

# Colombia

## MARKET REVIEW

During 2003, the Colombian economy improved its performance and registered the highest rate of growth in Latin America at 3.74%.

The internal economy recovered, mainly pushed by the private sector, which had a much better year as a direct consequence of positive expectations in the Colombian economy. These positive expectations are based on new security rules, fiscal adjustments and monetary policies (lower interest rates).

Since August 7, 2002, the President, Alvaro Uribe, has been firmly in charge of the Colombian government. He retains high popularity ratings and considerable support in Congress, but there are some occasional clashes between Congress and the Government who aim to eradicate corruption.

The guerrillas are still active and disruptive, though the firm action of the government has counteracted this and gained great support from Colombian citizens.

Heavy spending on the military offensive against them and on social programmes will require abundant capital inflows, complicating the government's efforts to stabilise the burden of public debt.

Nonetheless, the government succeeded in obtaining support from Congress and Constitutional Court to launch a referendum asking the citizens for support in many public-spending cuts.

The level of investment grew to reach a level equivalent to 15.6% of GDP (though this rate is still low when compared with the average level of investment for the previous three years: 18.5%).

The external demand was reactivated and occurred mainly due to growth in the US economy, which helped partially to offset the negative impact of Venezuela's economy contraction, whose GDP dropped about 9.5% in 2003.

The non-traditional exports grew to 5.3% (i.e. gold, emeralds). The good per-

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formance of export levels and the greater capital flows contributed to the local currency appreciation at the end of 2003.

The international context was relatively favourable for Colombia. The unemployment rate decreased to 12.3% as a natural consequence of the improvement in the Colombian economy.

As a measure of country risk, Standard & Poor's rated Colombia's sovereign debt as BBB/Stable/A.

Total foreign investment during 2003 is shown in Table 1.

**The leasing industry.** Based on the level of leased assets, during 2003 the finance leasing industry in Colombia grew 36.04% compared to its level during 2002 (source Fedeleasing).

There are two large players in the operating leasing arena. One of them is Surenting S.A., a joint venture between Suleasing S.A., Mitsubishi Industries (Japan) and International Finance Corporation (IFC). The other large player is Global Vendor Services, wholly owned by The CIT Group (the world's second-largest lessor).

As a general remark, operating lessors are not subject to the control of the Banking Superintendency, since they do not perform any financial activity.

According to Fedeleasing, the Association of Colombian Leasing

## Leasing services

### The Alta Group - Latin American Region

Carrera 7ª No. 74-56 Oficinas 501-506, Santa Fe de Bogotá, D.C., Colombia. Tel: (1) 313 2350; Fax: (1) 313 2380; E-Mail: rafael.ramirez@thealtagrouplar.com. Principal: Rafael Ramirez.

**Activities:** Consulting to manufacturers, vendors and lessors, evaluating and improving business practices and strategies training of staff and negotiation support.

### CIT Global Vendor Services S.A.

Carrera 7 No. 115-33 Oficina 404, Bogota - Colombia. Tel: (1) 520-0202. CEO: Andrés Olarte Azuero.

**Activities:** Operating lessor.

### Compañía Suramericana de Arrendamiento Operativo S.A. (Surenting)

Bogotá Calle 72 No.7 -82 Piso 4. Tel: (1) 606 8003/606 8005/606 8484; Fax: (1) 606 8804.

**Activities:** Operating lessor.

### Compañía Suramericana de Arrendamiento Operativo S.A. (Surenting)

Medellín Carrera 52 No.14-30 Local 340 Centro Empresarial Olaya Herrera. Tel: (4) 3161818; Fax: (4) 3160808.

**Activities:** Operating lessor.

### Financiera Mazdacrediro SA

Carrera 11, No. 94-02, Bogota, Colombia. Tel: (1) 610 6411.

