

INCORPORATION OF COMPANIES

Documents required for incorporate companies, business association schemes, procedure for incorporating companies, incorporation costs, investor aid programs, related entities, applicable regulatory framework, and comparison chart of legal vehicles.

Bogotá is the main city of the 1st country in Investment protection in Latin America and the 2nd best environment for doing business in Latin America (Doing Business 2017).

It has the 28% of the total companies in the country. The Doing Business 2017 report noted that, thanks to anti-paperwork regulations (Law 1429 of 2010), the cost of establishing a company in Bogotá and in the rest of the country was reduced by more than 40%⁸.

The Incorporation of a company or the registry of a foreign company branch generally requires the following documents depending to the legal vehicle chosen by the investor.

Incorporation of legal vehicles		
Activity	Documents	Approximate administrative rates (COP)
Incorporation	Bylaws	
	Public deed (if applicable)	Notary fees: 0.3% of the subscribed capital for limited liability companies and 0.3% of authorized capital for joint stock companies. VAT: 19% on notary fees
	Power of attorney	Rates applicable to apostilles and legalizations, depending on the country of origin.
Registration in the Commercial Registry (Chamber of Commerce)	Pre-RUT (DIAN form 1648)	Free of charge
	RUES form	Free of charge
	Submission of documents in the commercial registry	Registration tax: 0.7% of the company's subscribed capital. Registration fees: between COP 39,000 and COP 124,000, depending on the range of assets of the company or branch.
DIAN registration	Tax ID	Free of charge
Bogota Tax Authority ("SHD" as per its acronym in Spanish) registration	Tax Information Registry	Free of charge
Foreign investment registration	Minimum information required for foreign investment registration form	Free of charge
Book registration	Book of minutes	\$ 39,000,00
	Shareholders ledger	\$ 39,000,00

*Companies and branches

Business association schemes

When a foreigner starts permanent businesses in the country, they must incorporate a company or register a branch in Colombia in order to carry out their business in the country. The Colombian legislation does not include a specific criterion or term to determine whether a business is permanent or not. Therefore, such concept of permanence will depend on the particular form in which the investor carries on their business, regularity, permanence, and duration of the business, deployment of infrastructure in the country, and hiring of personnel required, among others.

The Colombian commercial legislation offers different alternatives for the incorporation of companies, including: (i) incorporate of a commercial company or (iii) establish a branch of a foreign company.

Commercial Company

In Colombia, there are six (6) legal vehicles of which constitute a legal entity interdependent from its partners or shareholders:

- Simplified stock company
- Stock company
- Limited liability company
- Partnership
- Limited partnership
- Sole proprietorship

Branch of a foreign company

Foreign company branches are establishments opened by a foreign company in Colombia to carry out their business in the country. Unlike commercial companies, branches do not have a legal status independent from their head office. Therefore, they are jointly liable for the business they carry on in Colombia through their branches.

As they are an extension of the head office, branches are allowed to certify in the country the experience of their head office as own, which is an advantage for those foreign companies that anticipate their participation in public and private contracting processes that require previous experience.

The table Frequently Used BLegal vehicles shows the main characteristics of the most common forms of legal organization among foreign investors, such as simplified stock companies, stock companies, and foreign company branches.

Procedures for Incorporating a Commercial Company or Registering a Branch of a Foreign Company

The procedure, length and costs for the incorporation of a commercial company or the registration of a foreign company branch are similar. Once all the required documents are gathered, all procedures for incorporating a company and obtaining all registers necessary from registration and tax authorities may be executed in a approximately twenty (20) days.

Documents required

The incorporation of a company company or registration of a foreign company branch generally requires the documents listed in the below table.

when the partners or the future shareholders are not in the country to performed the above mentioned activities mentioned, for either incorporate a company company or registering a foreign company branch, a power of attorney must be granted by written. Nonetheless, some procedures may require personal presentation before the Chamber of Commerce or a notary, therefore we suggest to review the applicable procedure on a case-by-case basis.

If the investor's country is part of the The Hague Convention the Power of Attorney shall be apostilled and submitted attaching an apostilled document issued by a notary in which states the certification of legal existence and signatory authority, in the case of legal

entotoes (or its equivalent), which shall also be apostilled, certifying existence and legal representation in the case of legal entities. For countries that are not part of The Hague Convention, the document shall also be issued by a notary (or equivalent official) and submitted to the corresponding Colombian consulate so that an official certifies legal existence of the company and that it carries out its activities in accordance to its corporate purpose and the local laws. Finally, the afore mentioned certified by a consulate shall be legalized before the Colombian Ministry of Foreign Affairs.

