

SETTING UP BUSINESS IN COLOMBIA



General Aspects

The Republic of Colombia is a democratic country in a strategic location in the Northwest corner of South America with an area of 1,141,748 km² and a population of 48 million people. The country has the third largest Spanish-speaking population in the world after Mexico and Spain. The largest city in Colombia is the capital Bogota with a population of 8 million people approximately. However the country has more than 6 mid-sized cities of economic importance such as Medellin, Cali, Barranquilla, Ibague, Manizales, Armenia and Bucaramanga among others.

According to the World Bank Colombia is ranked 53 in the Ease of Doing Business Rank and is at the top of Latin American countries in investment protection. In the last decade Colombia's GDP growth rate has been one of the highest of Latin America ranging between 2% and 6%.

Recently the countries' stability and growth has been mainly driven by construction activities and financial services, as well as domestic private consumption and investments. Unemployment has reached a record below the two digits driven by policies that aim to reduce labor costs.

Starting a business

During the past years corporate law in Colombia has been more flexible towards foreign investment and creation of permanent long term businesses

Corporations in Colombia are created by execution of an agreement that regulates basic corporate matters, i.e. its bylaws (company name, place of business and purpose, corporate bodies and meetings, legal representatives, officers, etc.).

For some corporations, the incorporation process entails issuing a public document while for others it is necessary to notarize a private document. These documents must be filed before the Chamber of Commerce located in the city of operation of the corporation.

If the prospective partners or shareholders cannot be present or available in the country in order to attend the incorporation proceedings required by the relevant authorities, they must grant a written power of attorney for purposes of the establishment of the entity in Colombia. All documents issued abroad, including the necessary powers of attorney, must be notarized and must be authenticated by the Consulate Abroad. The consul's signature must be certified by the Ministry of Foreign Affairs in Colombia. For countries that are signatories to the Hague Convention, the documents must have an apostille.

Documents issued in another language must be submitted to the authorities in their original language, with an official translation prepared by a translator authorized by the Colombian Ministry of Foreign Affairs.

The public deed, the acceptance letters of the persons appointed for the management and administration of the company, and the RUT (tax payer ID number) must be filed before the Chamber of Commerce of the corporations location, together with other forms issued by this entity.

Foreign currency must be channeled through duly authorized financial institutions in Colombia or through compensation accounts registered with the Central Bank. Accordingly, foreign exchange declarations must be filed before the Central Bank to convert foreign currency into Colombian Pesos. If the investment is performed with foreign currency (not through a contribution of assets), filing out the declaration will be enough to register it.

Type and General Aspects of Legal Business Entities

Depending on the type of legal entity selected to incorporate the business, there are minimum and maximum number of partners. In Colombia there is one type of entity (see SAS below) that requires just one partner and it can be a company with one stockholder or a corporation. There is no need to have a local resident as a partner of any corporation; therefore, there are not restrictions for entities 100% owned by foreigners.

There are not either rules related to the amount of share capital, its amount should be determined based on the capital estimated to set up the business. All legal entities are independent from their owners; however, in some cases the liabilities can go beyond the capital contributions of the partners.

All legal entities require an Agent (Legal Representative) and for convenience most companies have at least 2 alternates. Several routine and periodical reports, forms and tax returns should be signed by the agent. Limitations of agent's capacities are defined in the incorporation documents. Because of the lack of such limitations and in order to protect the company's assets, several companies sign power of attorneys with limited capacities to the assignee different than the agent. All corporations and branches are subject to the control of the authorities through the superintendence of corporations or equivalent.