**Activities:** Leasing activities.

### IFI Leasing SA

Carrera 13, No. 93-12 Piso 2, Bogota D.C. Colombia. Tel: (1) 621 8844;

E-Mail: ifileasi@rcumoreno.com.co. President: Dr. Daniel Hernández Galindo.

### Leasconsulting S.A.

Transv. 10A, #127A-97, Bogota D.C., Colombia. Tel: (1) 258 3029; 648 3664; Fax: (1) 258 3029;

E-Mail: ricardo.munoz@leasconsulting.com; jorge.posada@leasconsulting.com. Senior Partners: Ricardo Munoz M, Jorge Posada V.

**Activities:** Commercial outsourcing, finance structuring, Andean Pact leasing consulting, brokerage.

### Leasing Bogota S.A. CFC

Calle 36, #7-47 Piso 11, Bogotá DC, Colombia. Tel: (1) 320 2066. President: Gonzalo Varela Villegas.

**Activities:** Leasing services.

### Leasing Bolivar

Cra. 7, No. 71-52 Torre B, Piso 12, Bogotá, Colombia. Tel: (1) 312 2377.

### Leasing Citibank S.A. C.F.C.

Cra. 9A, 99-02 Piso 2, Bogota, Colombia. President: Jose Antonio Riachi Vega.

**Activities:** Leasing activities.

### Leasing Colombia S.A. C.F.C.

Calle 30A, No. 6-38, Piso 14, Bogotá D.C., Colombia. Tel: (1) 288 0477; Fax: (1) 287 4775;

E-Mail: leasecol@elsitio.net.co. President: Alvaro Motta; Commercial Manager: Claudia Rueda; Financial Manager: Mónica Sánchez; Operating Manager: Ana Posada.

**Activities:** Financial lease of all kinds of equipment, including real estate leasing, leveraged leasing and big ticket operations, broker and packager.

**Shareholders:** Bancolombia, Colcorp.

### Leasing De Credito

Carrera 7 No. 27 - 18 Piso 9, Bogota D.C. Colombia. Tel: (1) 332 3939;

E-Mail: leascred@empresario.com.co. General Manager: Juan Antonio Montoya Uricoechea.

**Activities:** Leasing services.

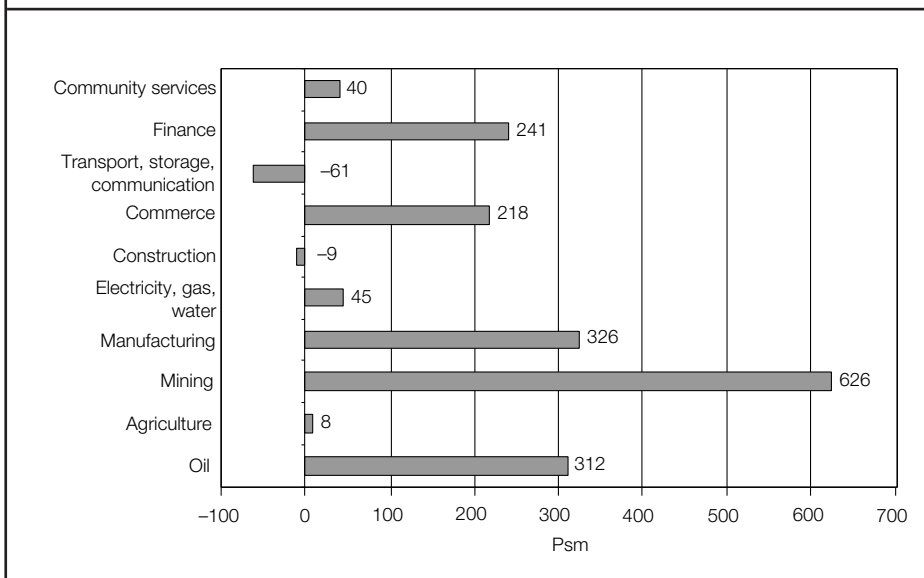
### Leasing de Occidente S.A. CFC

Cra 13, #26-45 Piso 15, Bogotá DC, Colombia. Tel: (1) 336 1366.

