

Republic of Colombia  
Ministry of Culture

Decree Number 763 of 2009

**10 March 2009**

"By way of which Laws 814 dated 2003 and 397 of 1997 are partially regulated, the latter modified by way of Law 1185 dated 2008, pertaining to Nation's Cultural Heritage of tangible nature".

**The President of the Republic of Colombia**

In the exercise of his constitutional and legal faculties, especially those conferred by article 189, numeral 11 of the Political Constitution, and in development of laws 397 of 1997, modified by law 1185 dated 2008 and 814 dated 2003, and

**WHEREAS**

That law 1185 dated 2008 modified integrally the Title of law 397 of 1997 relative to the Nation's Cultural Heritage, set forth the Nation's Cultural Heritage System and set a Special Protection and incentive Regime for assets of said Heritage which due to their special conditions or representativeness may have been or are declared Assets of Cultural Interest.

That law 1185 dated 2008, which integrally modified Title 11 of Law 397 of 1997, set forth that the Nation's Cultural Heritage System affects all regional levels and is under general coordination of the Ministry of Culture which has the faculty to set technical and administrative guidelines to subject institutions and persons that are part of such system, becoming necessary for the National Government to regulate aforementioned legislation and to set general parameters for the actions of this ministry.

That law 814 dated 2003 and executive order 1746 dated 2004 incorporated several precisions on the Ministry of Culture's competences with respect to the country's cinematographic activities and heritage and that, consequently, it is necessary to modify some provisions of decree 358 dated 2000 prior to said legislation and to revoke those that address aspects whose management should be regulated by this ministry.

That the increasing development shown by the cinematographic industry in the country, forces us to review some aspects regulated in decree 352 dated 2004 on the requirements that should be certified in order to obtain investments covered by law 814 dated 2003 and to have access to incentives from the Funds for Cinematographic Development (i.e. the "*Fondo para el Desarrollo Cinematográfico*").

That law 1185 dated 2008 specified that the National Government could expand by way of decree, the constitution of the National Council for Cultural Heritage, seeing the need to incorporate the Nation's General Archive into said advisory body in order to manage the Nation's Cultural Heritage and Assets of Cultural Interest, especially those of an archivist nature.

"By way of which Laws 814 dated 2003 and 397 of 1997 are partially regulated, the latter modified by way of Law 1185 dated 2008, pertaining to Nation's Cultural Heritage of tangible nature".

Similarly, it is required to guarantee an adequate representation of the various players of the cinematographic chain in the National Council of Arts and Culture in Film Making, which was created by way of decree 2291 dated 2003, as well as in the National feature movies and Short films, in virtue of the ever changing and increasing conditions of the national film industry.

## **IT DECREES**

**Article 1. Purpose.** This decree regulates partially law 397 of 1997 modified by law 1185 dated 2008, and law 814 dated 2003, pertaining to the Nation's Cultural Heritage of tangible nature and to the Special Protection Regime for Assets of Cultural Interest.

## **TITLE I**

### **THE NATIONAL CULTURAL HERITAGE SYSTEM OF THE NATION**

**Article 2. The National Cultural Heritage System of the Nation.** The National Cultural Heritage System of the Nation whose acronym is -SNPCN-, is constituted by the group of public institutions at national and regional level that exercise competences on the Nation's cultural heritage, for assets and for expressions of the Nation's cultural heritage, for assets of cultural interest and their owners, usufructuaries at any title and title holders, for expressions incorporated into the representative list of Non-material (intangible) Cultural Heritage, for the group of institutions and institutional development processes, planning, information, as well as for public and private persons' competences and obligations working jointly, that enable protecting, safeguarding, recovering, preserving, sustaining and disseminating the Nation's cultural heritage.

The SNPCN's objective is to contribute to the appraisal, preservation, safeguard, protection, recovery, sustainability, dissemination and social appropriation of cultural heritage, according to the stipulations of the Political Constitution in legislation, specifically in law 397 of 1997, modified by la law 1185 dated 2008 and under the principles of decentralization, diversity, participation, coordination and autonomy.

In accordance with article 5 of law 397 dated 1997, modified by article 2 of law 1185 dated 2008, the SNPCN is under the general coordination of the Ministry of Culture, which has the faculty to set technical and administrative regulations, subjecting those institutions and persons integrating said system, in agreement with the law and the provisions of this decree.

To promote social appropriation of the cultural heritage, the SNPCN shall foster the implementation of educational programs and projects as well as information processes at national and regional level that motivate the active participation of communities, institutions, regional bodies, collective groups and cultural agents in valuing and in pondering processes on cultural heritage.

**Article 3. Formulation.** In order to guarantee its operation and functioning, the SNPCN shall coordinate, relate and integrate with the National Culture System and with the different players and the national and the regional institutions involved in planning and in executing actions processes in favor of cultural heritage.

"By way of which Laws 814 dated 2003 and 397 of 1997 are partially regulated, the latter modified by way of Law 1185 dated 2008, pertaining to Nation's Cultural Heritage of tangible nature".

In the same way, in accordance with article 4 of law 397 of 1997, modified by article 1 of law 1185 dated 2008, section "a", to achieve SNPC's objectives, the development plans of regional institutions and plans of communities, social groups and towns incorporated into said objectives should be harmonized with the Decennial Culture Plan, with the National Development Plan and should allocate resources to safeguard, preserve, recover, protect, sustain and disseminate cultural heritage.

Article 4. Competences of Public institutions. For the purposes of this decree, public institutions of The National Cultural Heritage System of the Nation are understood to be the Ministry of Culture, the National Institute of Anthropology and History, the National Archive, Caro and Cuervo Institute, the National Council for Cultural Heritage, the Regional and District Councils for Cultural Heritage, the provinces, the districts and municipalities, the indigenous authorities, the authorities referred to in the 70<sup>th</sup> Law 70 of 1993 and, in general, the State's institutions that at national and at regional level develop, finance, promote or execute activities pertaining to the Nation's Cultural Heritage.

Without prejudice to other specific attributions assigned by the Political Constitution or other legal provisions, the public actions set forth in law 1185 dated 2008 and in this decree in relation to the Nation's Cultural Heritage Assets and with Assets of Cultural Interest, whose acronym is –BIC– are those listed in this article.

In agreement with the foregoing, when this decree makes reference to the competence of the "institution with jurisdiction" or "authority with jurisdiction" in each case it shall be understood as referring to the following specific attributions:

#### **1. About the Ministry of Culture.**

##### **1.1. General competences on BIC at national and at regional level.**

- i. Formulating State policies with regards the Nation's cultural heritage and coordinating The National Cultural Heritage System of the Nation, for which it shall set the subjecting general policies, technical and administrative guidelines for institutions and individuals belonging to said system.
- ii. Regulating the appraisal criteria that all institutions with jurisdictions should apply at national and at regional level to declare BICs.
- iii. Regulating, should it be deemed necessary and according to the changing concepts of cultural heritage, BIC categories or classifications additional to those set forth in this decree at national and at regional level.
- iv. Setting forth technical and administrative aspects pertaining to the general contents of the Special Protection and Handling Plans, -PEMP (given its initials in Spanish)- of the BICs at national and at regional level, in accordance with law 397 of 1997 modified by law 1185 dated 2008 and this decree.
- v. Determining the BICs declared prior to issuance of law 1185 dated 2008 at national and at regional level that require PEMP and the term to adopt them, if necessary and in addition to the provisions of this decree.
- vi. Authorizing in accordance with law 1185 dated 2008 and this decree, the temporary export of BICs owned by diplomats regardless of the institution that may have approved their **formal declaration**.
- vii. Regulating technical and administrative aspects required for temporary export of privately owned BICs at national and at regional level, without prejudice to the regulations in terms of customs.

"By way of which Laws 814 dated 2003 and 397 of 1997 are partially regulated, the latter modified by way of Law 1185 dated 2008, pertaining to Nation's Cultural Heritage of **tangible nature**".

viii. Defining tools and criteria to structure the Nation's Cultural Heritage Inventory in coordination with regional institutions, in accordance with article 14 of law 397 of 1997, modified by article 9 of law 1185 dated 2008.

ix. Regulating technical and administrative aspects to make and to update BIC records at national and at regional level in accordance with law 397 of 1997, modified by law 1185 dated 2008 and with the provisions of this decree.

x. Receiving and maintaining records on administrative penalties imposed at national and at regional level by the institution with jurisdictions, in cases of violation of the Nation's Cultural Heritage as provided in article 15 of law 397 dated 1997, modified by article 10 of law 1185 dated 2008.

xi. Signing with the relevant churches and religious organizations agreements to effectively apply the Special Protection Regime when assets belonging to said churches or institutions have been declared BIC.

xii. Revoking, when applicable, the declaration of national monuments made by the Ministry of Education.

xiii. Assigning resources allocated by the corresponding laws and annual budget laws for actions pertaining to the Nation's Cultural Heritage.

The Ministry of Culture's faculties on matters pertaining to the issuance of the necessary technical and administrative guidelines shall be exercised within the provisions of the legal regulations and this decree.

## **1.2. Specific competences on BICs at national level.**

Indicative list of BIC Candidates

i. Making and managing the Indicative List of Candidates for Assets of Cultural Interest at national level and to include on said List the Assets that may be declared BIC at said level.

ii. Defining which assets included on aforementioned List require a Special Protection and Handling Plan -PEMP-

Declarations and repeals

iii. Issuing BIC declarations at national level.

iv. Revoking BIC declaration acts of national level due to legal reasons or when the relevant assets could have lost the value that caused their declaration as BICs.

v. Submitting to the National Council for Cultural Heritage the aforementioned acts that may require participation of said Council, and accepting said opinions when being of mandatory nature.

### **BIC Protection Special Regime**

vi. Acting as institution with jurisdiction on matters pertaining to the enforcement of Special Protection Regime – REP (given its initials in Spanish) – referred to in article 11 of law 397 dated 1997, modified by article 7 of law 1185 dated 2008, with respect to Assets it declares as BIC at national level or of those declared as such prior to law 1185 dated 2008.

vii. Approving the PEMP's of assets that it declares as BIC at national level or those declared as such prior to issuance of law 1185 dated 2008, if such assets do require said plan, prior opinion from the National Council for Cultural Heritage.

