency-market intermediary.

Article 13. Gold. The purchase, sale and possession of gold, in dust, bar or coin, shall be free. The Government may, for a non-extendable period of two years, regulate these activities and shall stipulate who may engage in exporting gold dust, bars or coins.

Paragraph. The taxes on gold shall remain in force, and the Government shall, before the entry into operation of the free trade provided for in this Article, establish the necessary regulations to ensure the normal and complete collection of taxes for the producer municipalities.

Article 14. In conformity with Government regulations, insurance denominated in foreign currency may be procured to cover persons and such goods as are generally classified as special risks.

The technical reserves relating to such insurance may be invested in foreign-currency securities, in accordance with Government regulations.

CHAPTER III ON INVESTMENTS

Article 15. Investment regime. The Government shall establish the general regime governing foreign-capital investment in Colombia and Colombian investment abroad. In the performance of this function, the types, uses, approval procedure and general conditions of such investments shall be specified.

A foreign-capital investment duly made in Colombia shall give the investor the right to remit abroad profits from the investment and to reimburse the invested capital and the capital gains, subject to the limits and conditions set by the Government.

By means of rules of a general nature, exceptional regimes may be established according to the destination of the investment, such as investments for the financial, hydrocarbon and mining sectors.

Except with regard to the transfer of funds abroad, foreign investment in Colombia shall for all intents and purposes be treated in the same way as investment by Colombian nationals.

The investment-reimbursement and profit-remittance conditions legally in force on the date of registration of the foreign investment may not be changed in any way that will unfavorably affect foreign investors, except on a temporary basis when international reserves are lower than three months' imports.

Paragraph. Rules issued under this Article may not grant any conditions or afford any treatments that discriminate between foreign investors and private Colombian investors.

Article 16. The Government may, by means of rules of a general nature, determine which service companies specific to the hydrocarbon sector, by reason of being exclusively engaged in the sector, shall be allowed to enter into foreign-currency agreements in Colombia and to implement them under the same regime as is applicable to oil companies.

In accordance with the provisions of Decree 1056 of 1953, Article 16, and the provisos to said Article, and in keeping with the authority of the National Energy Commission under Law 51 of 1989, it shall not be mandatory for the foreign-currency proceeds of the oil companies' petroleum exports to be repatriated to Colombia and surrendered for pesos.

Article 17. Existing overseas investments and assets. Residents in Colombia are hereby authorized to freely hold and possess overseas assets, provided the assets have been owned since before September 1st, 1990, or have been acquired or are acquired with foreign exchange not required to be transferred or traded through the currency market, which shall not be subject to the provisions of Article 15.

Returns on these investments or their liquidation value may be reinvested or used freely abroad.

The Superintendency of Currency Control shall abstain from initiating or terminating any administrative proceedings for violations of the foreign-exchange regime consisting of possessing, holding or trading foreign exchange, or securities representing foreign exchange, up to a maximum limit of fifteen thousand dollars (US\$15,000), provided the events occurred before September 1st, 1990.

Paragraph. The provisions of this Article shall govern without prejudice to the application of criminal-law provisions and of provisions established by virtue of the authority conferred by Article 121 of the Constitution, and also of fiscal laws defining the tax treatment of these assets.

TITLE II ON PROVISIONS RELATING TO FOREIGN EXCHANGE

CHAPTER I COMPLEMENTARY PROVISIONS

Article 18. Provisions regarding export taxes. The subnational jurisdictions and the Special Districts may not establish any taxes on exports or on the transit of products to be exported.

Article 19. Coffee levy. A coffee levy is hereby established to be paid by coffee producers into the National Coffee Fund for the priority purpose of maintaining coffee earnings for the stated purposes for which the Fund was created. The levy shall be five percent (5%) of the representative price per pound of mild Colombian coffee exported. The value of the levy shall be neither greater than four cents of the dollar (US\$0.04) per pound nor less than two cents of the dollar (US\$0.02).

For the purpose of helping to put the National Coffee Fund back on a sound footing and stabilize coffee farmers' income, a further levy is hereby created payable by coffee farmers of two cents of the dollar (US\$0.02) per pound of coffee exported provided the price is higher than sixty cents of the dollar (US\$0.60), said levy to remain in force up to December 31, 2005. From January 1st, 2006, provided the representative price of Colombian mild coffee is equal to or higher than ninety-five cents of the dollar (US\$0.95) per pound, this levy shall be three cents of the dollar (US\$0.03) per pound of coffee exported and shall be used exclusively for stabilizing coffee farmers' income through the domestic price. Its collection shall not become effective until such date as the Government sets for the purpose with the prior favorable opinion of the National Coffee Growers Committee.