Legal form	Feature
Limited Liability Company (Sociedad Limitada)	Requires at least 2 partners and max. 25 partners. 100% of the equity shall be paid at once. Needs a Board of Partners. Law requires that companies with assets higher than approx. US\$1.0 million or annual sales higher than US\$600.000 should have a statutory auditor (Revisor Fiscal) who has several duties assigned by Law.
Corporation (Sociedad anónima)	Requires at least 5 shareholders and there is not a max. Number of shareholders. It is the most used vehicle to access the stock market and different type of shares can be created to accommodate financing needs or even to compensate employees. Needs a General Meeting of Shareholders meeting as the top authority, a Statutory Auditor and a Board of directors. 100% of the shares issued shall be paid at once. Shares are fully traded instruments.
Simplified Stock Company (Sociedad Anónima Simplificada)	Requires at least one shareholder here is not a maximum number of shareholders. It is the most used vehicle to incorporate a business in Colombia because it does not need to define duration nor a specific area of business and it is a very flexible vehicle to manage the corporate affairs. Equity can be paid in a two year term. Trading of shares can be limited during 10 years in the bylaws. There is no need of board of directors. The law requires that companies with assets higher than approx. US\$1.2 million or annual sales higher than US\$750,000 should have a statutory auditor (Revisor Fiscal) who has several duties assigned by Law.
Foreign Company Branch	Branch of a foreign corporation: It is mainly used by corporations of the extracting business (oil & gas, mining) to take advantage of tax benefits in their Country of origin and to take advantage on the exchange regulation freedom given by Law to O&G and mining branches mainly because that type of activities are mostly conducted in foreign currency. Most of branches have an external auditor (Revisor Fiscal).

IFRS

Local regulations require the presentation of accounting in official books under the Colombian Generally Accepted Accounting Principles (GAAP). However Colombian laws have established a set of rules and regulations to meet the requirements to present the accounting through International Accounting Standards.

Colombian tax authorities under Law 1314 of 2009 made mandatory the official use of IFRS as of 2015 and 2016 for all companies established in the country. Therefore they determined that the companies cease to apply local regulations and initiate the delivery of financial information and compliance with international standards.

This new regulation causes important changes in the accounting records and also encourages companies to develop a strategy and assess the impacts of this change.

Foreign Direct Investment Principles

Under Colombian Law, a foreign investor or Company may operate in Colombia based on 4 principles established, Decree 2080 of 2000:

Principles	Feature
Equal Treatment	For all purposes, foreign investment is subjected to the same treatment as investments made by Colombian nationals. Therefore, the impositions of any conditions on foreign investors, whether discriminatory or favorable, are not permitted.
Universality	Foreign investment is allowed in all sectors of the economy with the exception of the following: <ul style="list-style-type: none">- Activities related to defense and national security- Processing, disposition and disposal of toxic, hazardous or radioactive waste not originating in the country There are certain legal restrictions related to the property in some economic activities such as land acquisition in borders, manufacture, possession, use and commercial exploitation of nuclear, biological and chemical weapons; Private Security and Surveillance Services; Transportation, journalism and radio broadcasting services. Activities like gambling and liquors are a public monopoly of the state
Authorization	Conducting foreign investment does not require authorization; however specific investments such as financial services, O&G, and mining require authorization from authorities like the Colombian Financial Superintendence or the Ministry of Mines and Energy. The Colombian Central Bank (Banco de la República) requires registering investments for statistical purposes.
Protection	Repayment terms of investment and transfer of legal income effect on the date of registration of the foreign investment may not be changed in a way that would adversely affect the investor, except temporarily when international reserves are less than three (3) months of imports.

For a favorable investment climate, Colombia has implemented a policy of negotiation and ratification of International Investment Agreements (IIAs), Bilateral Investment Treaties (BITs), as well as Free Trade Agreements (FTAs) with chapters on investment and Double Taxation Agreements (DTAs). This policy implements the strategy of economic integration embodied in the Colombian Constitution and in the most recent national development plans.

Foreign Exchange Regimen

Regulation strictly controlled by the Colombian Central Bank which allows transactions needed to conduct the business only after complying certain formalities including a set of reports with authorities. Compliance is also supervised by the Superintendence of Companies and the Tax Authority.

Trading and transactions in foreign currency between residents is not allowed and foreign currency is not a legal mean of payment inside the national territory. Currency in cash can be converted into local currency using banks, hotels and authorized establishments.

Residents are allowed to open and use bank accounts in foreign currency with banks established outside the national territory. There are no bank accounts in foreign currency in Colombia. Several banks offer the service of such bank accounts using their branches outside the country.

Dividends can be paid to foreign investors without limitations or restrictions.