"By way of which Laws 814 dated 2003 and 397 of 1997 are partially regulated, the latter modified by way of Law 1185 dated 2008, pertaining to Nation's Cultural Heritage of **tangible nature**".

viii. Authorizing interventions in BICs at national level, as well as those interventions that are planned in its areas of influence and/or on assets contiguous to said assets.

ix. Authorizing interventions in public spaces located in urban areas declared BIC at national level.

x. Registering the professionals that supervise BIC interventions at national level.

xi. Authorizing when applicable in the cases foreseen in law 1185 dated 2008 and under the conditions set forth therein and regulated in this decree, the temporary **export of privately owned BICs at national level**.

xii. Evaluating the potential transfer offers of **privately owned BICs** at national level, resulting from the intent to sell by the owners and to respond in accordance with article 11 of law 397 of 1997, modified by article 7 of law 1185 dated 2008, numeral 4, and to receive notice of ownership title transfer of BICs at national level in accordance with the same legal regulation.

xiii. Informing the relevant Real State Public Registry Office for it to incorporate the entry in the property registration number sheet the declaration of **BICs' real estate property**, or those declared prior to issuance of law 1185 dated 2008 at national level, as well as of the existence of the PEMP applicable to the real estate property, should said plan be required. Similarly, informing on the repeals of said declarations.

xlv. Authorizing in exceptional cases, the transfer or loan of BICs at national level that belong to public institutions, among public entities of any order, and authorizing when applicable to public entities owners of BICs at national level to lend them for use to recognized non-profit private organizations or signing with said organizations agreements or contracts as per article 10 of law 397 of 1997, modified by article 62 of law 1185 dated 2008.

xv. Drafting and keeping up to date the registration of BICs at national level and incorporating BIC records at national level into the BIC National Registry in accordance with article 14 of law 397 of 1997, modified by article 9 of law 1185 dated 2008.

## **Penalties**

xvi. Applying and coordinating, depending on the case, in respect of BICs at national level the precautionary and penalty regime set forth in article 15 of law 397 of 1997, modified by article 10 of law 1185 dated 2008.

## **2. About the Colombian Institute of Anthropology and History**

It is the National Institute of Anthropology and History's competence to apply exclusively throughout the entire national territory the Archeological Heritage Special Regime, as well as the tasks assigned by law 397 of 1997, modified by law 1185 dated 2008 in relation to such heritage, which are described in Title IV of this decree.

## **3. About the Nation's General Archive.**

It is Nation's General Archive's exclusive competence and subject to the proceedings set forth in law 397 of 1997, modified by law 1185 dated 2008, to carry out the actions addressed in this article, numeral 1.2 its sub-numerals, in respect of assets characterized by their archivist nature.

Without prejudice to the foregoing, the Nation's General Archive's competences on this matter shall be performed in such a way that they guarantee the necessary coordination within the National Archive System as per law 594 dated 2000.

"By way of which Laws 814 dated 2003 and 397 of 1997 are partially regulated, the latter modified by way of Law 1185 dated 2008, pertaining to Nation's Cultural Heritage of **tangible nature**".

The provisions of this decree shall be applicable in a general manner to the Nation's General Archive and to the Special Protection Regime for archives that have been declared BIC, provided they are compatible with the special nature of such assets. In any case, the Ministry of Culture, in coordination with the Nation's General Archive shall have the authority to issue technical regulations related to archives declared BIC, to the relevant appraisal criteria and to the specific application of the BIC Special Protection Regime.

#### **4. About the municipalities.**

It is the municipalities' responsibility through the relevant major's office to comply, in accordance with article 82 of law 397 of 1997, modified by article 5 of law 1185 dated 2008, with BIC regulations at municipal level that they declare or pretend to declare as such: Also, said competences are similar to those specified in numeral 1.2 and sub-numerals of this article.

Such competences shall be also applicable in respect of assets included in the Land Use Plans and those assets declared as monuments, areas of historic or architectonic preservation, historical settings or other denominations carried out by the municipal councils or majors' offices, homologated to BICs in accordance with the provisions of article 42 of law 397 of 1997, modified by article 1 of law 1185 dated 2008, section "b".

In the same way it is their competence, in coordination with the relevant Municipal Council, to allocate the resources that the corresponding laws and budgets specify for actions pertaining to the Nation's Cultural Heritage.

It is the municipalities' responsibility to formulate the PEMP for Urban Group Assets and Monuments in the public space located in their territory.

#### **5. About the districts.**

It is the districts responsibility to comply, through the relevant capital district major offices in accordance with article 8 of law 397 of 1997, modified by article 5 of law 1185 dated 2008, in respect of BICs at capital district level that they declare or pretend to declare as such, competences similar to those specified in numeral 1.2 and sub-numerals of this article.

Said competences shall also apply in respect of assets declared monuments, historic and architectonic preservation areas, historical settings and other denominations carried out by the district councils or majors' offices, homologated to BIC in accordance with the provisions of article 4 of law 397 dated 1997, modified by article 12 of law 1185 dated 2008, section "b".

In the same manner, it is their responsibility, in coordination with the relevant District Council, to allocate the resources that the corresponding laws and budgets specify for actions pertaining to the Nation's Cultural Heritage.

#### **G. About the provinces.**

It is the provinces' responsibility via the Governors' Offices to comply, in accordance with article 8 of law 397 dated 1997, modified by article 5 of law 1185 dated 2008, in respect of BICs at regional level that they declare or pretend to declare as such, competences similar to those specified in numeral 1.2 and sub-numerals of this article.

Said competences shall also apply in respect of assets declared monuments, historic and architectonic preservation areas, historical settings and other denominations carried out by the regional assemblies or governors' offices, homologated to BICs in accordance with the provisions of article 4 of law 397 of 1997, modified by article 1 of law 1185 dated 2008, section "b".

"By way of which Laws 814 dated 2003 and 397 of 1997 are partially regulated, the latter modified by way of Law 1185 dated 2008, pertaining to the Nation's Cultural Heritage of **tangible nature**".

In the same way it is their competence, in coordination with the relevant Regional Assembly, to allocate the resources that the corresponding laws and budgets specify for actions pertaining to the Nation's Cultural Heritage.

#### **7. About the indigenous authorities**

It is the Indigenous Authorities' responsibility to comply, in accordance with article 8 of law 397 of 1997, modified by article 5 of law 1185 dated 2008, in respect of BICs they declare or pretend to declare as such in their jurisdictions, competences similar to those specified in numeral 1.2 and its sub-numerals of this article.

#### **8. About the black communities' authorities**

It is the black communities' authorities to comply, as per the stipulation in law 70 of 1993, in accordance with article 8 of law 397 of 1997, modified by article 5 of law 1185 dated 2008, in respect of BICs they declare or pretend to declare as such in their jurisdictions, competences similar to those specified in numeral 1.2 and its sub-numerals of this article.

#### **9. About the National Council for Cultural Heritage**

It is the National Council for Cultural Heritage's responsibility to issue preliminary opinions and to comply with the tasks set forth in article 2 of decree 1313 dated 2008 or the regulations that modify or replace them, especially with regards to assets that are the Ministry of Culture and the Nation's General Archive's competence according to the provisions of this decree.

#### **10. About the Regional Councils for Cultural Heritage**

It is the Regional Councils for Cultural Heritage's responsibility to issue preliminary opinions and to comply with the tasks set forth in article 2 and 10 of decree 1313 dated 2008 or the regulations that modify or replace them, with regards to the assets that are competence of provinces, municipalities, indigenous authorities and black communities' authorities as per the stipulations in law 70 of 1993.

#### **11. About the District Councils for Cultural Heritage**

It is the District Councils for Cultural Heritage's responsibility to issue preliminary opinions and to comply with the tasks set forth in article 2 and 10 of decree 1313 dated 2008 or the regulations that modify or replace them, with regards to the assets that are the competence of said districts.

**Article 5. Influence of regulations on cultural heritage.** In accordance with the provisions of article 7 of law 1185 dated 2008, numeral 1.5 and with the precepts in law 388 of 1997 or the regulations that modify or replace them, regulations on preserving and using areas or real estate properties declared BIC shall prevail when adopting, modifying or adjusting the Land Use Plans of municipalities and districts.

## **TITLE II**

### **APPRAISAL CRITERIA TO DECLARE ASSETS OF CULTURAL INTEREST -BICs-**

"By way of which Laws 814 dated 2003 and 397 of 1997 are partially regulated, the latter modified by way of Law 1185 dated 2008, pertaining to the Nation's Cultural Heritage of **tangible nature**".

**Article 6. Appraisal Criteria.** Appraisal criteria are general guidelines that direct and contribute to attributing and defining the cultural significance of personal or real estate property. The cultural significance is the definition of the cultural value of an asset based on an integral analysis of appraisal criteria and attributed values.

The BICs at national and regional level shall be declared by the institution with jurisdiction in accordance with the following appraisal criteria, without prejudice to others where if necessary the Ministry of Culture may determine:

1. **Age:** Determined by the date and time of origin, manufacturing or construction of the asset.

2. **Authorship:** Identification of the author, authors or group that left a testimony of their production, associated to a period, style or trend. The authorship may **be, exceptionally, attributed.**

3. **Authenticity:** Determined by the preservation state of the assets and their evolution in time. It is related with its original construction and subsequent transformations and interventions, which should be clearly legible. Transformations or alterations to the original structure should not distort the asset's character.

4. **Constitution of the asset:** It refers to the materials and construction techniques.

5. **Shape:** It refers to the constituent and decorative elements of the asset with respect to its historical origin, artistic, style and design trends, in order to acknowledge its use and aesthetic sense.

6. **State of preservation:** physical condition of an asset captured in the materials, structure, spacing and volume, among others. Among the conditions that determine this status there is the use, the care and the maintenance of the asset.

7. **Environmental Context:** It refers to the constitution and implementation of the asset in relation with environment and landscape.

8. **Urban context:** It refers to the insertion of an asset as an individual unit into a consolidated urban sector. Characteristics such as profile, design, finishing, volume, urban elements, organization, fillings, voids and color should be analyzed.

10. **Physical context:** It refers to the relation of an asset and its location; it analyzes its contribution to the constitution and development of a place, village or landscape. If the asset is located inside a property it should be analyzed whether it was envisioned as an integral part thereof and/or it has been associated with a new relevant use and function inside the property.

10. **Socio-cultural representativeness and contextualization:** It refers to the cultural significance that the asset has in the measure that it creates emotional ties by society towards objects and sites. It reveals the sense of belonging for a human group on the assets around its habitat, on the basis that it implies collective references of memory and identity.

The aforementioned appraisal criteria enable attribution of values to the assets such as:

"By way of which Laws 814 dated 2003 and 397 of 1997 are partially regulated, the latter modified by way of Law 1185 dated 2008, pertaining to the Nation's Cultural Heritage of **tangible nature**".

1. **Historic value:** an asset possesses historic value when it is recorded on a document or testimony to reconstruct history, as well as for scientific, technical and artistic content. It is the direct association of assets with periods of time, processes, events and political, economic, social and cultural practices, social groups and persons especially important at global, national, regional or local level.

2. **Aesthetic value:** An asset possesses aesthetic value when artistic quality or design attributes have been recognized in it, which reflect a creative idea in its composition, in its manufacturing or construction technique, as well as the footprints of usage and use left throughout time.

This value is related with appreciating the formal and physical characteristics of an asset and with its tangible nature.

3. **Symbolic value:** an asset possesses a symbolic value when it expresses the ways to see and feel the world. The symbolic value has a strong identification power and social cohesion. The symbolic meaning maintains, renews and updates wishes, emotions and ideals built and interiorized that link epochs and spaces of memory.

This value makes reference to the involvement of an asset with processes, practices, events or important activities for the community's memory or constant development.

**Paragraph.** An asset can gather all or some of the values or it can be based on one or several appraisal criteria specified in this article, in order to be declared by the relevant institution as a BIC at national or at regional level, according to its representativeness for the level to which it belongs.