**Activities:** Leasing services.

## Colombia

**Table 1: Foreign investment in Colombia by industry**



Companies, the numbers highlighted in Table 2 characterised leasing in 2003.

The rebound of the equipment leasing industry is a combination of the overall economic recovery and an improvement in focus and strategic direction within the industry, which by the end of the year achieved some important tax benefits that are not only leading the growth of the leasing system but also the growth of capital investment and the economy.

Tables 3 and 4, based upon information from the Superintendency of Banks and from Fedeleasing, show the current shape of the Colombian leasing industry.

**Law and regulation. Leasing companies.** Pursuant to the Financial Statute, since Law 74 of 1989, finance leasing companies are subject to the Superintendencia Bancaria (Banking Supervision Regulatory Body) and therefore their operation should comply to the same regulations as banks.

Consequently, only those companies with a licence granted by the Superintendencia Bancaria may act as lessors in any leasing contract within Colombia. This principle has been ratified by Law 35 of 1993, which also provided the obligation to convert leasing companies into finance companies.

As a result of such a conversion, finance leasing companies are enabled to have access to the funds from the public savings, having therefore less capital costs for leasing transactions, but with a greater volatility, since there is no perfect match between the funding period and the leasing terms.

Leasing companies must be incorporated with the same procedures necessary

for the creation of a new bank in Colombia. Minimum paid equity shall be, according to Law 510, 1999 and Decree 2323, 1999, Col\$11,613,000,000 (approximately US\$4,500,000) for the year 2002. It shall be further adjusted by the CPI Index (inflation).

Financial entities (banks, investment banks and financial companies) are entitled to participate as shareholders in a leasing company. Decree 663 of 1993 requires that when one of these corporations participates in a leasing company, it must hold a share of no less than 51% of total outstanding shares.

For independent lessors, that restriction does not exist. So, manufacturing or trading companies or groups can incorporate a lessor without that restriction, but always filing for the corresponding licence at the Superintendencia Bancaria.

Foreign investors are allowed to hold up to 100% of a leasing company's outstanding shares. The only process to be completed is to gain the permission of the Superintendencia Bancaria, which in less than three months may be granted together with the licence of the finance leasing company, provided that all documentation and independent research on the ability and good reputation of the shareholders is revised to the Superintendencia Bancaria's satisfaction.

In addition, foreign investments in Colombia may be insured through the Overseas Private Insurance Corporation and, since the adoption of Law 149 of 1994, through MIGA. These two entities provide a relief to country risk, since they insure foreign investments.

## Leasing services

### Leasing del Valle S.A.

Calle 8, #4-47, Piso 17, Cali, Colombia. Tel: (2) 883 4787. Contact: John Sanin Hernandez.

**Activities:** Leasing services.

### Leasing Popular S.A. CFC

Calle 72, #10-70 Torre A, Piso 11, Bogota, Colombia. Tel: (1) 235 6500;

E-Mail: lpopular@coly.telecom.com.co. President: Helmuth Barros; Also Contact: Claudi Molano, Jairo Pineda, Alvaro Herrera.

**Activities:** Leasing services.

### Leasing Suramericana Compañía Financiamiento Comercial S.A. 'SULEASING' (Head Office)

Calle 8 N° 43C-101, Medellín, Colombia. Tel: (4) 268 6500; Fax: (4) 311 1112;

E-Mail: lfperez@suleasing.com.co. President: Luis Fernando Perez C; Financial Vice President: Alvaro Fernando Robayo M.

**Activities:** Offers a variety of finance leasing products to small, medium and large corporations.

**Shareholders:** Corporación Financiera Nacional y Suramericana S.A.

### Suleasing Internacional S.A., Representative Office

Carrera 9, No. 73-74, Of. 703, Bogotá, Colombia. Tel: (1) 317 7818; Fax: (507) 317 7841;

E-Mail: lvmontes@suleasing-intl.com.pa. Contact: Laura V. Montes.

