

PARRA, RODRÍGUEZ & CAVELIER

Carrera 9 No. 74-08 Of. 504
Bogotá, D. C. Colombia
Teléfono: +57(1)376 4200
Fax: +57(1) 376 1707
prc@prc-laws.com

**FOREIGN AND DOMESTIC INVESTMENT ‘STABILITY-
AGREEMENTS’ UNDER THE RECENTLY ENACTED LAW 963/2005**

Aurora Barroso de Charry
Alfonso Plana Bodén

PARRA, RODRIGUEZ & CAVELIER

Carrera 9 No. 74-08 Of. 504
Bogotá D.C., Colombia
Teléfono: +57 (1) 376 4200
Fax: +57 (1) 376 1707

Calle 3 Sur No 41-65 Of. 1202
Medellín, Colombia
Teléfono: +57 (4) 321 0742

Calle 19 Norte 2N - 29 Of. 4002
Santiago de Cali, Colombia
Teléfono: +57 (2) 653 5375
Fax: +57 (2) 667 0545

e-mail: prc@prc-laws.com

The recently enacted Law 963/2005 whereby legal stability or certainty is conveyed to foreign investors in Colombia has brought into scope new possibilities for both foreign and domestic investors.

As the title suggests, the newly enacted Law sets forth a regulation which underlying purpose is that of assuring by means of so-called “legal stability agreements”, a legal certainty environment that, especially foreign investors in Colombia, have sought after vigorously.

In order to reach such certainty, so-called “legal stability agreements” aimed at the promotion of new investments and the increase in those already existing in Colombia are created and further regulated.

Following are the basic features and requirements in connection with the stability agreements that the Law has established and which we intend to portray below:

1. The State will guarantee investors that enter into such agreements -in the event of an adverse amendment of legal provisions foreseen in such agreement, and that are of a determinant nature so that the investment takes place- that foreign investors will have the right to avail of the provision prior to the amendment for the term established in the stability agreement.
2. Amendments are referred to any change in the wording or language of the provision, either by the Legislative in case of a Law, or by the Executive or other State branch in the case of an Administrative Act (i.e. decree, resolution, order, etc.). A change in binding official constructions or interpretations by administrative authorities (i.e. State agencies) will be likewise deemed an amendment for the purposes of the Law.
3. Notwithstanding, legal certainty may not be conveyed as to provisions related to (i) social security, (ii) tax returns and payments thereof, (iii) compulsory investments decreed by the National Government under state of commotion, economical, environmental or social emergency, and war, (iv) indirect taxes, (v) provisions related to safeguarding regulations of the financial sector, (vi) public utility rating regime, nor (vii) provisions declared unconstitutional or unlawful by the relevant courts. In furtherance the Law

establishes that the stability agreements will honor the National Constitution and International Treaties ratified by the Colombian Government.

4. Both domestic and foreign investors, natural or corporate citizens, may be a party to the stability agreements, as well as joint ventures (not being corporate citizens) that carry out new investments or increase their current investments in Colombia, in amounts equating or higher than 7.500 minimum monthly legal wages, namely COP2.861.250.000.00 or USD1,237,126.1 intended to the development of any of the following areas: travel, industry, agriculture, timber and agricultural exporting, export processing areas, commercial and oil free zones, telecommunications, constructions, port and railway developments, electrical energy production, irrigation projects and the efficient use of water resources as well as any other activity or area approved by a Committee created to the effect by the Law under review.

5. New investments are those done upon projects that begin to operate after the coming into force of the new Law.

6. Together with the application submitted by the investor interested in concluding a stability agreement, the following must also be addressed by the interested party:

6.1 Establish the maximum term to carry out the investment and the term of duration of the agreement.

6.2 Point out the articles, sections, paragraphs, numerals, literals, and items of the provisions issued by the entities and agencies determined by the Law, as well as the binding official interpretations, of which the stability will be ascertained and guaranteed, portraying the reasons of the need to have such provisions and official interpretations in effect in relation with the investment.

6.3 Establish the amount of the premium that the investor will have to pay to the State, which shall be equal to 1% of the investment made every year, save for unproductive periods of time dependant upon the investment type, in which case the amount will be 0.5%.

7. The legal stability agreements shall enter into force upon signature and remain as such during the term of duration foreseen in the agreement, which has to be between 3 and 20 years.

8. The application to enter into such an agreement will be reviewed and examined by the Committee that will approve or reject the conclusion of the agreement, as established under the National Development Plan and the CONPES (National Council of Social and Economical Policy) framework issued in this connection.

9. The agreements will be executed by the relevant Ministerial area, in which the investment is done. The relevant Ministry shall have a term of 4 months to execute the agreement, counted as from the submittal of the application by the investor and on condition that the application has all the legal requirements established under the Law.

10. The investor will remain bound to strictly comply and honor (i) the legal and regulatory provisions related to the relevant activity type, (ii) prompt payment of taxes, charges, and contributions as well as other labor and social excises to which a given corporation may be subject to, (iii) comply with provisions on environmental and natural resources nurture, use, management, and benefiting, and (iv) comply with tax and labor related obligations.

11. The agreements may be terminated prior to the foreseen termination date in the event that the investment is not promptly carried out or if the investment is wholly or partially retrieved as well as in the case the investing party fails to pay the premium referred to under point 6.3 herein or is impaired according to the event set out below.

12. Those that have been sentenced by a final judgment or sanctioned by an administrative act not subject to further appeal in Colombia or abroad in any given time, for corruption actions considered a criminal offence in domestic legislation will not be able to enter into stability agreements nor be a beneficiary thereof.

This Report has been prepared by and its copyrights belong to PRC, a law firm with offices in Bogotá, Cali and Medellín, Colombia. The general information contained in this report does not constitute legal advisory. The transcription and quoting of the information herein contained is permitted as long as the source is also quoted.

Copyright PRC 2005 - all rights reserved.

Note: If you do not want to receive any more reports please send an e-mail to Legal.report@prc-laws.com, including in the subject the word "UNSUBSCRIBE".