### TITLE III DECLARATION OF ASSETS OF CULTURAL INTEREST – BICs –

#### CHAPTER I PROCEDURE

**Article 7. Procedure to declare BIC.** The procedure to be followed by the relevant authority in all cases to declare BICs, is the one set forth in article 8 of law 397 of 1997, modified by article 5 of law 1185 dated 2008.

BIC declarations carried out without adhering to the procedure defined in the referred law and regulation in this decree shall be annulled pursuant to the provisions of the Administrative Contentious Code. The nullity request can be formulated by any institution or person.

**Article 8. Indicative List of Candidates to Become Assets of Cultural Interest,** Inclusion of any asset on the Indicative List of Candidates to Become Assets of Cultural Interest, -LICBIC (given its initials in Spanish)-, constitutes the first step with which the relevant institution should comply within the process of BIC declaration. This inclusion does not imply the subjection thereof to the Special Protection Regime set forth in law 1185 dated 2008 and regulated in this decree,

The LICBIC consists of an information registration that shall be administered in any case by the relevant authority.

"By way of which Laws 814 dated 2003 and 397 of 1997 are partially regulated, the latter modified by way of Law 1185 dated 2008, pertaining to the Nation's Cultural Heritage of **tangible nature**".

Those assets shall be admitted to the LICBIC that, according to their cultural significance at the corresponding level (national, regional, district, municipal, indigenous territories or black communities territories as per Law 70 of 1993) and for being in agreement with the appraisal criteria specified in the previous Title, are inclined to being declare BIC.

Once an asset has been included on the LICBIC, the relevant authority shall define whether said asset requires or not the formulation of a Special Management and Protection Plan -PEMP-.

Inclusion of an asset on the LICBIC shall be communicated to the applicant or owner, profiting or interested party or to undetermined third parties, in the fashion set forth by the Administrative Contentious Code.

The LICBIC should be integrated into the Nation's Cultural Heritage Inventory administered by the Ministry of Culture or to the inventories administered, in their respective specialties by the relevant national and regional authorities. In any case, inclusion of assets on a LICBIC at national or at regional level should be informed in a term no later than one month to the Ministry of Culture, which shall determine the characteristics that said information should contain.

**Article 9.** The initiative for a BIC declaration may result from an authority with jurisdiction, from the owner of the asset and/or from a third party regardless of his/her private or public, natural or juridical nature.

If the initiative comes from the owner or from a third party, the request should be filed with the authority in charge of carrying out the declaration.

If in the opinion of the authority with jurisdiction, the asset requires the formulation of a PEMP pursuant to the provisions of the previous article, the owner or interested party should formulate it. During this period of time the authority with jurisdiction shall not lose the faculty to formulate the PEMP diligently of which it shall inform the author of the initiative in a timely fashion.

The Ministry of Culture shall set forth, in accordance with the faculties granted to him/her by law 1185 dated 2008, the technical and administrative requirements with which the person requesting a BIC declaration should comply.

**Article 10. Cultural Heritage Council's Opinion.** Once an asset has been included on the LICBIC and the relevant PEMP has been formulated, if assets so requires it to the judgment of the authority with jurisdiction, the proposal of BIC declaration and PEMP shall be submitted to the opinion of the corresponding Cultural Heritage Council.

The relevant Council shall issue an opinion on the declaration and approval of the PEMP if applicable or on the need to make corrections. The proposal can be submitted as many times as necessary.

**Article 11. Principle of coordination.** In accordance with the provisions in article 8 of law 397 of 1997, modified by article 5 of law 1185 dated 2008, to declare and to manage BICs the principle of coordination shall apply between the national, regional, district, municipal levels and those of the indigenous territories and black communities as stipulated in Law 70 of 1993.

"By way of which Laws 814 dated 2003 and 397 of 1997 are partially regulated, the latter modified by way of Law 1185 dated 2008, pertaining to the Nation's Cultural Heritage of **tangible nature**".

All BIC declaration dossiers submitted after the issuance of this decree to the District or Regional Councils for Cultural Heritage shall be communicated to the Ministry of Culture with a notice of no less than fifteen (15) working days following said nomination.

The Ministry of Culture is entitled to issue the opinions it deems necessary. Similarly, it can request that the process be suspended or a new one started.

**Article 12 . Nature of the declarations.** The BIC declaration or annulment acts are administrative acts in the terms of the Administrative Contentious Code.

The administrative action consists of a procedure foreseen in article 5 of law 1185 dated 2008, an amendment to article 8 of Law 397 dated 1997 without prejudice to the terms regulated in this decree.

**Article 13. Contents of the declaration act.** Any administrative act that declares an asset as BIC should contain at least:

1. The description and location of an asset or set of assets.
2. The boundaries of the affected area and the zone of influence, in the case of real estate.
3. The description of the location space in the case of movable property.
4. The appraisal criteria and values considered to establish the cultural significance of an asset or set of assets.
5. The reference of the BIC Special Protection Regime stipulated in article 7 of Law 1185 dated 2008, modified by article 11 of Law 397 of 1997.
6. Approval of the Special Protection and Handling Plan — PEMP —, if required, in which case it shall be an integral part of the administrative act.
7. The reference to the penalty regime stipulated in article 10 of Law 1185 dated 2008, an amendment to article 15 of Law 397 of 1997.
8. The decision to declare the relevant asset or set of assets as BICs.
9. The obligation to notify and to communicate the act, as applicable, and an indication of applicable resources.
10. The obligation to remit the administrative act to the Real Estate Public Registry Office in the case of real estate.

**Paragraph.** When referring to real estate, the authority with jurisdiction shall remit to the Real Estate Public Registry Office a copy of the PEMP declaration and approval act, if applicable, for the purposes of registration in the relevant property registration number sheets within fifteen (15) working days following the entry into force of the declaration. In accordance with the provisions of article 11 of Law 397 dated 1997,

"By way of which Laws 814 dated 2003 and 397 of 1997 are partially regulated, the latter modified by way of Law 1185 dated 2008, pertaining to the Nation's Cultural Heritage of **tangible nature**".

modified by article 7 of Law 1185 dated 2008, this type of registrations are free of charge. The same procedure shall apply in case of cancellation of the declaration.

## **CHAPTER II SPECIAL PROTECTION AND HANDLING PLANS- PEMP-**

**Article 14. Objective of the PEMPs.** The Special Protection and Handling Plans - PEMP- are a management instrument of the Nation's Cultural Heritage, via which the necessary actions are determined in order to guarantee protection, preservation and sustainability of BICs or assets intended to be declared as such if in the authority with jurisdiction's judgment said plan is required.

The PEMP as an instrument of the Special Protection Regime of the BICs, should:

- i. Define the conditions to **articulate** the assets in their physical, architectonic, urban or rural context, pre-existing plans and their socio-cultural environment based on the preservation of their values, mitigation of their risks and use of their potential.
- ii. Specify the protective actions of preventive and/or corrective nature necessary to preserve the assets.
- iii. Establish the physical, maintenance and preserving conditions of assets.
- iv. Establish mechanisms or determining factors that enable assets' recovery and sustainability.
- v. Generate conditions and strategies to improve knowledge and appropriation of assets by the community in order to guarantee their preservation and transfer to future generations.

## **CHAPTER III PART I SPECIAL PROTECTION AND HANDLING PLANS FOR REAL ESTATE PROPERTIES**

**Article 15. Real Estate Categories.** Real estate for the purposes of adopting the PEMP are classified as specified below without prejudice to others that the Ministry of Culture may order:

### **1. About the Urban Group:**

- i. Urban sector:** Fraction of the territory of a population group foreseen with distinctive physiognomy, features and appearance that confer it certain unity and peculiarity.
- ii. Public Space:** Set of real estate properties of public use, and of elements of privately owned real estate which due to their nature are allocated to uses or affectation to satisfy collective urban needs that go beyond the limits of the inhabitants' individual interests.

"By way of which Laws 814 dated 2003 and 397 of 1997 are partially regulated, the latter modified by way of Law 1185 dated 2008, pertaining to the Nation's Cultural Heritage of **tangible nature**".

**2. About the Architectonic Group:** Buildings whether housing, institutional, commercial, industrial, military, religious architecture for transportation and engineering works.

**Article 16. PEMP for Real Estate.** In case of real estate categories specified in the foregoing article, the following shall be taken into account for the purposes of formulating a PEMP:

**1. About the Urban Group:** A PEMP shall be formulated for Urban Group real estate included on the Indicative List of Candidates to become Assets of Cultural Interest – LICBIC-, without prejudice to the autonomous decision attributions held by authorities that have jurisdiction on said matters.

Urban Group Assets at national and regional level declared BICs prior to law 1185 dated 2008 require in any case formulation of a PEMP.

**2. About the Architectonic Group:** a PEMP shall be formulated for Architectonic Group real estate included on the Indicative List of Candidates to become Assets of Cultural Interest - LICBIC-, at national and at regional level without prejudice to the autonomous decision attributions held by authorities that have jurisdiction on said matters, when any of the following conditions are present:

- i. Risk of transformation, partial or total demolition due to urban, rural and/or infrastructure development.
- ii. When using such represents risk or limitation for its preservation.
- iii. When assets require defining or redefining their regulations and/or that of their surroundings for the purposes of their preservation.

The Architectonic Group assets at national and at regional level declared BIC prior to law 1185 dated 2008 require a PEMP when included in any of previously listed circumstances, without prejudice to the authority with jurisdiction's attributions to formulate them in other cases.

The Architectonic Group real estate properties located in an Urban Sector declared BIC do not necessarily require a specific PEMP.

**Article 17. Content of real estate property PEMPs.** In accordance with the provisions stipulated in article 11 of law 397 of 1997, modified by article 7 of law 1185 dated 2008, numeral 1, when the declaration of a real estate property as BIC imposes the formulation of a PEMP, the latter shall establish affected area, area of influence, intervention level allowed, management conditions and dissemination plan which shall ensure the community support to preserving the property.

**Article 18. Affected Area.** It is the physical marking of the property or group of properties constituted by its construction and free areas for the purposes of declaring it as BIC.

**Article 19. Area of Influence.** It is the marking of the surrounding context close to the property necessary for the preservation of its value. To mark the area of influence, a potentiality analysis should be made as well as one of threats or risks that may affect the property in terms of landscape, setting, urban or rural context and infrastructure.

"By way of which Laws 814 dated 2003 and 397 of 1997 are partially regulated, the latter modified by way of Law 1185 dated 2008, pertaining to the Nation's Cultural Heritage of **tangible nature**".

**Article 20. Intervention level allowed:** These are the guidelines or criteria pertaining to preserving the property values and its area of influence.

It defines the type(s) of works that may be undertaken in an affected area and its area of influence in order to define the scope of intervention. The following intervention levels should be taken into account without prejudice to the faculty that the Ministry has to regulate other levels of intervention for BICs at national and regional level:

**i. Level 1. Integral Preservation:** It is applied to architectonic group properties of exceptional value, which due to their irreplaceable nature should be preserved entirely. In these, any intervention may put at risk their values and integrity reason why the works should be clear and attest the moment when said works were performed. If the property allows it, expansions shall be possible in function of promoting revitalization and sustainability.