Paragraph 1. The methodology for establishing the representative price of Colombian mild coffee shall be determined by the Government. Until the respective regulations are issued, the surrender value shall be used to determine the amount of the levy.

Paragraph 2. The Government may require partial or total withholding of coffee in kind only when special circumstances require an accumulation of inventory that in the opinion of the National Coffee Growers Committee cannot be achieved exclusively through purchases by the National Federation of Coffee Growers of Colombia, or when obligations under international coffee agreements so require.

Paragraph 3. Processed coffee may be fully or partly exempted from payment of the coffee levy, when the Government so decides.

Paragraph 4. Levy surpluses not immediately applied to the objectives laid down in the Law may be used only for making transitory investments in securities that are known to be safe, are highly liquid and provide sufficient returns.

In no case may these funds be used for making permanent investments, even where such investments are connected with the coffee industry.

A Commission is hereby created for monitoring the management and use of the coffee levy, to be made up of two members from the Coffee Growers Committees, one from the Ministry of Finance and Public Credit, two members from the Senate and two from the House of Representatives, the members from the Senate and House of Representatives to be appointed by the respective Third Committees on Economics.

Paragraph 5. Parafiscal farm levies. For purposes of income tax and related taxes, payments of parafiscal levies made by producers into the stabilization funds of Law 101 of 1993 and other laws creating same shall be understood to have a causal relationship to the income-producing activity and to be necessary and proportional according to the laws that establish them in cases and conditions particular to each farming subsector.

Note: Article 19 was modified by Law 788 of 2002, Article 63.

Article 20. (REPEALED). Transfers and allocations. Immediately after the foreign-exchange proceeds of coffee exports have been mandatorily surrendered for pesos and the value of the transfers has been deducted at the Banco de la República, the National Coffee Fund shall use funds from the levy defined in the previous Article, from its other revenues or from its capital to make the following transfers and allocations in the amounts and for the purposes specified as follows:

a) In 1991 and 1992, the equivalent of two point seven percent (2.7%) of the surrendered value shall be allocated to the Departmental Committees of the National Federation of Coffee Growers for the programs of social and economic development in coffee-growing areas, promotion and support of cooperatives, and improvement of small farmers' conditions in coffee-growing areas, undertaken directly or, where the nature of the programs so allows, through agreements with local governments. Starting from 1993 the share of the regional committees shall be increased to three point seven percent (3.7%).

b) The equivalent of two point seven percent (2.7%) of the surrendered value to be allocated by the National Coffee Fund itself primarily to the strengthening of programs designed to make coffee growing in Colombia more competitive and efficient, including scientific experiments, technology, dissemination, extension and diversification of coffee-growing and -processing practices.

c) The equivalent of two per cent (2%) of the surrendered value in 1991 and 1992 and one percent (1%) in 1993 and 1994 to the national budget.

Note: Point c) was REPEALED by Law 6 of 1992, Article 140.

Paragraph. Payments financed from the transfers prescribed in points a) and b) of this Article must be included in the National Coffee Fund's annual budget, and the fiscal control of these resources shall be performed by the Office of the Comptroller General of the Republic. The capital formed with the resources stipulated in point a) shall be the property of the Departmental and Municipal Coffee Growers Committees, according to these Committees' respective shares of the resources. The wealth thus created shall, at all events, remain tied to the purposes specified in point a) of this Article.

Note: The expressions:

- "to the Departmental Committees of the National Federation of Coffee Growers" and "regional committees" contained in point a), and
- "The capital formed with the resources stipulated in point a) shall be the property of the Departmental and Municipal Coffee Growers Committees, according to these Committees' respective shares of the resources. The wealth thus created shall, at all events, remain tied to the objectives specified in point a) of this Article" contained in the Paragraph to this Article

have been declared to be conditionally constitutional by the Constitutional Court in Decision C-543 of 2001 on the understanding that the resources from the parafiscal levies would be administered by National Federation of Coffee Growers, without the Federation having any right of ownership thereto as defined by the Civil Code.

Note: ARTICLE 20 WAS REPEALED BY LAW 788 of 2002, Article 118, Official Journal, Year CXXXVIII. No. 45046. DECEMBER 27, 2002. PAGE 11.

Article 21. The withholding requirement referred to in Paragraph 4 [22] of Article 19 shall, in the event of becoming applicable, be made by imposing on all exporters, including the National Federation of Coffee Growers of Colombia acting on its own account or on behalf of the National Coffee Fund, the obligation of transferring to the Fund without compensation and delivering to it at the warehouses or depots of the National Federation of Coffee Growers of Colombia a quantity of parchment coffee equal to such percentage as the Government may

specify after consulting the National Committee of Coffee Growers, of the coffee intended to be exported, of such quality and type as may be specified by that entity.