**Activities:** Offers cross-border leasing with specialisation in infrastructure equipment to Colombia and other Latin American countries.

### Suleasing S.A. CFC

Calle 8, #43C, 101 Medellín, Colombia. Tel: (4) 268 6500. President: Luis Fernando Perez Cardona.

**Activities:** Leasing activities.

## Colombia

**Table 2: Value of leased assets in Colombia (2002-03)**

	October 2003 (Ps m)	October 2002 (Ps m)	Variation %
Leased assets	2,282,393	1,677,758	36.04

In accordance with the position that Colombia has gained in the international marketplace as the strategic centre for the Andean Group, and nowadays for the G-3 and the CARICOM countries, Colombian leasing companies are allowed to invest in foreign leasing companies to establish their beach-head in managing an expanded leasing market.

*Accounting.* Further to the fact that the Superintendencia Bancaria issued the Circular Externa No. 100 of 1995, Circular 100 has been updated by Circular 70, 2000, which comprises the Unified Accounting Plan (PUC), as well as by Circulars 23 and 24, 2003. The rules for accounting for leases, after the elimination of the system of inflation adjustment financial statements, are consistent with the specific standards for finance companies,

Decreets 2649 and 2650 of 1993 adopted the General Accepted Accounting Principles (GAAP), based mainly on the IAS and FASB standards.

The principles of IAS 17 have been adopted by Law 223 of 1995. Lessees having more than US\$3.8m in total assets must register the leased equipment as an asset and the net present value of the stream of rentals as a liability. Accrued rentals shall be registered, part as amortisation of the leased asset and the balance as a financial expense.

Lessees having less than US\$3.8m in total assets (SBE or PYMES) may register the lease as off-balance-sheet, provided that minimum terms are agreed on.

Leased assets, being fixed assets, shall no longer be adjusted by inflation both for fiscal and accounting purposes.

For lessors, and restricted to the equipment they capitalise, depreciation must be allocated during the lease term on a straight-line basis for accounting purposes and, starting from 1992 due to Decree 2913 of 1991, also for tax purposes (Decreets 2911 and 2912 of 1991).

Circular 100 of 1995 issued by the Superintendencia Bancaria states the rules for receivables accounting. As soon as they accrue, if by the amount of the lease contract, this can be classified as a consumption category. Once accrued three rental periods of receivables

unpaid, the lessor shall stop registering further rentals as income, and instead the lessor must register at the balance footnotes the amount of rentals further accrued.

When the lease contract is classified as a commercial contract, the same principle must be applied once accrued six rental periods unpaid.

Further regulations are related to the requirements for contract rescheduling, loss reserves for uncollected receivables and other related matters, which are very hard for financial presentation. Once again, these regulations, despite affecting profits disclosures, do not affect cash flow.

The rest of the accounting regulations for leasing companies are the same as for every other business corporation.

*Operations.* Colombia follows the guidelines set forth by the Bank of International Settlements, under the new Basle Accord. In this direction, Decree 1720, 2001 defined the "solvency ratio" as the quotient resulting of dividing the leasing company's equity by its total assets weighed by their comparative risk

factors. This ratio was set forth at a minimum rate of 9%.

In the same direction, Circular 050, 2001, as modified by Circular 11, 2002, mandated all regulated entities, including but not limited to leasing companies, to create internal permanent procedures for monitoring the risk factors associated to their portfolios and adjust their solvency accordingly. These procedures are called "Credit Risk Management Controls", better known by their initials in Spanish "SARC".