In respect of Urban Group Properties preservation of layout, blocks, parameters, profiles, heights, occupancy indexes, roads, parks, squares and passages, among others should be guaranteed. Expansion of the property's internal spaces is allowed, provided authenticity of its space structure is maintained: organization of access, halls, and horizontal and vertical circulation spaces.

Type of works allowed in Level 1: Restoration, general repairs, first aid, functional rehabilitation or adjusting, structural reinforcing, reintegration, expansion, consolidation and liberation.

**ii. Level 2. Preservation of the architectonic type.** It is applied to Architectonic Group real estate properties with representative features in terms of land implementation (rural or urban), built volume, space organization and decoration elements which should all be preserved. Modification of the property's internal spaces is allowed provided authenticity of its space structure is kept: organization of access, halls, and horizontal and vertical circulation spaces.

Type of works allowed in Level 2; Restoration, general repairs, first aid, functional rehabilitation or adjusting, refurbishing, structural reinforcing, reintegration, expansion, consolidation and liberation.

**iii. Level 3. Context Preservation,** It is applied to real estate properties located in an Urban Sector, which although not having representative architectonic characteristics are compatible in the context due to their implementation, volume, profile and materials.

Similarly, it is applied to properties that are not compatible with the context, as well as to undeveloped land that should be fitted to the urban sector's characteristics.

This level seeks to recover the urban context in terms of layout, profiles, parameters, occupancy indexes and constructed volume.

Types of works allowed in Level 3: Demolition, new buildings, modification, refurbishing, general repairs, first aid, rebuilding, structural reinforcing, consolidation and expansion.

"By way of which Laws 814 dated 2003 and 397 of 1997 are partially regulated, the latter modified by way of Law 1185 dated 2008, pertaining to the Nation's Cultural Heritage of **tangible nature**".

**Article 21. Management Conditions.** Management conditions are the set of guidelines and determiners to manage the real estate property in three (3) aspects: Physical – Technical, Administrative and Financial which should foster its preservation and sustainability.

**i. Physical-Technical Aspects:** Determiners related to the use, volume, heights, occupancy and construction indexes, accessibility, mobility, parking spaces, front gardens, isolations, signage, public utilities network, urban equipment, public space and other aspects related with the property's physical conditions and its area of influence.

**ii. Administrative Aspects:** real estate property's management scheme that defines and guarantees an accountable person in charge of caring for the property and of enforcing the corresponding PEMP.

**iii. Financial Aspects:** economic and financial measures to recover and to sustain the real estate property that includes identifying and formulating projects to incorporate it into the economic and social dynamics and to determine the funding resources for its preservation and maintenance.

The PEMP should establish, where applicable, the determiners that the different local administrations should develop in respect of land management instruments, such as partial plans, urban action units, expropriation processes and urban renovation, among others; as well as public and private investment commitments.

Development plans, according to the case, shall include the necessary provisions whether technical, financial or budgetary to develop and to implement the PEMPs for Urban Group real estate property.

Public institutions, owners of real estate properties declared as BICs are obliged to allocate technical and financial resources for their preservation and maintenance.

Included within this type of aspects are tax incentives regulated by this decree.

**Article 22. Dissemination Plan.** It is the set of actions to disseminate the property's characteristics and values. The main objective of this plan is to ensure community support to the property's preservation.

When the property is declared a BIC, the authority with jurisdiction should inform the institutions in charge of culture and tourism in the relevant province, municipality and/or district where said property is located in order to promote knowledge and appropriation by the community.

### **CHAPTER III PART II SPECIAL PROTECTION AND HANDLING PLANS FOR MOVABLE PROPERTY**

**Article 23 . Movable property categories.** Movable property, for the purposes of adopting the PEMP is classified as specified below without prejudice to others ordered by the Ministry of Culture:

"By way of which Laws 814 dated 2003 and 397 of 1997 are partially regulated, the latter modified by way of Law 1185 dated 2008, pertaining to the Nation's Cultural Heritage of **tangible nature**".

**1. Private and Public Collections:** Assets that constitute the collections that belong to public institutions, libraries, museums, culture organizations, churches and religious organizations, among others.

**2. Monuments located in Public Space:** Monuments located in public spaces such as roads, squares and parks.

**Article 24. PEMP for movable property.** Within the movable property categories specified above, the following shall be taken into account for the purposes of formulating the PEMP:

A PEMP shall be formulated for Private and Public Collections and Monuments included on the Indicative List of Candidates to become Assets of Cultural Interest –LICBIC–, without prejudice to the autonomous decision attributions held by authorities that have jurisdiction on said matters.

A PEMP shall be formulated for Monuments located in Public Spaces declared BIC prior to issuance of law 1185 dated 2008 without prejudice to the faculty of each authority with jurisdiction to formulate it in other cases.

**Article 25. Contents of movable property PEMPs.** In accordance with the provisions of section 49 of numeral 1 of article 7 of law 1185 dated 2008, when declaring movable property as BIC imposes the formulation of a PEMP, the latter shall specify the assets or set of assets, the characteristics of the space where said assets are located, the intervention level allowed, the management conditions and information plan that shall ensure community support for their preservation.

**Article 26. Asset or set of assets.** It is the physical description of an asset or set of assets and the parts that constitute them which is defined for the purposes of declaring them as BICs.

**Article 27. Location space.** It is the description, marking and characterization of the space where an asset or set of assets are located. The adequate use of this space is necessary to preserve the value of said asset or set of assets.

**Article 28. Intervention level allowed.** In movable property declared BIC only integral preservation level shall be allowed taking into account that said property should be preserved entirely. Any intervention may put its value and integrity at risk, reason why the planned actions should be clear and the moment when they were performed should be documented.

**Article 29 . Management conditions.** It is the set of guidelines and determiners to manage the movable property or set of movable properties in three (3) aspects: Physical-Technical, Administrative and Financial which should promote its preservation and sustainability.

**I. Physical-Technical aspects:** Determiners related to the physical conditions of an asset or set of assets, with their use and function, location space, conditions of exhibition, presentation, handling, storage, security and environment (temperature, humidity and illumination).

"By way of which Laws 814 dated 2003 and 397 of 1997 are partially regulated, the latter modified by way of Law 1185 dated 2008, pertaining to the Nation's Cultural Heritage of **tangible nature**".

**ii. Administrative aspects:** Administrative scheme of an asset or set of assets that defines and guarantees an accountable person in charge of caring for said assets and of enforcing the corresponding PEMP.

**iii. Financial aspects:** economic and financial measures to recover and to sustain an asset or set of assets which includes identifying and formulating projects to incorporate them into the economic and social dynamics and to determine the funding resources for their preservation and maintenance.

It incorporates tax aspects regulated by this decree.

**Article 30. Dissemination Plan.** It is the set of actions to disseminate an asset or set of assets' characteristics and values. The main objective of this plan is to ensure community support in preserving it.

When assets are declared BICs, the authority with jurisdiction should inform the institutions in charge of culture and tourism in the relevant province, municipality and/or district where said property is located in order to promote knowledge and appropriation by the community.

#### **CHAPTER IV COMPETENCES TO FORMULATE SPECIAL PROTECTION AND HANDLING PLANS – PEMP –**

**Article 31. Competences to formulate PEMPs.** For Architectonic Group assets and Private and Public collections, formulation of the PEMP corresponds to the owner's account. In said formulation a third requesting party may concur.

For Urban Group assets and Monuments located in public spaces, formulation of the PEMP corresponds to the District or Municipal authorities of the province where these are located. The relevant regional and national authorities may concur through the contribution of resources in this case.

**Article 32. Private initiatives to formulate PEMPs.** Private owners of assets declared as BIC or those that are included on the LICBIC may advance the formulation of the PEMP even if it is not required by the authority with jurisdiction in order to carry out actions to protect and to preserve said assets.

**Article 33. Procedure to formulate and approve PEMPs.** The Ministry of Culture shall define technical and administrative aspects that develop at least two PEMP phases: Phase I: Analysis and Diagnose; Phase II: Integral Proposal.

**Article 34. PEMP Implementation.** Once the administrative act has been issued to declare assets as BIC and to approve the relevant PEMP the latter can then be implemented.

"By way of which Laws 814 dated 2003 and 397 of 1997 are partially regulated, the latter modified by way of Law 1185 dated 2008, pertaining to the Nation's Cultural Heritage of **tangible nature**".

**First Paragraph.** The authority with jurisdiction that makes the declaration and approves the PEMP shall be in charge of verifying the implementation thereof. To that end, it shall schedule technical visits to the property at least once (1) a year, said calls shall be made by suitable professionals who shall present the corresponding report.

**Second Paragraph.** For the case of BICs at national level, the Ministry of Culture shall verify directly or through the relevant regional authorities responsible for managing cultural heritage.

**Article 35. Transition regime.** The Special Protection Plans — PEPs — formulated and approved prior to the issuance of this decree, which hereinafter shall be deemed as PEMP shall be governed by the relevant enacting acts. However, their modifications shall be subject to the provisions of this decree.

The PEMPs that on the issuance date of this decree are in the process of being formulated shall adjust to the provisions contained herein.

**Article 36. Terms to formulate and to approve PEMPs.** Given the different nature of the personal and real estate BICs and the various categories of assets, the Ministry of Culture shall regulate the terms to formulate and to approve PEMPs.

Similarly, it shall specify the maximum terms to determine the BICs declared prior to law 1185 dated 2008 that require PEMPs as well as the maximum term to formulate and approve such PEMPs not exceeding the maximum term to that end, i.e. of five (5) years as of the entry into force of this decree.

**Article 37. Residual jurisdiction.** Notwithstanding the provisions of this Chapter, the authorities with jurisdiction to declare BICs shall have the right to formulate the PEMPs they deem necessary.

## CHAPTER V BIC INTERVENTION

**Article 38. Definition.** Intervention is understood as any action that causes changes to the BIC or that affects the state thereof. It encompasses, including but not limited to, actions of preservation, restoration, recovery, removal, demolition, dismantling, transfer or subdivision and which shall be carried out in accordance with the Special Management Plan, should it exist.

The intervention comprises the execution of technical studies, designs and projects, up to the execution of the works or actions on assets.

**Article 39. Authorization.** Any intervention of a BIC, regardless on whether the BIC requires a Special Protection and Handling Plan or not, shall have prior authorization of the authority with jurisdiction that would have made the declaration.

"By way of which Laws 814 dated 2003 and 397 of 1997 are partially regulated, the latter modified by way of Law 1185 dated 2008, pertaining to the Nation's Cultural Heritage of **tangible nature**".

**Article 40. General intervention principles.** Any intervention of a BIC shall observe the following principles:

1. Preserving the assets' cultural values.
2. The minimum intervention understood as the strictly necessary actions to preserve assets in order to guarantee their stability and clearing them of deterioration sources.
3. Taking the necessary measures provided by modern techniques to guarantee the preservation and stability of assets.
4. Enabling the possibility of reversing the intervention if deemed necessary in the future.
5. Respecting the historical evolution of assets and refraining from withdrawing aggregates, unless there is a critical appraisal thereof.
6. Replacing or substituting only the elements essential for the structure. New elements shall have to be dated and differentiated from original ones.
7. Documenting all performed actions and interventions.
8. New interventions should be legible.