Documents granted in another language shall be translated to Spanish by a certified translator in Colombia authorized by the Colombian Ministry of Foreign Affairs.

Incorporation of a company or foreign company branch requires, except in the case of simplified stock companies, notarization of documents in a public instrument. The general activities required to incorporate and start a company or foreign company branch are as follows:

Implementations Costs

1. Public Deed: Granting a public deed triggers notary fees fees of 0.3% of the company's capital amount. In addition, notary fees trigger 19% VAT, which results in a combined rate of about 0.357 % of the company's capital amount. Additional cost shall apply to the issuance of copies.

2. Registration in the Merchantile Registry: Registration in the Merchantile Registry comprises the following costs:

a) Registry tax of 0.7% of the company's capital amount or the branch's assigned capital; and 0.3% of the share premium amount (in the case of contributions made after the incorporation).

b) Registration shall be applicable for business establishments or branches: between COP 39,000 and COP 124,000 (USD 13 to USD 41 // USD 1 = COP 3,053.42), depending on the level of assets linked to the establishment.

c) Registration fees determined based on the company's assets amount. Rates can be checked at <http://www.ccb.org.co/Inscripciones-yrenovaciones/Tarifas-de-los-registrospublicos-2017>

d) Other immaterial registration costs COP \$600,000 (USD 197*).

3. Registration of corporate books in the Merchantile Registry Registration fees of for COP \$60,000 (USD 20*) per book.

Related Entities

Chamber of Commerce of Bogota

in the procedure of incorporate companies in Colombia, the Bogotá Chamber of Commerce is the entity responsible for registering new companies or branches and control the existing ones (merchantile registry).

Go to: www.ccb.org.co

National Tax and Customs Authority (DIAN)

Entity responsible for guaranteeing the fiscal security of the country by managing and controlling due compliance with tax, customs and exchange obligations, and facilitating foreign trade transactions in conditions of equity, transparency and legality. In the process of incorporation of companies, it is responsible for tax registration of new companies and assignation of a tax identification number as a necessary requirement for the incorporation.

Go to: www.dian.gov.co

Central Bank

The Colombian Central Bank is responsible, among other functions, for issuing, managing and controlling monetary transactions in the country, as well as issuing the country's local currency, the Colombian peso. It is also involved in the process of registering foreign investment, which will be explained in the chapter Foreign Investment in Colombia.

Go to: <http://www.banrep.gov.co/>

Superintendence of Companies

Governmental entity through which the President of Colombia undertakes the inspection, surveillance, and control of trading companies, as well as other prerogatives provided by law in relation to other legal entities or individuals.

Go to: <http://www.supersociedades.gov.co>

Regulatory Framework

- Colombian Code of Commerce, Book 2, Article 98 et seq.
- Law 222 of 1995. Available at: <http://www.secretariassenado.gov.co/>
- Law 1014 of 2006. Available at: <http://www.secretariassenado.gov.co/>
- Law 1258 of 2008. Available at: <http://www.secretariassenado.gov.co/>
- Decree 1192 of 2009. Available at: <http://www.secretariassenado.gov.co/>
- Law 1429 of 2010. Available at: <http://www.secretariassenado.gov.co/>
- Decree 19 of 2012. Available at: <http://www.secretariassenado.gov.co/>

- Law 1607 of 2012. Available at: <http://www.secretariassenado.gov.co/>
- Decree 1068 of 2013. Available at: <http://www.secretariassenado.gov.co/>
- Resolution 451 of 2017 by the Superintendence of Notaries and Registries. Available at: <http://www.supernotariado.gov.co.do.gov.co/>