The Foreign Exchange Regime involves two different markets: i) the Foreign Exchange Market and ii) the Free Market.

Markets	Feature
Foreign Exchange Market	<p>The following transactions must be done through this market, and must present a foreign exchange declaration:</p> <ul style="list-style-type: none">- Import and export of goods- Foreign debt operations carried out by residents and the financial cost related to those transactions- Investment of foreign capital in Colombia and returns associated therewith- Investment of Colombian capital abroad and returns associated therewith- Endorsements and warranty bonds in foreign currency- Foreign derivative transactions- Financial investments in securities and assets issued or registered abroad and their returns
Free Market	<p>The free market consists of foreign exchange transactions that could be completed voluntarily through the foreign exchange market, such as payments for services in foreign currency and transfer of foreign currency for other types of transactions, such as donations. These types of transactions do not have to be reported to the Central Bank.</p> <p>Colombian residents are allowed to open and hold bank accounts at foreign banks. Free market bank accounts may be used in connection with transactions that need not be mandatorily traded through the foreign exchange market.</p>

Main Taxes in Colombia

The fiscal year is the calendar year from January 1st to Dec. 31st.

Taxes	Feature
Income Tax	<p>Corporation's net income is taxed at a general rate of 33% except for some industrial or service activities conducted within a Duty Free Zone where income tax is 20%.</p> <p>Some services related to tourism and leasing have a general rate of 9%.</p> <p>The tax system considers three different ways to determine the taxable income: ordinary system, a presumptive taxable income and equity comparison system.</p>
Deductions	<p>Specific donations to innovation, technological research and innovation in professional education projects of public or private higher education institutions may be entitled to a deduction.</p> <p>Donations to public libraries are entitled to a deduction of 100% of the amount donated during the taxable period with the fulfillment of certain requirements.</p> <p>Donations to entities such as foundations and non-for-profit associations are not entitled to deductions on income tax. However these donations are entitled to a discount of 25% of the donated amount over the calculated income tax.</p> <p>Donations to certain entities developing activities of social interest such as health, education and research activities are also not deductible for income tax purposes however donations to these entities are entitled to the same discount mentioned in the paragraph above.</p> <p>The costs directly related with the acquisition or manufacturing goods or the provision of services related to manufacturing are deductible from income tax with some specific restrictions. Also Costs and expenses incurred abroad are deductible as long as they comply with general requirements.</p> <p>Salaries paid or accrued to employees are deductible.</p> <p>100% of the industry and commerce tax and real estate tax paid during the relevant taxable year and 50% of the Tax on debit transactions paid during the year are also deductible.</p> <p>Interests accrued on debts are deductible if they meet some specific requirements.</p> <p>Investment in environmental control and improvement can be deducted. The amount deducted cannot surpass 25% of the invested amount meeting certain requirements.</p> <p>The exchange difference from payments made in foreign currency calculated to the day of acquisition and the debts or assets in foreign currency calculated with exchange rate in force on the last day of the year shall be taxable or deductible, as the case may be.</p>