**Article 41. Type of works for real estate properties declared as BIC.** The different works that can be carried out to properties declared BIC, according to the intervention level allowed and prior authorization from the authority with jurisdiction, are as follows:

**1. First Aid:** Urgent works to be carried out to a property that is about to collapse, poses an imminent risk or that has suffered damages due to natural agents or human action. It includes provisional protection actions or works to stop or prevent from suffering greater damages, such as: reinforcement of walls or structures, temporary extra roofs and all those actions to avoid plundering of elements and/or parts of the property, wood work, decorations, movable property, etc.

**2. General repairs:** Works to maintain the property in proper conditions of hygiene and adornment without affecting its original materials, its shape and integrity, its bearing structure, its internal distribution and functional, ornamental, aesthetic, formal and/or volume characteristics. It includes maintenance and repair works such as cleaning, new paint, elimination of leaks, replacement of parts in a poor state, drainage works, control of humidity, and contention of earth, improvement of flooring materials, ceilings, veneering and paint in general. It also includes replacement, improvement and/or expansion of hydraulics, toilet, electrical, ventilation, fire, voice and data as well as gas installations.

**3. Structural reinforcement:** It is the consolidation of the structure of one or several buildings in order to adjust them to adequate seismic resistant security levels according to the requirements of Law 400 of 1997 or the norm that changes, modifies or replaces it and its regulation.

"By way of which Laws 814 dated 2003 and 397 of 1997 are partially regulated, the latter modified by way of Law 1185 dated 2008, pertaining to the Nation's Cultural Heritage of **tangible nature**".

**4. Rehabilitation or functional adjustments:** works necessary to adapt a building to a new use, guaranteeing the preservation of its characteristics. They allow modernization of the facilities and optimization and improvement of space usage.

**5. Restoration:** works aimed at recovering and adapting a building or part of it in order to preserve and to reveal its aesthetic, historical and symbolic values. Said works are based on respect for integrity and authenticity.

**6. New works.** Construction or works in an undeveloped plot of land.

**7. Expansion.** Increase of built area of an existing building, being understood as built area the built part that corresponds to the sum of floor surfaces, excluding terraces and uncovered areas.

**8. Consolidation.** Partial or entire reinforcement of a building.

**9. Demolition.** Total or partial demolition of one or several buildings in one or several plots of land.

**10. Liberation.** Works aimed at removing aggregates or additions that go against the wellbeing of the building since they hide its values or characteristics. The process of liberating aggregates or additions encompasses the following actions:

I. Removal of walls built in any material, that subdivide original spaces and that affect its characteristics and proportions.

ii. Demolition of bodies attached to the original volumes of the building, when determined that these affect its cultural values.

III. Reopening of original windows, doors, ocular windows, niches, alcoves, cisterns, wells and others.

iv. Removal of structural and non structural elements that affect the building's stability.

v. Removal of constructive and ornamental elements that distort the building's cultural value.

**11. Modification.** Works that change the architectonic or structural design of an existing building without incrementing its built area.

**12. Reconstruction.** Works aimed at redoing totally or partially the space and formal structure of a building based on data obtained from the same construction or graphic, photographic or archive documents.

**13. Reintegration.** Works geared towards restituting elements the building has lost or that are up for replacement due to irreversible deterioration.

**Paragraph.** In the case of real estate property, also subject of this authorization are the interventions in the areas of influence, adjoining properties and public spaces located in urban sectors declared as BIC and identified in a PEMP.

**Article 42. Types of actions and interventions for movable property declared as BIC.** The different actions or interventions that may be carried out on movable property BICs, according to the level of integral preservation and prior authorization of the authority with jurisdiction, are as follows:

"By way of which Laws 814 dated 2003 and 397 of 1997 are partially regulated, the latter modified by way of Law 1185 dated 2008, pertaining to the Nation's Cultural Heritage of tangible nature".

**1. Preventive Preservation:** It refers to strategies and measures of technical and administrative order geared towards avoiding or minimizing deterioration of the assets, and if possible, direct interventions. It comprises activities such as storage, handling, packing, transportation, control of environmental conditions, planning of emergencies, training of staff and awareness raising actions among the general public.

**2 Preservation — Restoration:** direct actions on assets geared towards ensuring their preservation through stabilization of the material. It is carried out based on the formulation of a restoration project. It includes urgent actions on assets whose physical and/or chemical integrity is in danger and/or in imminent risk, as a result of damages produced by natural agents or human actions, provisional protecting actions to stop or prevent greater damages, as well as periodical and planned actions geared towards maintaining the assets in excellent conditions.

Among the actions one finds: surface cleaning, in-depth cleaning, disinfection, pest control, desalinization, de-acidification, recovery of floor plans, structural reinforcement, joining of cracks or fragments, consolidation, fixing, grafts, restitution of parts and/or missing parts, removal of biological material, removal or previous interventions and/or of added materials, plastering and chromatic reintegration, among others.

**Article 43. Authorization request.** The authorization request to intervene a BIC should be presented to the authority with jurisdiction by its owner or legal representative or by the professional dully authorized by the owner according to requirements issued by the Ministry of Culture for both BICs at national and at regional level.

The authorization shall be issued via a motivated resolution, in which the type of approved intervention shall be specified.

In the case of real estate BICs, the same procedure shall apply to adjoining properties or those located in the BIC's area of influence.

**Paragraph.** The Ministry of Culture shall regulate the cases of minimum interventions of personal and real estate property BICs that do not require prior authorization.

**Article 44. Obligation to restitute the BIC due to non-authorized demolition.** Should a BIC be demolished partial or totally, or intervened substantially without the corresponding authorization and in violation of regulations that oblige its preservation, the authority with jurisdiction shall proceed immediately to stop said activity in agreement with police or local authorities if necessary, and shall order the owner or tenant the restitution of the areas unduly demolished or intervened according to their original design, without prejudice to the sanctions stipulated in the law.

## **CHAPTER VI REGISTRY OF PROFESSIONALS THAT SUPERVISE BIC INTERVENTIONS**

**Article 45. Registry of professionals that supervise BIC interventions.** The Intervention of a BIC can only be done under the supervision of professionals on the subject matter dully registered with the authority with jurisdiction.

Regional authorities can use the Ministry of Culture's registry.

"By way of which Laws 814 dated 2003 and 397 of 1997 are partially regulated, the latter modified by way of Law 1185 dated 2008, pertaining to the Nation's Cultural Heritage of tangible nature".

Supervision of intervention should be understood as follow-up, management, control and/or execution of a BIC intervention.

**Article 46. Principles to supervise an intervention.** For the purposes of supervising an intervention, professionals should act based on the following principles:

**1. Autonomy and responsibility:** professionals are responsible at disciplinary, fiscal, civil and criminal level for damages caused to those who have hired them, third parties or public administration, as well as the property object of the intervention, according to the case.

**2. Subjection to the PEMP and applicable regulation.** Professionals shall verify the agreement of the intervention with the Special Protection and Handling Plan -PEMP-if one exists and with the applicable regulations.

**Article 47. Hiring of professionals to supervise a BIC intervention.** Public or private juridical persons and natural persons that intend to intervene any private or real state property declared as BIC shall hire and pay professionals duly registered with the authority with jurisdiction in order for them to supervise the intervention.

**Article 48. Registration requirements.** For the purposes of registration, the request shall be submitted with the Ministry of Culture or regional authorities and the following minimum requirements should be met:

**1. For real estate property:**

i. To have an architecture or civil engineering title, professional registration number and a postgraduate certificate in architectonic or urban restoration with at least one academic year. The Ministry of Culture shall determine in general the equivalences for the purposes of homologation of professional experience through postgraduate education.

ii. To certify work experience of at least one (1) year in research, projects and/or works in real estate properties declared as BIC and also properties that constitute the Nation's cultural heritage, for minor works such as first aid, maintenance and general repairs, and three (3) years for the other types of works related with intervention of such properties.

**2. For movable property:**

i. To have a professional degree in restoration of movable property or credentials granted by the Council for National Monuments.

ii. To certify work experience of at least two (2) years in research, projects and/or execution of intervention actions in cultural movable property.

**Paragraph.** Degrees obtained in other countries should be homologated according to Colombia's legal requirements.

"By way of which Laws 814 dated 2003 and 397 of 1997 are partially regulated, the latter modified by way of Law 1185 dated 2008, pertaining to the Nation's Cultural Heritage of tangible nature".

**Article 49. Professionals' registry for supervision of intervention to a BIC at national level.** The relevant authorities at national level can establish their own professionals' registry, for which they should adhere to the minimum requirements set forth in this Decree.

In the same way, they can consider and accept professionals included in the registry of the Ministry of Culture or of the Provinces, Districts or Municipalities.

**Article 50. Registration Request and presentation of documentation.** The registration request shall be made upon delivery of the form established by the authority with jurisdiction, dully filled out along with documents that certify compliance of requirements.

This form shall be available free of charge on the web page of each authority with jurisdiction.

**Article 51. Verification of requirements.** Once the authority with jurisdiction has verified compliance with requirements, the professional shall become part of the professionals' registry to supervise BIC interventions.

Absence or non-veracity of certifications presented shall determine immediate removal of the candidate from the registration process, regardless of the status of said process, without prejudice to civil, criminal, disciplinary and fiscal actions that may derive thereof.

In the same way, the authority with jurisdiction shall revise at any time inscription in the registry, at their initiative or that of any citizen.

Requests and registrations can be made at any time.

The relevant authorities shall have the right to set out an invitation to register professionals at least every three (3) years, without limitation on doing so before when due to reason of convenience or need deem it justifiable.

## **CHAPTER VII TEMPORARY EXPORT OF BICs**

**Article 52. Authorization.** Temporary export of BICs shall be authorized by the relevant institution pursuant to the provisions in Title I of this decree, when the objectives determined in law 397 of 1997 modified by law 1185 dated 2008 are strictly confirmed.

The Ministry of Culture shall set general technical aspects for the authorizations to proceed, without prejudice to enforcing custom regulations.

"By way of which Laws 814 dated 2003 and 397 of 1997 are partially regulated, the latter modified by way of Law 1185 dated 2008, pertaining to the Nation's Cultural Heritage of tangible nature".

## **CHAPTER VIII TRANSFER AND CONTRACTS ON PUBLIC INSTITUTIONS' BICs**

**Article 53. Transfer and other contracts on Public Institutions' BICs.** In accordance with article 10 of law 397 of 1997, modified by article 62 of law 1185 dated 2008, the BICs owned by public institutions are free of liens, do not expire and inalienable.

Authorization to transfer or loan among public institutions shall take place via a supported administrative act issued by the authority with jurisdiction.

Similarly, in case contracts referred to in the paragraph of mentioned provision, are signed, in respect of non-profit private institutions, a supported administrative act shall be issued, without prejudice to enforcing other requirements stipulated in article 355 of The Political Constitution, or articles 95 and 96 of Law 489 of 1998. This type of contracts or agreements with private persons shall only have as main objective to guarantee the need to protect, recover, preserve, sustain and disseminate the relevant BIC without affecting its nature of being free of liens, that it does not expire and that it is inalienable. In this sense, the use given to the real estate property should guarantee its integrity.

