

BUSINESS CREATION

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

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

It has 28% of 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 the rest of the country was reduced by more than 40%⁸.

Incorporation of a trading company or registration of a foreign company branch generally requires the following documents according to the business association selected by the investor.

Incorporation of business associations		
Activity	Documents	Approximate administrative rates (COP)
Incorporation	Bylaws	
	Public instrument (if applicable)	Notary fees: 0.3% of 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 country of origin.
Registration in the trade registry (Chamber of Commerce)	Pre-RUT (DIAN form 1648)	Free of charge
	RUES form	Free of charge
	Document filing at the trade 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	Single Tax Registry	Free of charge
SHD 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
	Stock record	\$ 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 for the conduct of their business in the country. The Colombian legislation does not include a specific criterion or term for establishing 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) incorporation of a trading company or (iii) establishment of a foreign company branch.

Trading companies

In Colombia, there are six (6) legal forms of organization for legal entities regardless of their partners or shareholders:

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

Foreign company branch

Foreign company branches are business establishments opened by a foreign company in Colombia for the conduct of their business in the country. Unlike trading companies, branches do not have a legal status independent from their head office. Therefore, they are jointly and severally 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 Business Associations 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 Trading Company or Registering a Foreign Company Branch

The procedure, duration, and costs for the incorporation of a trading company or the registration of a foreign company branch are similar. Upon collecting all documents necessary, all procedures for incorporating a company and obtaining all registers necessary from registration and tax authorities can be conducted in a period of twenty (20) days on average.

Documents required

Incorporation of a trading company or registration of a foreign company branch generally requires the documents in the table shown below.

When partners or future shareholders are not in the country for the procedures mentioned, for either incorporating a trading company or registering a foreign company branch, a power of attorney can be prepared and granted in writing to conduct such procedures. Nonetheless, some procedures may require personal appearance before the Chamber of Commerce or a notary public, for which it is important to review the applicable procedure on a case-by-case basis.

If the investor's country belongs to The Hague Convention for the notarization of powers of attorney, it shall be apostilled and accompanied by a document issued by a notary public

(or equivalent official), 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 public (or equivalent official) and submitted to the corresponding Colombian consulate so that an official certifies existence of the company and conduct of business according to corporate purpose and laws of the relevant country. Finally, the document certified by a consulate shall be legalized with the Colombian Ministry of Foreign Affairs.

Documents granted in another language shall be translated into 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 instrument:** Granting a public instrument involves notary 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. Issue of copies will result in other notary costs.
- 2. Registration in the Trade Registry:** Registration in the Trade Registry involves the following costs:
 - a) Registry tax of 0.7% of the company's capital amount or the branch's allocated capital; and 0.3% of the share placement premium amount (in the case of contributions after incorporation).
 - b) Registration fees 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 Trade Registry involves registration rights for COP \$60,000 (USD 20*) per book.

Related Entities

In the process of creating companies in Colombia, the Bogotá Chamber of Commerce is responsible for registering new companies or branches and control the existing ones (trade registry).

Go to: www.ccb.org.co

Internal Revenue and Customs Service (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 assignment of a tax identification number as a necessary requirement for 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, and exercises the powers 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/>

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 business associations

Sociedad por acciones simplificada

Incorporation and amendments	<p>Characterized by its versatility and simplicity of incorporation and operation.</p> <p>Incorporation and amendments are formalized by a private instrument granted before Notary Public and registered in the Trade Registry.</p>
Corporate name	Name must be followed by the acronym "S.A.S."
Liability	Limited to the amount of contribution, except for cases of proven fraud.
Number of shareholders and capital	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).
Length	As stated in the articles of incorporation. May be undetermined.
Capital	<p>Generally, there are no rules for minimum capital (except for special sectors).</p> <p>Represented by shares. Articles of incorporation should indicate authorized, subscribed and paid-in capital. A term of up to two (2) years for payment.</p> <p>Minimum or maximum percentages or amounts can be established to be controlled by a shareholder (rules for variable capital).</p> <p>In addition, different classes of shares, including multiple vote, can be established according to the needs of shareholders.</p>
Corporate purpose	May be undetermined, insofar as it is a licit commercial activity.
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>

Sociedad anónima

Sucursal de sociedad extranjera

Incorporation and amendments are formalized by a public instrument granted before a Notary Public and registered in the Trade Registry (involves implementation costs due to notary fees).

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).

Name followed by the acronym "S.A."

Name of the head office followed by the word "Sucursal".

Limited to the amount of contributions.

Head office is jointly and severally liable for activities in the branch.

Requires five (5) shareholders as a minimum, none of which may have an interest equal to or greater than 95% of the subscribed capital.

Shares the same legal status of its head office. Therefore, it is not independent company from the head office and does not have shareholders.

As set forth in the articles of incorporation. Cannot be undetermined.

As stated in the articles of incorporation. Cannot be undetermined and is limited to the duration of the head office.

Generally, there are no rules for minimum capital (except for special sectors).

Allocated by the head office in the resolution ordering incorporation or as amended by subsequent resolutions.

Represented by shares of the same par value. Articles of incorporation should indicate authorized, subscribed and paid-in capital.

Must be paid in full at the time of registration.

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.

Must be limited to specific activities.

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.

Responsibility of the board of directors, which is elected by the General Meeting of Shareholders. The board, in turn, elects a legal representative.

Responsibility of a general agent with one or more substitutes appointed by the head office.

Requires statutory auditor.

Requires statutory auditor.

Tipos de vehículos legales más comúnmente utilizados

Sociedad por acciones simplificada

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 trading 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.



Sociedad anónima

Sucursal de sociedad extranjera

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

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

Because of general clauses and when: (1) there are losses which reduce the net equity below 50% of the 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 required by law.

All trading 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.

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

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

All trading 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.