No coffee may be exported without prior verification of the physical existence of the coffee intended to be exported, of the levy referred to in Article 19 having been paid, and where applicable of the withholding having been effected in the manner indicated.

Withheld coffee shall be automatically subject to the regime established by the provisions in force and by the agreements made between the Government and the National Federation of Coffee Growers of Colombia

Article 22. Foreign-currency earnings from coffee exports corresponding to the minimum surrender price set by the Monetary Board shall be surrendered in full to be sold for pesos through the Banco de la República.

The National Coffee Fund may hold resources in a foreign-currency fund for meeting expenditures incurred abroad in respect of investments and expenses of coffee commercialization, publicity, office operations and foreign-currency loans in accordance with a budget to be drawn up on an annual basis, which shall be approved by the National Committee of Coffee Growers and the Monetary Board and shall be subject to control by the Office of the Comptroller General of the Republic.

The transfers made into this fund in accordance with the approved budget shall be accounted for as surrendered foreign exchange by the Banco de la República's Currency Office.

The levies and transfers prescribed in Articles 19 and 20 hereof shall not be applied to the budgeted expenses, loan payments and commercialization investments referred to in the previous paragraph.

The Federation shall report movements in the Fund referred to in this Article to the Banco de la República's Currency Office on a monthly basis.

Paragraph. Without prejudice to the provisions of Articles 3 and 11 hereof, the Banco de la República may accept advance exchange surrender in respect of coffee exports.

Article 23. The National Committee of Coffee Growers shall lay down measures designed to ensure the quality of export coffee, which shall be observed by the National Federation of Coffee Growers and by private exporters. The Federation shall have oversight over compliance with these measures, and its decisions are subject to appeal before the National Committee of Coffee Growers.

Article 24. Every year at the start of the ordinary sessions of Congress the Government shall report to Congress on the execution of the National Coffee Fund's budget and on the Fund's finances, through the Permanent Constitutional Third Committees of the Chambers.

Article 25. Without prejudice to the freedom of export, for the purpose of encouraging and facilitating permanent export activity all coffee exporters are required to register as such at Incomex (Colombian Foreign-Trade Institute) or the institution that takes over its functions, which entity shall, after obtaining the opinion of the National Federation of Coffee Growers of Colombia and in accordance with the rules and criteria set by the National Committee of Coffee Growers, establish minimum quality and other requirements to be met by exporters to become registered as such.

The registration of exporters shall be exempt from all taxes or charges.

Paragraph 1. The Federation's opinion shall be presented within a period not exceeding 60 calendar days. Should such opinion be unfavorable, the Federation shall be obliged to explain in writing the reasons for its decision, which decision shall be subject to appeal before the National Committee of Coffee Growers. If the Federation fails to provide an explanation or abstains from replying within the specified period, the party concerned shall necessarily be included in said register if it meets all other requirements.

Paragraph 2. Individuals and legal entities resident in Colombia may carry out domestic and foreign coffee purchase and sale transactions and coffee processing operations. Moreover, subject to legal provisions and to procedures established by the National Committee of Coffee Growers, they may freely select their buyers.

Article 26. Domestic coffee price committee. Domestic coffee prices for purchases by the National Federation of Coffee Growers of Colombia with resources from the National Coffee Fund shall be set by a committee made up of the Minister of Finance and Public Credit, the Minister of Agriculture and the Manager of the National Federation of Coffee Growers.

This same committee shall adopt measures to facilitate the purchase of coffee from small and medium producers directly by the Federation, or by cooperatives of coffee farmers, in order that the prices set for such operations may effectively benefit them.

Article 27. Futures and options market. Individuals and legal entities domiciled in Colombia may carry out hedging operations in international futures and options markets abroad, provided they comply with the regulations that the Monetary Board sets for this purpose. A parallel futures market may be established in Colombia to determine the price of farm products, in accordance with such regulations as the Government may issue.

Article 28. Stipulation of foreign exchange obligations. Obligations incurred in foreign exchange or currencies shall, where legally possible, be hedged in the specified foreign exchange or currency; otherwise they shall be hedged in Colombian legal currency, on such terms as the Monetary Board shall set by means of regulations of a general nature.

Article 29. International commitments. The provisions of this Law and of such laws as may be adopted pursuant hereto shall be understood to be without prejudice to the commitments under prevailing international treaties or agreements.