Taxes	Feature
Wealth Tax	<p>It is paid by legal entities that have a net equity worth of COP\$ 1.000 million (US\$ 300.000) as of January 1st 2015. Rate is calculated as follows:</p> <p>2015: Net Equity worth:</p> <p>Between COP \$ 1.000 M to COP \$ 2.000 M. Rate: 0,20%</p> <p>Between COP \$ 2.001 M to COP \$ 3.000. Rate: 0,35%</p> <p>Between COP \$ 3.001 M to COP \$ 5.000 M. Rate: 0,75%</p> <p>Higher than 5001 M. Rate: 1,15%</p> <p>2016:</p> <p>Between COP \$ 1.000 M to COP \$ 2.000 M. Rate: 0,15%</p> <p>Between COP \$ 2.001 M to COP \$ 3.000. Rate: 0,25%</p> <p>Between COP \$ 3.001 M to COP \$ 5.000 M. Rate: 0,50%</p> <p>Higher than 5001 M. Rate: 1%</p> <p>2017:</p> <p>Between COP \$ 1.000 M to COP \$ 2.000 M. Rate: 0,05%</p> <p>Between COP \$ 2.001 M to COP \$ 3.000. Rate: 0,10%</p> <p>Between COP \$ 3.001 M to COP \$ 5.000 M. Rate: 0,20%</p> <p>Higher than 5001 M. Rate: 0,40%</p>
Capital Gain	<p>Taxes for specific profits have a rate of 10% as follows:</p> <ul style="list-style-type: none"> - Inheritances - Sales of fixed assets - Lotteries, raffles, gambling, etc.
Value Added Tax (VAT)	<p>The general rate applicable to sales, rendering services and import of goods is 19%, exports are excluded, most agricultural goods and goods of special interest for the economy have a rate between 0% and 5%. Luxury or special goods are taxed at a higher rate (Tobacco, liquor, perfumes, etc.).</p> <p>Taxpayers are entitled to deduct from their VAT return the amount of VAT paid for the purchase of goods and taxable services.</p>
Consumption Tax	<p>Sales from specific sectors of the economy such as vehicles, telecommunications and food and beverages have rates between 4% and 16% of consumption tax.</p>
Tax on Debit Transactions	<p>Tax calculated at a rate of 0.4% over debit transactions in bank accounts.</p> <p>Debits transactions between accounts that belong to the same owner are except of this tax.</p>

Taxes	Feature
Stamp Tax	It's a national tax applicable to private or public documents that certify specification, amendment, or termination of a responsibility.
Industry and commerce tax (ICA)	<p>Paid and regulated on each city where the company sell/operate on a regular basis. Rate varies from city to city in a range of 0.2% to 1.4% as follows:</p> <ul style="list-style-type: none"> - For industrial activities: from 0.2% to 0.7%. - For commercial and service activities, from 0.2% to 1%. <p>Some municipalities have as high as 1.4% for some activities.</p> <p>The placement of billboards, signs, boards and emblems on the street, in public or private places visible from the public space and the placement of ads in any kind of vehicles is subject to a billboard or signs tax with a rate of 15% of the industry and commerce tax.</p>
Real State Tax	<p>This is a municipal tax applicable to any real estate property located at any municipality. Tax rate is based on the formal valuation of the tax payer's real estate property.</p> <p>The tax rate may vary from 0.3% to 3.3% of the property value depending on the municipality or if it is an undeveloped land.</p>
Registration Tax	The registration of acts, private documents, public deeds for incorporation before different authorities in Colombia have a rate between 0.1% and 1%.
Offset of Tax losses	Tax losses as of 2007 can be off setted in the subsequent taxable period without limitation in time or amount. Compensations of excess presumptive income tax over net income are permitted within the following five years.
Tax credits	<p>Discount for taxes paid abroad are permitted in the following cases when certain requirements are fulfilled:</p> <ul style="list-style-type: none"> - Taxes paid abroad - Payroll taxes for new employees - VAT paid for import of equipment and machinery of some industries
Transfer pricing	For transactions amongst related parties, Colombian tax authorities request a transfer price report. Taxable income can be adjusted if prices, costs, etc cannot be considered as determined on an arm's length basis.
Transfer pricing	<p>Companies that begin activities and hire employees younger than 28, women older than 40, disabled people, among others have the following benefit rates of income tax (law 1429 of 2010):</p> <p>Rate</p> <ul style="list-style-type: none"> 9 % the first 2 years 15% 3rd year 21% 4th year 27% 5th year 33% as off 6th year

Labor Rates and Labor Related Taxes

There is plenty of unskilled and semi-skilled labor throughout the national territory. Minimum monthly wage is around USD \$245 but the cost to the employer would be USD \$370. Labor related taxes and surcharges are around 51% of the salary.

There is also a growing skilled and managerial experienced population, most of it bilingual. For this group of people, when salaries are higher than 10 minimum salaries, there is room for a small reduction in labor related taxes.

After 15 employees it is mandatory to hire one apprentice from the Governmental Learning Service (Servicio Nacional de Aprendizaje, SENA), one additional from 21 to 40 employees and another from 41 to 60, etc.