Frequently used legal vehicles

Simplified share company

Incorporation and amendments	<p>Characterized by its versatility and simplicity of its incorporation as well as its operation</p> <p>Incorporation and amendments are formalized by means of a private document that shall be granted before Notary Public and registered in the Merchantile Registry.</p>
Corporate name	<p>Corporate Name must be followed by the acronym "S.A.S."</p>
Liability	<p>Limited to the amount of contribution, except for cases of proven fraud.</p>
Number of shareholders and capital	<p>May be incorporated by one or several individuals or legal entities and there are no limitations to the amount of capital (one national or foreign shareholder may hold 100% of the capital).</p>
Length	<p>As stated in the articles of incorporation. May be undetermined.</p>
Capital	<p>Generally, there are no rules for minimum capital (except for special sectors).</p> <p>Represented by shares. The articles of incorporation should indicate authorized, subscribed and paid-in capital. The payment of the subscribed capital shall be made within the next two (2) years</p> <p>Minimum or maximum percentages or amounts may be established to be controlled by a shareholder (rules for variable capital).</p> <p>In addition, different types of shares, including multiple vote, may be established according to the needs of shareholders.</p>
Corporate purpose	<p>May be undetermined, insofar as it is a licit commercial activity.</p>
Management and control bodies	<p>As agreed in the bylaws. Not required to have a board of directors.</p> <p>When there is a single shareholder, he or she may exercise the powers of the General Meeting of Shareholders and the legal representative.</p> <p>Does not require statutory audit, unless the legal amounts established for the purpose are met.</p>

Stock Company	Branch of a foreign company
<p>Incorporation and amendments are formalized by means of a public deed granted before a Notary Public and registered in the Merchantile Registry (involves implementation costs due to shall apply).</p>	<p>Establishment of a branch and amendments to the articles of incorporation are formalized by a public instrument granted before a Notary Public and registered in the Trade Registry (involves implementation costs due to notary fees).</p>
<p>Corporate Name followed by the acronym "S.A."</p>	<p>Name of the head office followed by the word "Sucursal".</p>
<p>Limited to the amount of contributions.</p>	<p>Head office is jointly and severally liable for the activities executed by the branch</p>
<p>Requires a minimum five (5) shareholders which cannot held a participation greater than the 95% of the subscribed capital.</p>	<p>Has the same legal status of its head office. Therefore, it is not independent company from the head office therefore, it does not have shareholders.</p>
<p>As set forth in the articles of incorporation. Cannot be undetermined.</p>	<p>As stated in the articles of incorporation. Cannot be undetermined and is limited to the duration of the head office.</p>
<p>Generally, there are no rules for minimum capital (except for special sectors).</p> <p>Represented by shares of the same par value. Articles of incorporation should indicate authorized, subscribed and paid-in capital.</p>	<p>Corresponds to the capital assigned by the head office in the resolution incorporation or as amended by subsequent resolutions.</p> <p>Must be totally paid at the time of registration.</p>
<p>At least half of the authorized capital should be subscribed at the time of incorporation and at least a third of the amount of each subscribed share should be paid. The remaining balance shall be paid within the maximum term of one year.</p>	
<p>Must be limited to specific activities.</p>	<p>Designated by the head office in the act or resolution of incorporation and cannot exceed or differ from the corporate purpose of the head office.</p>
<p>Responsibility of the board of directors, which is elected by the General Meeting of Shareholders. The board, in turn, elects a legal representative.</p>	<p>Responsibility of a general agent with one or more substitutes appointed by the head office.</p>
<p>Requires statutory auditor.</p>	<p>Requires statutory auditor.</p>

Most common legal vehicles

Simplified Stock Company

Profits

Unless a different majority is agreed in the bylaws, they are ordered with the majority of votes present at the meeting.

There is no minimum amount for distribution. Different rules for distribution that are not linked to the capital share percentage may be established.

Dissolution

Because of general clauses and when there are losses which reduce the net equity below 50% of the subscribed capital.

Surveillance

All the commercial companies are subject to inspection and, occasionally, surveillance and control by the Superintendence of Companies, unless such power has been conferred to another superintendence in accordance with the corporate purpose to be fulfilled.



Stock Company

Branch of a foreign company

Distributed in proportion to subscribed shares prior decision of the General Meeting of Shareholders, unless otherwise agreed in the bylaws.

Since it is not a subsidiary, profits are not understood as dividends for corporate purposes. Profits are transferred upon decision of the head office.

The General Meeting of Shareholders shall approve the distribution of profits with the 78% of the shares present at the meeting, unless a different majority has been agreed. If this majority is not achieved, the minimum amount to be distributed can not be less than 50% of the net profits.

Pursuant general clauses of general clauses and when: (1) there are losses which reduce the net equity below 50% of the subscribed capital;

Follows the same provisions applicable to the head office since it is an extension thereof, general grounds, and losses reducing net worth below 50% of subscribed capital.

(ii) 95% or more of the shares are held by a sole person;

(iii) there is a reduction in the number of shareholders below the minimum established by law.

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