Without prejudice to other information, or the stipulations of the relevant contracts, the administrative act referred to in this article should have at least:

1. Identification of the parties and their legal representatives, when upon authorization the contractor company is known.
2. The description and location of the asset or assets involved.
3. The administrative, technical, legal situation or others that describe the current situation of the asset.
- 4 .BIC declaration act.
5. The PEMP, should the property have one.
6. Description of protection, recovery, preservation, sustainability and information activities of the asset, which the institution shall carry out according to the PEMP, should the asset have one. If the asset does not have any PEMP, said activities shall be in accordance with the indications of the lender or transferor if it involves transfer among public institutions.
7. The institution that lends, acquires the property or the private person shall express in writing its irrevocable commitment to comply with the protection, recovery, preservation, sustainability and information activities of the asset.
8. Description of the parties, object, obligations, values, term and conditions of the contract to be signed.

**First Paragraph:** it shall be the exclusive responsibility of the institution that signs the relevant contract to comply with all legal requirements.

**Second Paragraph.** During development of the contract, the public institution that signs it should send to the institution that granted the authorization, the required information. Once the contract has terminated, said public institution shall send a final report on the execution and liquidation thereof. In any case, the institution granting the authorization shall perform supervising and monitoring activities in order to verify that the conditions in which the authorization was granted are being complied with.

"By way of which Laws 814 dated 2003 and 397 of 1997 are partially regulated, the latter modified by way of Law 1185 dated 2008, pertaining to the Nation's Cultural Heritage of tangible nature".

**Third Paragraph.** Prior to the authorization, the authority with jurisdiction shall have the right to establish the need to adopt a PEMP for the relevant BIC, should the latter not have one.

#### **TITLE IV ARCHEOLOGICAL HERITAGE**

**Article 54. Archeological heritage special regime.** The archeological heritage is governed exclusively by the provisions in articles 63 and 72 of the Political Constitution by articles 12 and 14 of law 163 of 1959, by article 6 of law 397 1997, modified by article 3 of law 1185 dated 2008 and all other pertinent regulations, article 1 of decree 1397 of 1989, as well as the stipulations of decree 833 dated 2002 and provisions of this Title.

All other provisions of this decree shall be applicable to the Archeological Heritage only when expressly specified.

**Article 55. Authority with jurisdiction.** In accordance with article 6 of law 397 of 1997, modified by article 3 of law 1185 dated 2008 and all other pertinent regulations of said law, the Colombian Institute of Anthropology and History -ICANH- is the sole institution authorized by the legal provisions to apply the archeological heritage management regime at national level, as well as at regional level.

Without prejudice to other competences foreseen in legal or statutory provisions or any other that correspond to the management of archeological heritage in the entire national territory, it is in particular ICANH's jurisdiction to:

1. Authorize natural or juridical persons to exercise the tenancy of movable property of archeological heritage nature, provided said persons comply with the obligations to register and to manage said properties determined by the ICANH.
2. Keep records of archeological assets held by third parties.
3. Make and keep up to date records on archeological properties, protected archeological areas and their areas of influence, and to remit said records to the Ministry of Culture –Heritage Administration Office in accordance with numeral 2, article 14 of law 397 of 1997, modified by article 9 of law 1185 dated 2008.
4. Declare when applicable Protected Archeological Areas, and if applicable, delimit the respective area of influence, a declaration that does not affect the land ownership.
5. Approve Archeological Management Plans for protected archeological areas, which shall include the Areas of Influence, should there be any on archeological properties given in tenancy; it shall have the right to demand and to approve said Archeological Management Plan.

"By way of which Laws 814 dated 2003 and 397 of 1997 are partially regulated, the latter modified by way of Law 1185 dated 2008, pertaining to the Nation's Cultural Heritage of tangible nature".

6. Receive notices which any person has the obligation to report, with the occasion of finding assets that are part of the archeological heritage and to define the applicable measures to protect adequately said assets.
7. Authorize the development of surveys, explorations or excavations of archeological nature.
8. To approve Archeological Management Plans in the projects to construct hydrocarbons transportation networks, mining, dams, road infrastructure, as well as in all other projects and works that require environmental licenses, equivalent registrations or authorizations with the authority with jurisdiction and to define the characteristics of the Preventive Archeological Programs in these cases in accordance with numeral 1.4, article 11 of law 397 of 1997, modified by article 7 of law 1185 dated 2008.
9. Authorize interventions to archeological heritage assets, Protected Archeological Areas and Areas of Influence in accordance with existing Archeological Management Plans and to register or certify the professionals who may be authorized to carry out the relevant interventions according to the provisions of numeral 2, article 11 of law 397 of 1997, modified by article 7 of law 1185 dated 2008.
10. Authorize, when applicable and up to a maximum legal term, the temporary export of archeological assets in accordance with numeral 3, article 11 of law 397 of 1997, modified by article 7 of law 1185 dated 2008.
- 11 Apply the penalty regime of its competence, pursuant to the provisions in article 15<sup>th</sup> of law 397 of 1997, modified by article 10<sup>th</sup> of law 1185 dated 2008.

**First Paragraph.** If necessary, the ICANH shall have the right to delegate the exercise of competences attributed by the law and statutory acts in accordance with the specific parameters of law 489 of 1998.

**Second Paragraph.** To exercise the competences assigned by law and listed in this article, the ICANH shall establish the relevant certifications, document requirements and technical aspects given the nature of the archeological heritage.

**Third Paragraph.** The provisions of this article modify the requirements set forth in article 2 of decree 833 dated 2000. For all purposes of said decree, the ICANH shall be the authority with jurisdiction.

**Fourth Paragraph.** The Preventive Archeological Program is the scientific research geared towards identifying and characterizing archeological assets and contexts present in the area of those projects, works or activities that require environmental licenses, equivalent registrations or authorizations with the environmental authority or that when occupying areas larger than one hectare, require a development, division into plots or construction licenses.

The purpose of this program is to evaluate the expected levels of affectation on archeological heritage due to the construction of aforementioned works, projects and activities, as well as to formulate and to apply the management measures applicable in the related Archeological Management Plan.

"By way of which Laws 814 dated 2003 and 397 of 1997 are partially regulated, the latter modified by way of Law 1185 dated 2008, pertaining to the Nation's Cultural Heritage of tangible nature".

**Article 56. Protected Archeological Areas and Areas of Influence.** In accordance with article 6 of law 397 of 1997, modified by article 3 of law 1185 dated 2008, the ICANH shall declare protected areas where archeological assets are present, without said declaration affecting land ownership, even though said assets shall be subject to the Archeological Management Plan approved by said institution.

Declared Protected Archeological Areas or those declared by the ICANH shall be areas precisely determined in the national territory, including land owned by private persons or public institutions where private or real estate property exist that are part of the archeological heritage, with the purpose of establishing in said properties an Archeological Management Plan that guarantees archeological context integrity.

Declaration of Protected Archeological Areas shall be made generally by the ICANH. In this case, the ICANH shall prepare in advance the corresponding Archeological Management Plan, which shall be socialized with the regional authorities, the indigenous communities and black communities referred to in law 70 of 1993 that have jurisdiction over the Area. The ICANH shall listen to suggestions made by the authorities and shall incorporate them into the corresponding Archeological Management Plan.

Regional institutions shall also have the right to request declaration of Protected Archeological Areas as well as the indigenous and black communities referred to in Law 70 of 1993 when said areas are located within their jurisdiction. This request, which can be filed individually or jointly between the aforementioned authorities shall attach the relevant Archeological Management Plan for approval by the ICANH. Said institution can be asked to provide information it has on the area and it may provide assistance when formulating the Plan. In these cases the obligation to socialize the Archeological Management Plan shall be the responsibility of the institution or community that has suggested said plan.

**First Paragraph.** For the purposes of decree 833 dated 2000, when one refers to areas of archeological Influence it shall be referred to the term "Protected Archeological Areas".

**Second Paragraph.** For the relevant purposes, archeological preservation areas, national archeological parks and those BIC of national interest that have been declared as such in virtue of their archeological importance, shall be deemed as Protected Archeological Areas. The ICANH shall make an Archeological Management Plan, should it not exist, en in a term of maximum ten (10) years counted as of the issuance date of this decree.

**Third Paragraph.** In accordance with numeral 1.4, article 11 of law 397 of 1997, modified by article 7 of law 1185 dated 2008, once declaration of a Protected Archeological Area has taken place, the ICANH shall establish an adjacent Area of Influence, whose objective is to serve as buffer zone with regards to affectations that may be caused by the construction and operation of works, projects or activities developed in the immediate perimeter thereof. The precise determination of the Areas of Influence's extension, as well as the intervention levels allowed shall be determined in the Archeological Management Plan of the protected area.

**Fourth Paragraph.** The ICANH shall regulate the certifications, required documents and technical aspects to request declaration of Protected Archeological Areas.

"By way of which Laws 814 dated 2003 and 397 of 1997 are partially regulated, the latter modified by way of Law 1185 dated 2008, pertaining to the Nation's Cultural Heritage of tangible nature".

**Article 57. Types of intervention on archeological heritage.** Following are the types of interventions on archeological heritage which require authorization from the ICANH:

1. Interventions in development of archeological research that imply surveying, excavation and restoration activities.

Prior to initiating the activities, the interested party shall submit a research project to the ICANH.

2. Interventions in projects to build hydrocarbons transportation networks, mining, dams, road infrastructure, as well as in all other projects, works or activities that require environmental licenses, registrations or equivalent authorizations with the environmental authority, or that when occupying areas larger than a hectare require development, division into plots or construction licenses.

Prior to initiating the works or activities, the interested party shall implement a Preventive Archeological Program that enables him/her in the first phase to formulate the corresponding Archeological Management Plan. As a condition to initiate the works, said Plan shall have to be approved by the Colombian Institute of Anthropology and History. Without prejudice to the foregoing, for each one of the phases of the Preventive Archeological Program that implies surveying or archeological excavations works, the interested party shall request with the ICANH the respective intervention authorization.

3. Interventions in projects, works or activities within Protected Archeological Areas and Areas of Influence shall have to be made in accordance with the approved Archeological Management Plan.

Prior to initiating material interventions or works, the applicant shall take into account the intervention levels allowed and guidelines foreseen in the Archeological Management Plan that supported the declaration of protected Archeological Area and the determination of the area of Influence should there be one, or the National Land Use Plan if said plan has dully incorporated the terms of the corresponding Archeological Management Plan.

Interventions or works referred to in this numeral refer to any intervention that requires or not an environmental license, such as division into plots actions or development and construction works.

4. Interventions of movable property of archeological nature classified under legal tenancy.

The natural or legal person who in his/her quality of legal tenant holds archeological heritage movable property and requires to carry out preservation or restoration activities thereof, shall request with the ICANH an intervention authorization in advance.