Article 30. (REPEALED). Eligible currencies for State entities' international biddings. Upon the entry into force of this Law, all participants in international biddings conducted by public-sector entities at the national, departmental or municipal level shall present their bid prices, and the funding they offer, in Colombian pesos or in dollars of the United States. No other currency shall be acceptable for this purpose.

Note: ARTICLE 30 WAS REPEALED BY LAW 185 OF 1995, ARTICLE 26.

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Article 31. The [natural and legal] persons authorized to own foreign currency may, moreover, use them to buy foreign-debt securities registered at the Banco de la República's Currency Office.

To this end they must waive the right to transfer the interest and principal payments on such securities, provided the acquisition of the securities and the waiver of the right to transfer are not prohibited by the original loan agreements and conform to the terms thereof.

Where the original agreements do not allow waiver of the right to transfer, supplementary mechanisms shall be established to ensure the surrender of foreign-currency interest and principal payments, for pesos, through the Banco de la República.

Where waiver of the right to transfer is not prohibited by those agreements, it shall be effected through cancellation of the foreign-currency registration at the Banco de la República's Currency Office

The Government shall regulate the conditions for effecting the surrender of interest and principal payments in foreign currency, in those cases in which the loan agreements do not allow waiver of the right to transfer.

The servicing and redemption of securities acquired under this Article shall be the responsibility of the issuer entities and the original responsibilities shall be maintained; payments of principal and interest shall be made at the exchange rate prevailing on the day of the respective payment.

Paragraph. Financial institutions, in their capacity as currency-market intermediaries, may also use foreign exchange that they are not obliged to sell to the Banco de la República for acquiring foreign-debt securities registered at the Banco de la República's Currency Office.

CHAPTER II EXTRAORDINARY POWERS

Article 32. Extraordinary powers. Pursuant to Article 76(12) of the Constitution, the President of the Republic is hereby vested with extraordinary powers for a period of one year, to run from the publication of this Law, for the following purposes:

1. To alter the structure and functions of the Superintendency of Currency Control: a special system of civil-service positions and specific sources of funds may be established in this entity and such funds may consist of a percentage of the value of fines imposed in the exercise of its control functions; the structure and functions of the Banco de la República's Currency Office and of other bodies and units directly connected with regulating, controlling and applying the foreign-exchange regime, in order to adjust the structure and functions of the public administration to the provisions of this Law. To this end, bodies and units may be eliminated or merged and functions eliminated or assigned to other bodies of the executive branch of public power.

2. To establish a system of penalties for infractions of the rules laid down herein and other provisions adopted hereunder, in particular penalties applicable to currency-market intermediaries, and the procedure for putting the system into effect. The new system shall be of a strictly administrative nature and shall not include imprisonment.

CHAPTER III FINAL PROVISIONS

Article 33. Contract and budget authorizations. The Government is hereby authorized to enter into such agreements and make such appropriations and other budget operations as may be required for compliance with this Law and with the provisions adopted for putting it into effect.

Agreements entered into by the Government with public-sector entities for compliance with this Law shall only require the signature of the parities, the budget entry where appropriate, and publication thereof in the Official Journal, this requirement being regarded as met when the order for publication is given by the Government.

Any additions, extensions or modifications introduced into the agreement that the National Federation of Coffee Growers enters into with the Government for management of the National Coffee Fund and for services shall continue to be subject to review by the Council of State and Congress and to publication in the Official Journal.

Note: The text in italics was declared unconstitutional by the Constitutional Court in Decision C-449 of 1992.

Article 34. Transition of legislation. The rules hereof not requiring regulations for their implementation shall be applicable to foreign-exchange operations currently under way; all other rules shall be applied according to regulations adopted pursuant to this Statute.

Article 35. Entry into force. This Law shall come into force from its date of publication and shall repeal in part Law 6 of 1967 and Extraordinary Decree 444 of 1967, both as amended, supplemented or otherwise modified, Articles 1 to 5 and 7 to 10 of Law 74 of 1989, Article 19 of Law 25 of 1923, and all provisions contrary hereto. This notwithstanding, the repeals shall become effective only upon the entry into force of the rules issued pursuant to the general

provisions established therein, and in no event shall they become effective later than one year from the date of publication.

Done in Bogotá D.E. on the ...

President of the Senate, J. AURELIO IRAGORRI HORMAZA

Secretary of the Senate, Crispín Villazón de Armas

President of the House of Representatives, HERNÁN BERDUGO BERDUGO

Secretary of the House of Representatives, Silverio Salcedo Mosquera

Republic of Colombia – National Government

Bogotá D.E. 17th of January 1991. To be published and implemented.

CESAR GAVIRIA TRUJILLO

Minister of Finance and Public Credit

Rudolf Hommes Rodríguez