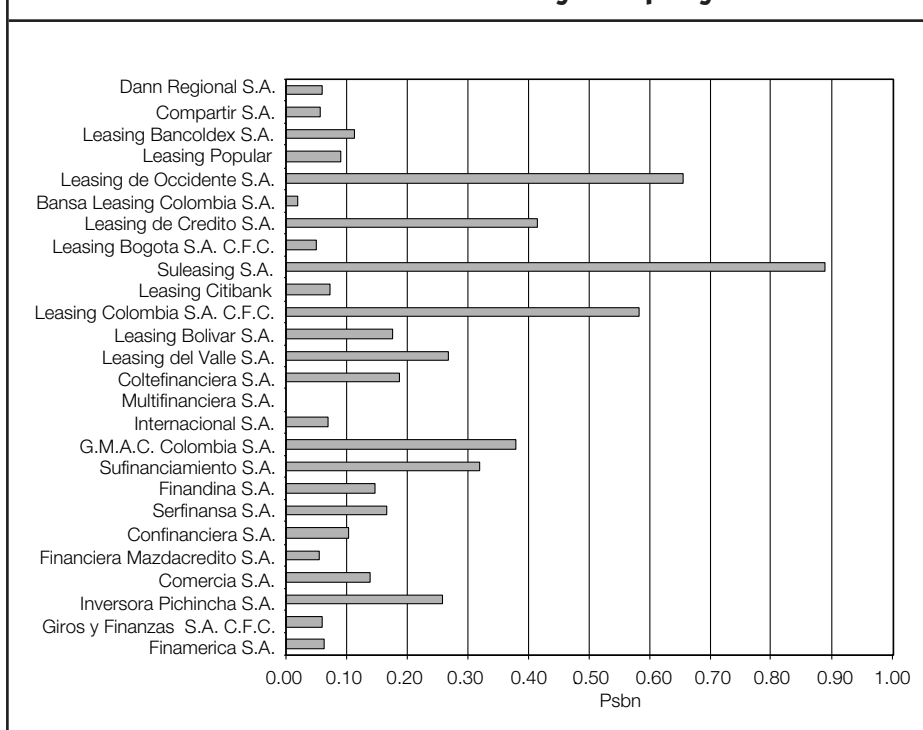
Law 795, 2002 introduced a new legal authorisation for leasing companies and banks to enter into housing leases.

In addition, Law 795, 2002 created credit "rediscount" facilities (conditional assignment of the leases for cheaper interest rates in order to provide some liquidity to leases), that can be granted by FINAGRO, IFI, FINDETER, FEN and BANCOLDEX, all of them government-controlled banks, dedicated in its order to provide financing to the agricultural industry, manufacturing, State and municipal entities, power supply and distribution entities and exporters. Decree 1145, 2003 developed such a credit facility.

*Taxation.* New taxation laws have been issued recently, some of them positively affecting leasing transactions in Colombia. The main changes introduced by these laws are summarised below:

