

The information in this document provides an overview of the fundamental legal considerations to be addressed when acquiring or establishing a business in Colombia. The content is intended to summarize some of the pertinent provisions which apply and is not intended as specific legal advice. Readers are well advised to seek the counsel of specialist professionals in their home states to advice on compliance with the laws and identify the many planning opportunities.

Setting Up a Business in Colombia

Setting up a business in Colombia is not burdensome or difficult procedure. This brief document outlines the key aspects to take into account when setting up a business in Colombia.

Under Colombian law, any person or entity that carries out businesses in Colombia on permanent bases, are required to establish a local presence. A local presence can be achieved by (i) establishing a local branch, or (ii) through the incorporation of a local company.

I. Establishing a local branch.

A Colombian branch can be established by any foreign company. Branches are not considered as corporate entities independent from their parents although for tax and other purposes they are required to maintain local accounting books. Establishing a branch requires the following documents for filing before the Mercantile Registry:

- a. The foreign company has to pass a resolution from the competent corporate body (usually the Board of Directors) authorizing the opening of the Branch in Colombia. The resolution has to include at least the following information: a) the main business purpose of the branch; b) the assigned capital of the branch; iii) its domicile; iv) the term of duration of the branch; v) the grounds for liquidation of the branch; vi) the appointment of a legal representative; and vii) the appointment of the branch's auditor.

- b. Alongside the establishment of the branch resolution, copies of the articles of incorporation and the By-laws of the foreign company have to be furnished.
- c. A POA validly granted to represent the company in the branch establishment process. The POA has to grant powers to carry out the registration before the Mercantile Registry and any other additional registration required (such as the tax and exchange registries).

Once the documents necessary to proceed with the establishment of the branch have been prepared and properly legalized, it is time to register the Branch before the Mercantile Registry of the Chamber of Commerce. For registration the following information is required:

- Principal office address of the branch.
- Telephone number.
- Email address.
- Copy of the identification documents of the individuals who are appointed as legal representatives of the Branch, as well as their signatures on the registration forms and their letters of acceptance to the appointment as legal representatives.

Finally, to obtain the Branch's tax ID (NIT) before the Colombian Tax Authority (DIAN), it will be necessary to open a bank account in Colombia, within 15 working-days as of the date of the registration of the Branch before the Mercantile Registry of the Chamber of Commerce.

The individuals appointed as legal representatives of the Branch, shall be registered before DIAN to obtain a Tax ID; therefore, if such registration has not been carried out before the branch establishment, it needs to be performed before the Branch's registration. Obtaining a

Tax ID, does not imply that the appointed legal representatives of the branch become tax payers in Colombia.

II. Incorporation of companies in Colombia.

Under Colombian law there are five types of corporate types:

- a. Partnerships (Compañías en Comandita);
- b. Limited Partnerships (Compañías en Comandita por Acciones);
- c. Limited Liability Companies (Compañías de Responsabilidad Limitada “LLC”);
- d. Corporations (Sociedades Anónimas); and
- e. Simplified Stock Companies (Sociedades por Acciones Simplificadas “SAS”).

The first four corporate types have been mostly replaced by the more flexible SAS, with corporations retaining importance as they are the only vehicle allowed for publicly traded companies. Hence, we will provide an overview of the partnerships, limited partnerships, LLCs and Corporations first and we will discuss the SAS more in detail as it has become the preferred vehicle to set up a business in Colombia.

Incorporation of Partnerships, Limited Partnerships, LLCs and Corporations:

Partnerships, Limited Partnerships, LLCs and Corporations can only be incorporated through a public deed authorized by a public notary and their corporate object is limited, as these companies can only carry out the businesses expressly authorized in their by-laws. Once the deed is granted the incorporation is only completed when registered before the Mercantile Registry of the Chamber of Commerce. The incorporation procedure is more or less homogenous for Partnerships, Limited Partnerships, LLCs and Corporations, and the steps between the granting of the deed and the registration before the Mercantile Registry

are similar to the ones described for the establishment of a branch (i.e. a POA has to be granted, the tax registration has to be procured, etc.).

Incorporation of an SAS

The incorporation of a SAS may be made through a private document. The only exception to this rule is when the contributions to the share capital are to be made in kind, by contributing real estate property, on which case a public deed is required.

The private document containing the By-laws is legalized before a notary public (but no public deed is required), and then filed before the Mercantile Registry of the Chamber of Commerce.

Governance

Partnerships are administered directly by the Partners. Limited Partnerships are administered by one or more General Partners (limited partners receive profits but are not involved in day to day decisions).

LLCs are administered by the board of shareholders, but day to day operations are often delegated to a manager (which can be a shareholder). Corporations are governed through the Shareholders' Assembly, the Board of Directors and the appointed managers and officials.

A SAS can be tailor made according to the needs of the business, if no Board of Directors is created on the by-laws all of the legal representation and administrative duties will be held by the Legal Representative.

Shareholders' liability

Shareholders liability varies between each corporate type: Partnerships expose more directly the shareholders to liabilities incurred by or on behalf of the company, as they are often considered as jointly and severally liable for the company's unpaid liabilities.

In Limited Partnerships, the General Partners are jointly and severally liable, whilst General Partners are only liable up to their contribution to the company's equity.

LLCs and corporations' shareholders are only liable up to their contribution to the company's equity, but may be considered to be jointly and severally liable for labor and tax obligations in very rare instances.

SAS shareholders are generally understood to be liable only up to their contribution to the company's equity and shareholders are not liable for labor and tax obligations incurred by the Company. Nonetheless, the corporate veil may be lifted in instances involving fraud.

Capitalization

There are no minimum capital requirements and, as a general rule, the capital of the company has to be paid at the time of the incorporation. The two exceptions are:

- i. Corporations, which require that only a third of the capital has to be paid at incorporation.
- ii. SAS companies, in which the payment of contributions can be freely established on the by-laws, however, the subscribed capital shall be paid in a maximum term of 2 years.

Taxes

The general corporate income tax rate is 25% regardless of the corporate type. There is also a surcharge to the income tax of 9%, known as CREE, which has to be paid by every type of company.

Businesses in Colombia may also have to pay VAT and local taxes. The general VAT tax rate for goods and services is 16%, but it may change depending on the type of good or service provided.

Additional filings and permits

In Colombia, direct foreign investment needs to be registered with the Central Bank (Banco de la República). Depending on the type of business, additional permits may be required such as sanitary or environmental authorizations.

For more information and assistance on any other matters please contact us at:

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