In order to obtain this authorization the ICANH shall request the presentation of an Archeological Management Plan adjusted to the characteristics of the movable property or properties to be intervened.

**First Paragraph.** The interventions described in numerals 1 to 3, shall only be carried out under the supervision of professionals on archeological matters dully certified with the ICANH.

**Second Paragraph.** The ICANH shall regulate certifications, required documents and technical aspects necessary to request and to issue intervention authorizations on the archeological heritage and shall define the minimum terms of reference to carry out the Preventive Archeological Programs and the drafting as well as enforcing of the Archeological Management Plans.

"By way of which Laws 814 dated 2003 and 397 of 1997 are partially regulated, the latter modified by way of Law 1185 dated 2008, pertaining to the Nation's Cultural Heritage of tangible nature".

**Article 58. Complementarities.** In all cases where the protected Archeological Area overlaps totally or partially a region declared natural protected area, the Archeological Management Plan shall take into account the guidelines set forth in the corresponding declaration. For this, the institutions in charge of managing said matters shall establish ways to cooperate and collaborate that enable them to formulate the relevant Management Plans.

**Article 59. Incorporation of Archeological Management Plans into the National Land Use Plans.** In virtue of the provisions of law 388 of 1997, and article 11 of law 397 of 1997, modified by article 7 of law 1185 dated 2008, the National Land Use Plans of the regional institutions where declared Protected Archeological Areas exist shall incorporate the relevant Archeological Management Plans.

The regional institutions where Protected Archeological Areas exist shall inform the relevant Real Estate Public Registry Office in order for the latter to incorporate in the property registration sheets the notes corresponding to the existence of Archeological Management Plans on the land covered by the declaration and shall report to the ICANH on such requests.

**Article 60. Change in tenancy of archeological assets.** Authorized holders of archeological assets that would have registered with the ICANH shall be entitled to request change of holder, subject to the condition that the third interested party be a natural or legal person, public or private that proves the necessary conditions to preserve, manage, protect and disseminate the archeological assets involved. Once the necessary information has been gathered, the ICANH shall authorize the change.

**Article 62. Material seizure of assets that are part of archeological heritage.** For the purposes of material seizure of archeological assets due to lack of registration of those held by any person, pursuant to the provisions of article 19, numeral 1 of decree 833, the term granted by article 6 of law 397 of 1997, modified by article 3 of law 1185 dated 2008 is of 5 years counted as of the communication date of the law being 12 March 2008,

## TITLE V

### **MOTION PICTURES HERITAGE**

**Article 62. Colombian Heritage of Motion Pictures.** All the aspects pertaining to the handling of Colombian Heritage of Motion Pictures, including the declarations of cinematographic works as Assets of Cultural Interest, the application of management, protection, restriction, incentive regime, special management plans or maintenance and preservation plans of this type of works according to the provisions of law 397 of 1997 modified by la law 1185 dated 2008, shall be governed exclusively by the provisions of articles 14 of decree 358 dated 2000.

"By way of which Laws 814 dated 2003 and 397 of 1997 are partially regulated, the latter modified by way of Law 1185 dated 2008, pertaining to the Nation's Cultural Heritage of tangible nature".

The Ministry of Culture shall regulate aspects of formal order and certification requirements necessary to that end.

**Article 63.** By way of which article 5 of decree 352 dated 2004 shall be modified which shall then state:

Article 5. Eligibility of projects. For a project to be eligible, it has to be presented by the interested party to the Administrator of the Cinematographic Development Fund.

By charging the resources of the Cinematographic Development Fund the expenses necessary to develop bidding processes or other defined methods to allocate resources, external audit and meetings of the National Council of Arts and Culture in Cinematography related to such Fund, shall be covered.

**Article 64.** By way of which numeral 6 of article 16 of decree 352 dated 2004 shall be modified, which shall then state:

"That the main projection in the movie theaters should be carried out with a difference of maximum 15 minutes counted between the termination of the **short film** and the start of said main projection."

Article 65. By way of which article 17 of decree 352 dated 2004 shall be modified, which shall then state that:

Article 17. Approval of projects. Feature movies and short films projects, candidates to be beneficiaries of donations and investments that give right to tax deductions foreseen in Law 814 dated 2003 shall be approved in advance by the Ministry of Culture through the Cinematography Management Office in accordance with the budget limits established and with the statistic, financial and operational situation of the national film industry according to at least the following criteria:

1. Technical feasibility of the project.
2. Feasibility of the projected budget.
3. Consistency of the projected budget with the technical and artistic elements of the project.
4. The producer shall deliver to the Ministry of Culture's Cinematography Office a copy of the complete project which should include: script, cast, locations, filming plan, information on technical and artistic team and specified budget.

"By way of which Laws 814 dated 2003 and 397 of 1997 are partially regulated, the latter modified by way of Law 1185 dated 2008, pertaining to the Nation's Cultural Heritage of tangible nature".

5. Complying with requirements set forth in articles 43 and 44 of Law 397 of 1997 and Decree 358 dated 2000, to be considered as a national feature or short movie production or co-production.

6. The producer shall present all other documents and credentials defined by the Ministry of Culture, including the certification of having a three per cent (3%) of the project's total cost available when requesting recognition in a bank account or fiduciary supervised by the Financial Superintendence and on the project producer's name.

First Paragraph. The approval referred to in this article shall be issued by means of a supported resolution prior to making the first donation or investment which shall be called Resolution of Recognition as National Project.

Second Paragraph. The budget approved by the Resolution of Recognition as National Project specifies exclusively the maximum amount of investments or donations that the film project can receive under the coverage of tax reductions established in law 814 dated 2003, according to budget limits defined by the Ministry of Culture.

Resolution of Recognition as National Project does not constitute in any case a guarantee to recover investments or to obtain profits for investors, nor a success prediction for producers, investors or contributors. Investment and donations negotiations are the exclusive responsibility and decision between producers, investors or contributors."

**Article 66.** By way of which numeral 3 of article 19 of decree 352 dated 2004 shall be modified which shall then state:

"3. Donation or investment date, which shall be the date the moneys are transferred to the fiduciary upon issuance of the Resolution of Recognition as National Project. This date corresponds to the fiscal year on which the tax reduction foreseen in article 16<sup>th</sup> of law 814 dated 2003 is applicable.

The execution or expenditure date of the resources invested or donated corresponds to the autonomous decision of the individuals responsible for the project, however the Cinematography Office shall issue the Cinematographic Investment or Donation Certificate when all requirements and terms foreseen in this decree and all other formal aspects established by the Ministry of Culture are fully met."

**Article 67. Declaration and Contribution payment.** As of the first day of the calendar month following the date this decree is published, exhibitors that are not current in their payments of the parafiscal contribution for which they are responsible or present declarations without the payment they are obliged to make shall not have the right to apply the parafiscal contribution reduction incentive referred to in article 14 of law 814 dated 2003, according to declaration and payment periods of contribution set forth in law 814 dated 2003 and in decree 352 dated 2004.

"By way of which Laws 814 dated 2003 and 397 of 1997 are partially regulated, the latter modified by way of Law 1185 dated 2008, pertaining to the Nation's Cultural Heritage of tangible nature".

Both the declaration and the contribution payment shall have to be made no later than the first fifteen (15) calendar days following the month in which they are caused.

Once the relevant exhibitor has paid the total outstanding amounts, he shall have the right to access aforementioned incentive as of the calendar month following the total payment date, provided he complies with all requirements set forth in decree 352 dated 2004.

**Article 68. Reporting.** The administrator of the Cinematographic Development Funds set forth in law 814 dated 2003 and in decree 352 dated 2004 shall generate the relevant reports to the tax and collection authorities in case reduction of parafiscal contribution would apply for a certain exhibitor contradicting the stipulation of foregoing article.

**Article 69** By way of which article 2 of decree 2291 dated 2003 shall be modified which shall state:

"Article 2. Structure. The National Council of Cinematographic Arts and Culture - CNACC- shall be constituted by the following members:

1. The Minister of Culture or their delegate.
2. The Cinematography Director of the Ministry of Culture.
3. Two representatives with extensive experience in the cinematographic sector designated by the Minister of Culture.
4. One representative from the Regional and District Cinematography Councils.
5. One representative of Feature Films Producers.
6. One representative of the Distributors.
7. One representative of the Exhibitors.
8. One representative of the Directors.

First Paragraph. The Minister of Culture, who shall chair the CNACC, shall have the right to delegate in the terms of law 489 of 1998.

If his/her delegate were the Cinematography Director from the Ministry of Culture, the former shall count on a delegate vote and his own. If the delegate were a different officer, the Director of Cinematography shall chair the council.

Second Paragraph. The Council shall have the right to invite to its deliberations public officers, or private persons that represent the associations of the cinematographic sector and all other sectors of the civil society it may deem necessary, according to the specific topics to be addressed. Said guests shall participate but shall not be entitled to vote. In case it should be required according to the ever changing conditions of the national cinematography, by way of resolution from the Ministry of Culture, representation of other sectors of the cinematographic activities included academic institutions shall be expanded with two (2) positions, in which case the same act shall determine how they are elected.

"By way of which Laws 814 dated 2003 and 397 of 1997 are partially regulated, the latter modified by way of Law 1185 dated 2008, pertaining to the Nation's Cultural Heritage of tangible nature".

Third Paragraph. The representatives from the National Council of Cinematographic Arts and Culture can be removed before expiration of the term for which they were elected or designated, if they fail to attend three (3) consecutive sessions thereof without just cause dully proven or when omitting to fulfill the tasks stipulated in the law or in this decree.

Fourth Paragraph. The Ministry of Culture shall determine the way the representative of the Cinematography Regional and District Councils is elected, and the structure of said Councils in such a way that representation of the various cinematographic centers is guaranteed at those regional levels and the minimum competences of the technical secretariats of said Councils."

**Article 70.** By way of which article 12 of decree 2291 dated 2003 shall be modified which shall state:

"Article 12. Term. Except public officers who are freely appointed and removed, the other members of the National Council of Cinematographic Arts and Culture shall have a term of two (2) years, counted as of their designation and/or election. Council members and those who have held that position before can be reelected in accordance with the procedure to designate or elect.

**First Paragraph.** As to the representation of the Ministry of Culture as public institution, said institution shall be subject to the changes that may occur therein, which shall be informed in writing to the Technical Secretariat Council within the month following the date on which the relevant change took place.

When due to any circumstance, the person acting as representative designated for the National Council of Cinematographic Arts and Culture stops performing such function, he/she shall be replaced by the Ministry of Culture who shall designate a new representative.

When the National Council of Cinematographic Arts and Culture removes or excludes due to legal or statutory causes, any elected member, said member shall be replaced following the election procedure stipulated in article 10 of this decree.

If any member of the Council is removed due to any cause, before termination date, the new person designated or elected shall occupy this position until the date initially foreseen for the person who abandons the position.