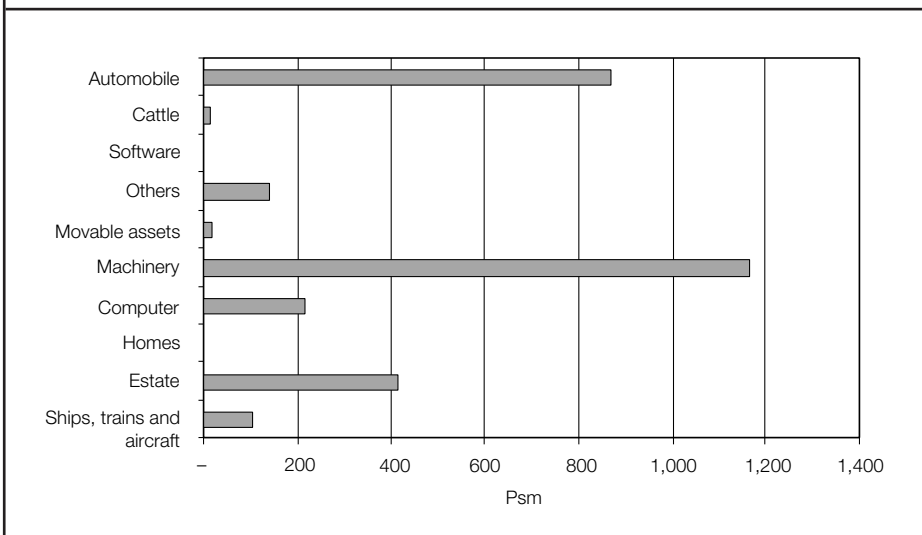
According to Art. 68 of Law 863,

**Table 3: Volume of leased assets by company**



## Colombia

**Table 4: Leasing market by asset type**



2003, from 2004 to 2007, 30% of new investments made in productive fixed assets can be deducted (including those assets acquired by financial leases).

Article 69 of the same law establishes that the third paragraph of article 127-1 of the Colombia Taxation Code (Estatuto Tributario) shall be void. This change implies that not only small- and medium-sized businesses (SMB or PYMEs i.e. businesses having less than Col\$10,937,900 in FY 2003, that is approximately US\$3.8m in total assets) can treat lease rentals accrued or paid as

fully deductible from taxable income. However, there are other considerations which need to be taken into account before applying such benefits (e.g. the term of the agreement in accordance with leased assets classification).

After the issuance of Law 863, the government issued Decree 618, 2004 in order to provide some clarity about the implementation of such a law. Article 1 of Decree 618 indicated the characteristics to be complied with by a financial lease agreement in order to be fiscally treated as an operating lease.

Based on article 1, only financial lease agreements that follow this rule will be fiscally treated as an operating lease:

- For real estate: Term equivalent to 60 months or more.
- For equipment, movable assets: Term equivalent to 36 months or more.
- For vehicles for productive use and technological equipment (computers): Term equivalent to 24 months or more.

Monthly payments to be fiscally deducted shall not exceed the result of dividing the value of the corresponding agreement by the number of months representing the term of the agreement, and the number of lease payments shall not be greater than 12 for the corresponding fiscal period.

During the year when the agreement starts and during the year when the agreement should finish, such a number shall not be greater than the number of months which have elapsed between the starting date and December 31 or the number of months elapsed between January 1 and the date of termination.

The above new regulation shall not be applied if the lease agreement qualifies as a lease agreement for an infrastructure project.

Those financial lease agreements that do not comply with the terms indicated above shall not be treated as operating leases or lease-back agreements.



Based on the level of leased assets, during 2003 the financial leasing industry in Colombia grew 36.04% compared to its level in 2002.

## Colombia

Leasing contracts, which formerly were subject to value-added tax (VAT) since July 1, 1992, are no longer subject to VAT due to the enactment of Law No. 6 of 1992.

Income taxes are applied at a uniform tariff of 35%. By virtue of Law 788, 2002, effective from January 1, 2003, all rentals arising from household leases for over a 10-year term are tax-exempt for lessors.

Law 863 of 2003 establishes that in addition to the 35% income tax mentioned above, all taxpayers have to pay an additional amount equivalent to 10% of the net tax to be paid for each fiscal year. This is typically a bonus depreciation allowance that was chosen in lieu of an Investment Tax Credit.

**The lease contract.** The lease contract is subject to the general rules for contracts and obligations as provided by the Commercial Code and the Civil Code. By means of article 2 of Decree 913 of 1993, a legal definition for the leasing contract has been adopted in line with the definition contained in the Ottawa Convention.

Also, despite the fact that Colombia, even though it had an active participation in the setting of rules, has not signed the Ottawa Unidroit Leasing Convention of 1988, based on Law 32 of 1992 which approved the Unidroit Treaty, the intention is to get the Colombian Government to adhere to the Ottawa Convention in order that the provisions contained by the aforementioned Convention are also valid for leasing contract rulings in Colombia.

As mentioned, according to Law 74 of 1989 and Decree 663 of 1993 whoever may act as lessor must be a leasing company organised as a public corporation with an operation permit granted by the Superintendencia Bancaria.