Unions are not a very common big issue; normally, proper and clear remuneration and HR policies may deter the formation of a union. A union can be formed with at least 25 employees. Strikes are subject to several conditions.

Less than 5% of the employees are unionized and most of them are from the official sector.

Maternity leave has a term of eighteen (18) weeks of paid leave pregnant or adoptive mothers. For multiple pregnancies, the paid leave entitlement is of twenty (20) weeks.

There is a tax benefit of 200% deduction for salaries paid to handicapped employees (handicap higher than 25% of limitation).

Working hours are limited to 48 a week, including Saturdays.

Employees are entitled to 15 working days a year of vacation. Also there are around 17 public holidays a year.

Employers take responsibility for the first 2 sick days of the employee as long as they are certified by a doctor from the private "promoter of health" (EPS) where the employee is registered. If the sick leave is longer the EPS will private "promoter of health" (EPS) will pay for those days.

There are trial periods where both can terminate the contract without penalties.

Contracts can be terminated without penalties as long as the termination is properly/legally justified. As part of the legal system, foreign employees are subject to the same regulations as for the locals. The only exemption is to contribute to a pension plan when the foreign employee proves that such concept is being paid overseas.

Types of contracts

Depending on the duration of the activities, if the services are rendered personally by the employee, if there is subordination of the employer and if the return for the remuneration, the following employments contracts can be offered:

Types	Feature
Indefinite Term	Duration is indefinite. Verbal contracts are considered to be indefinite term contracts, regardless of whether the parties have agreed otherwise. Payment for "promoter of health" (EPS) and pension fund are shared between both parties. All other social security contributions, taxes and benefits are paid by the employer.
Defined Term	The parties establish a term of duration without exceeding three years. Contracts with term of less than one year can be renewed for 3 times with equal or shorter terms. Further renewals must be for one year. Payment for "promoter of health" (EPS) and pension fund are shared between both parties. All other social security contributions, taxes and benefits are paid by the employer.
For the duration of the work or service	The term of these contracts is subject to the time of the work or service rendered and cannot be renewed. Health and Pension fund are paid by the employee.
Occasional, casual or temporary	<p>A type of contract for products or services that are not part of the common activities of the company.</p> <p>Two types of salaries are found in the labor regime:</p> <ul style="list-style-type: none"> -Ordinary salary where the employer pays surcharges and benefits such as severance payments bonuses. Employee receives 13 monthly salaries per year. Integral or all-inclusive salary which pays surcharges and benefits beforehand. Employee receives 12 monthly salaries per year. This type of salary can only be adopted if the employer pays more than ten times the monthly minimum wage (aprox. 3.000 USD). The employer pays the payroll benefits and taxes associated.

Foreign employees / types of visas

There are no restrictions to hire foreign employees as long as they meet the necessary requirements (Visa process). They have the same rights and regulations as local employees and can voluntarily register to a pension fund. (Amendment 15, Law 100 1993).

Holders of passports issued by several countries do not require a visa to enter Colombia (https://www.cancilleria.gov.co/sites/default/files/Normograma/docs/resolucion_minrelaciones_0572_2015.htm.)

At arrival the foreign affair ministry will assign a permit depending on the activity conducted in Colombia. This can be an Entry and Permanence Permit (PIP) or a Temporary Permanence Permit (PTP). The Visas you can obtain in Colombia are business visa, temporary visa or resident visa. Each one is divided in different categories depending on the activity conducted.

Business Visa

For visitors who conduct business in Colombian being part of foreign companies established in the country or those who have commercial affairs with local companies and represent the interest of the company by attending board member meeting, doing market research consultancy or supervise the management of the company in Colombia.

Visitors who can prove commercial status, vendors of industrial goods or services suppliers who want to conduct business in the country.

Visitors whose business is related to free trade agreements and seek to enter the country for the purpose of advancing corporate governance activities, promote business, develop investment, establish a commercial presence of a company, promote trade in goods and services across borders or other activities that are defined in those agreements.

At first, company representatives can visit the country. At the entry port, the official will define the duration of the visit (between 15 to 45 days). If necessary an extension can be requested. The maximum Limit is 180 days.



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