Second Paragraph. The Ministry of Culture shall have the right to determine other requirements that candidates should meet to elect or designate members of the National Council of Cinematographic Arts and Culture"

**Article 71.** By way of which article 10 of decree 358 dated 2000 shall be modified, which shall state:

"Article 10. Percentage of Colombian artists in the national co-production. The percentage Colombian artists in the national short and feature film co-production, foreseen in law 397 and in this decree, respectively, shall be certified provided there is participation of at least:

"By way of which Laws 814 dated 2003 and 397 of 1997 are partially regulated, the latter modified by way of Law 1185 dated 2008, pertaining to the Nation's Cultural Heritage of tangible nature".

1. The Director or producer of the film and one leading or supporting actor or
2. One leading actor and two of the following persons:

- i. Director of photography,
- ii. Artistic or design director.
- iii. Script writer or writers.
- iv. Music writer or writers.
- v. Cartoonist if it is an animated movie.
- vi. Editor.
- vii. Supporting actor.

**Paragraph.** The Colombian feature movie co production shall certify a technical participation in the same conditions set forth in article 9 of this decree for national feature movies productions."

**Article 72. Documentaries and animation works.** National short films and feature movies of documentary nature and cinematographic animation works do not require certifying the presence of Colombian actors for the purposes of articles 8 and 10 of decree 358 dated 2000. Certification shall be made via other established alternatives.

In the case of animation works, the voice of the characters made by national actors shall certify the presence of the number of actors required in aforementioned regulations, should that be the case.

**Article 73. Minimum duration of short movies.** For the purposes of article 13 of decree 358 dated 2000, the minimum duration of national short films is 7 minutes in accordance with article 3 of law 814 dated 2003.

**Article 74. Follow-up on cinematographic activities.** In accordance with article 111 of law 489 of 1998, for follow-up activities that are the Ministry of Culture's competence with respect to cinematographic activities, in accordance with article 4, numerals 5 and 6, of law 814 dated 2003, in numeral 3, article 15 of executive order 1746 dated 2003 that attributes functions to the Cinematography Management Office from the Ministry of Culture, and those pertaining to the obligations of producers, distributors, exhibitors, or other agents of the sector, said Ministry shall have the right to sign agreements or contracts with private persons to carry out the required inspections and whose reports constitute public certification to apply the measures stipulated in the law or statutory regulations.

The persons involved in the development of these activities shall fulfill public positions. Agreements signed to that end can involve Universities, non-profit organizations or audit institutions and shall be paid charging the Ministry of Culture's budget.

The relevant agreement which shall not have a term longer than 5 years, shall determine the scope of the responsibilities of private persons involved therein, who shall provide a guarantee of agreement in accordance with procurement regulations.

"By way of which Laws 814 dated 2003 and 397 of 1997 are partially regulated, the latter modified by way of Law 1185 dated 2008, pertaining to the Nation's Cultural Heritage of tangible nature".

In the same way, the Ministry of Culture shall determine by way of an administrative act the conditions and activities to be developed in the course of this type of agreements or contracts. This act shall be published and sector agents that should receive inspection visits paid by private persons shall be informed of such, in advance.

## **TITLE VI** **ARCHIVIST HERITAGE**

**Article 75. Archives.** These are all aspects related to the handling of archives considered Nation's Cultural Heritage, including declarations as Assets of Cultural Interest and procedures to such end, enforcing a Special Protection Regime, including restrictions, PEMP's, or incentives pursuant to the stipulations of law 397 dated 1997 modified to that respect by law 1185 dated 2008, which shall all be governed by the provisions of this decree or by those regulated by the Ministry of Culture in as far as requirement aspects and other criteria.

The Ministry of Culture shall regulate the necessary technical and administrative aspects to that end.

**Article 76.** By way of which numeral 13 shall be added to article 1 of decree 1313 dated 2008 pertaining to the constitution of the National Council of Cultural Heritage with the following content:

"13. Director of the National Archive or his delegate ".

## **TITLE VII** **INCENTIVES TO PRESERVE AND MAINTAIN ASSETS OF CULTURAL INTEREST**

**Article 77. Deductible expenses to preserve and maintain BICs.** The costs on which the deduction set forth in the first and second sections of Article 56<sup>th</sup> of Law 397 of 1997, modified by article 14 of law 1185 dated 2008 applies, are as follows:

**1. For the drafting of the Special Protection and Handling Plan-PEMP-:** Deductible shall be the expenses incurred in hiring specialized services to formulate the PEMP up to an amount of hundred (100) monthly minimum legal wages, only if the PEMP is approved by the authority that declared the BIC, at least within the first three (3) first months of the calendar year following the fiscal year in which the deductible costs are effectively incurred.

To that end, the authority in charge of executing the BIC declaration should have to have defined in advance if the property requires a PEMP, according to the procedure stipulated in article 8 of law 397 of 1997, modified by article 5 of law 1185 dated 2008.

"By way of which Laws 814 dated 2003 and 397 of 1997 are partially regulated, the latter modified by way of Law 1185 dated 2008, pertaining to the Nation's Cultural Heritage of tangible nature".

Application of the deduction shall be carried out once the institution in charge of the declaration and approval of the PEMP issues an approval certificate of the respective expense on the name of the BIC owner. To that end, proof of effective incurrence of the expense shall only be acceptable via an invoice issued by the service provider on the name of the BIC owner in the terms of the Tax by-laws.

Within the maximum range described in this numeral the Ministry of Culture shall have the right to determine maximum cost scales according to differentiations in the PEMPs required for personal and real estate property or subcategories therein.

**2. For maintenance and preservation.** Deductible costs shall be those incurred in:

- i. Hiring of services pertaining to the protection, preservation and intervention of the BIC.
- ii. Materials and raw materials necessary to preserve and maintain the BIC.
- iii. With regards to documents or photographs, deductible are those expenses incurred for the production, copy and reproduction thereof, provided they have a preservation objective and in no case a distribution or commercial objective.
- iv. Equipment necessary and directly associated with the implementation of the Special Protection and Handling Plan - PEMP- of the respective BIC.

**First Paragraph.** To apply the benefit foreseen in numeral 2 of this article, the corresponding expenses shall be specified in advance in the intervention project approved by the authority in charge of declaring the BIC.

**Second Paragraph.** To apply the benefit foreseen in numeral 2 of this article, the costs incurred shall be deductible for a period no longer than five (5) fiscal years, provided the authority in charge of the BIC declaration compares and certifies that the incurred costs correspond to those of the authorized intervention project or approved PEMP, should one exist. To that end, proof of effective incurrence of the costs shall only be acceptable via an invoice issued by the provider of the service or goods on the BIC's owner name, in the terms of the Tax By-laws.

**Third Paragraph.** To apply the benefit foreseen in numeral 2 of this article, the Ministry of Culture shall have the right to determine maximum cost scales according to differentiations on the interventions of personal or real estate property.

**Fourth Paragraph.** To apply the benefit foreseen in numeral 2 of this article, costs incurred in the national territory to protect, preserve and maintain an asset shall be accepted, except that due to special circumstances of technical impossibility or due to the impossibility to render such services in the country, the necessary services, materials and raw materials should be acquired abroad, and provided this is approved in the intervention project or the PEMP if applicable.

**Fifth Paragraph.** For the case of archeological heritage, taking into account that it is the Nation's property, the provisions of numerals 1 and 2 of this article shall be applicable to the state institutions that being income tax payers incur in the expenses described In respect of the formulation and application of Archeological Management Plans, provided said expenses do not correspond to the preventive archeological programs linked to the projects, works or activities which are the responsibility of the relevant institution.

Expenses incurred in the defined Archeological Management Plans shall take place in the framework of the agreements with the Colombian Institute of Anthropology and History -ICANH-. In this case the ICANH shall have competence to issue the certifications referred to in both numerals.

"By way of which Laws 814 dated 2003 and 397 of 1997 are partially regulated, the latter modified by way of Law 1185 dated 2008, pertaining to the Nation's Cultural Heritage of tangible nature".

**Sixth Paragraph.** It is the responsibility of the beneficiary of the incentive regulated in this article to comply with his or her fiscal obligations and certification of expenses that may be requested by the National Tax and Customs Authority, should it be applicable.

**Article 78. Mandatory nature of BIC registration.** The benefit regulated in the previous article cannot be applied if the relevant BIC were not to be fully registered and all registration obligations were not met, as well as if the information requirements described in article 14 of law 397 of 1997, modified by article 9 of law 1185 dated 2008 were not met.

Said benefit shall not be applicable if in case of real estate the relevant BIC were not been registered in the terms of numeral 1.2 of article 7 of law 1185 dated 2008, which amends article 11 of Law 397 of 1997.

For the case of archeological assets that in virtue of the law were to have a BIC nature, and Protected Areas to which the Archeological Management Plan were to be applied, the registration shall be subject to the regulations stipulated in this decree.

**Article 79. Motion Picture Heritage.** All what is relevant to enforcing the benefit stipulated in this Title shall continue to be governed by decree 358 dated 2000.

## **TITLE VIII VIOLATIONS AGAINST CULTURAL HERITAGE**

**Article 80. Immediate application and information to the Ministry of Culture.** The competent authorities described in Title I of this decree that have the faculties to enforce the administrative penalties stipulated in article 15 of law 397 dated 1997 modified by article 10 of law 1185 dated 2008, shall apply the provisions and principles of administrative actions according to the First Part and all Others pertaining to the Administrative Contentious Code.

Enforcement of penalties by regional authorities, the National Archive or the Colombian Institute of Anthropology and History shall be informed to the Ministry of Culture in each exact case of penalty.

The information shall contain at least:

1. Name of the person to whom the penalty was imposed.
2. Assets of Cultural Interest on which the infraction was committed
3. Adopted penalty

**Article 81. Material and final seizure.** The material seizure of a BIC due to any of the causes stipulated in article 15 of law 397 of 1997, modified by article 10 of law 1185 dated 2008 consists in confiscating the property, said action can be conducted by Police authorities or other State's offices fully authorized by the law or at the request of any of the relevant authorities according to the provisions of Title I of this decree.

"By way of which Laws 814 dated 2003 and 397 of 1997 are partially regulated, the latter modified by way of Law 1185 dated 2008, pertaining to the Nation's Cultural Heritage of tangible nature".

The assets confiscated due to any of the causes established in said law shall be presented to the authority with jurisdiction foreseen in Title I of this decree with the intent that said authority initiates the administrative actions geared towards making the decision on whether final seizure is to take place and in such case, the penalty to be adopted.

**Article 82. Validity term and annulments.** This decree is valid as of its publication date, it modifies article 2 of decree 833 dated 2000, articles 5, 17 and numerals 6 of article 16, 3 of article 19, all of decree 352 dated 2004, article 10 of decree 358 dated 2000, and what pertains to article 1 of decree 1313 dated 2008; and annuls articles 5 of decree 2291 dated 2003, and articles 7, 24, 25, 33 and 34, numeral 2 and paragraph, 35, 38, 41, 46 of decree 358 dated 2000.

**10 MARCH 2009**

Publish and enforce

*(Illegible signature)*

Issued in Bogotá D.C,

*(Illegible signature)*  
Oscar Iván Zuluaga  
Ministry of Treasure

*(Illegible signature)*  
Juan Lozano Ramírez  
Ministry of Environment, Housing and Regional Development

*(Illegible signature)*  
Paula Marcela Moreno Zapata  
Ministry of Culture