According to the contractual practice since 1973, a leasing contract is an autonomous figure which differs to the rental agreement by means of lessor obligations and duties (the lessor is not obligated to equipment maintenance), civil liability (the lessor is not liable by damages caused by the equipment to third parties) and enforceability of quiet possession guarantees (which shall be demanded to the supplier).

The lessor becomes the owner of the equipment and he is entitled to recover possession in the case of default or bankruptcy of the lessee, and also to execute on the lessee's estate all the sums due as a consequence of leasing contract default.

It had been defined by judges that the leased equipment never forms part of the lessee's estate. Thus, in the case of bankruptcy of the lessee, the lessor can recover the possession without prejudice.

However, the rules of Law 223 of 1995 have created some doubts in the practical application of the fair information by a lessee of its assets and liabilities to its creditors and third parties. These doubts might lead to conflict.

In addition, Law 222 of 1995 reformed the procedures for bankruptcy and reorganisation ("*Procedimientos Concursales*"). It is now a fact that during the reorganisation of a lessee, rentals to lessors must be paid with preference over any other liability provided that these are accrued during the reorganisation process.

Unpaid rentals accrued before the reorganisation are common liabilities and subordinated. The same principles are applied to the "fast track" reorganisation procedure set forth by Law 550, 1999. The Superintendencia de Sociedades dated May 20, 2000 ratified such a principle.

Decree 913 of 1993 contains the following principles for the leasing contract:

- The lessor shall be the legal owner of the leased assets, comprising share of ownership for syndicated transactions.
- The lessor must not engage or assume maintenance obligations related to the leased assets.
- The lessor will not be allowed to manufacture or to build leased assets.
- The sale-and-leaseback only will be valid if the leased assets are fixed productive assets.
- Securities are not entitled to be legally acceptable leased assets.

**Cross-border leasing.** Cross-border leasing is one of the most exciting avenues under current Colombian legislation.

Formerly, rentals paid under a cross-border leasing contract were subject to the payment of a remittance tax of 12% plus an income tax of 30% (withholding tax, which today should be around 35%). The only exceptions were aircraft and ships coming from the US by application of a bilateral treaty avoiding double taxation.

Since January 1, 1991, Law 49 of 1990 established the full exemption of such taxes, if the leasing contract is referred to an export-oriented project or in accordance to Resolución No. 54 of 1992 from CONPES (*Consejo Nacional*

*de Política Económica y Social*), to any sector of the Colombian economy.

Since Law 788, 2002 introduced the regulations avoiding the use of low taxation jurisdictions, based upon the Guidelines of the OECD, attention must be paid to the place of business of cross-border lessors to make sure that this tax benefit is not challenged by Colombian authorities.

Customs taxes under a cross-border leasing transaction are paid on a straight-line method in a period not exceeding five years or the lease term, if this term is shorter than a five-year period.

By virtue of Decree 2685, 1999, the exchange rate per customs taxes determination is the prevailing rate at the date of arrival of the equipment at the country.

At present, in order to encourage cross-border leasing transactions for the oil and gas sectors, as well as the energy sector for infrastructure projects (toll roads, ports, airports, etc.), some new regulations are expected to facilitate the acquisition of assets manufactured, produced or located in Colombia, in order to extend the cross-border leasing transactions not only to import assets but also for the local component of a project.

These regulations will also facilitate the coverage for the foreign lessors currently available in OPIC and MIGA.

Outstanding cross-border leases in Colombia are estimated at US\$764m based upon the annual cross-border lease payments charged to the Colombian balance of payments in the year 2000 (US\$183.4m).

The forecast for vendor financing and equipment leasing is very promising, in particular due to the favourable tax environment.

### Sources:

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 Federación Colombiana de Compañías de Leasing – [www.fedeleasing-org.co](http://www.fedeleasing-org.co)

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