

II. Creating a Company

Bogota is one of the cities which most facilitates the establishment of a company, because, once its statutes are ready, all of the procedures for its incorporation may be completed within five (5) days. The following section gives a general description of the most frequent options for the creation of a company by an investor, as well as the procedure for its formalization.

A. Corporate Schemes

For the foreign investor who wishes to create a company in Bogota, there are two alternatives: the investor may (i) establish a commercial company or (ii) establish a branch of a foreign company.

The main and most frequent schemes for companies are described below, followed by an outline of the requirements for the branches of foreign companies, in accordance with the legal regime currently in force.

Commercial Companies

Five (5) kinds of companies mainly exist in Colombia. All of them are created through a contract, which, once it is formalized, forms a legal entity independent of its partners. These companies are:

- A General Partnership
- A Limited Partnership Company
- A Limited Liability Company.
- An Incorporated Company
- A Simplified Shares Corporation

Table 2.1. sets forth the main characteristics of each kind of company.

Table 2. 1. Kinds of Commercial Companies

	General Partnership	Limited Partnership	Simplified Shares Corporation	Incorporated Company	Limited Liability Company
Description	Strictly speaking, it is a company made up of persons in which the priority is trust amongst the partners.	Two kinds of partners participate in this kind of company. The first, the acting or managing partners, are generally those who administer and represent the company but do not necessarily provide contributions of capital. The second, the sleeping or silent partners, only provide contributions of capital.	This is a new kind of company characterized by its versatility and simplicity, both when it is established and when it functions. In terms of liability, it has the characteristics of the incorporated company	In this modality, the partners only answer for the amount of their capital contributions. It has traditionally been one of the schemes most widely used for the development of medium-sized and large companies.	In this corporate scheme the partners only answer for the amount of their capital contributions. However, there is a possibility of an agreement between all or some of the partners by virtue of which a greater liability is imposed on them.
Registered or Corporate Name	Name followed by such designations as “and company”, “brothers”, “and sons” or similar.	Name followed by such designations as “and company” and “S. en. C.” (Spanish initials for Limited Partnership)	The name must be followed by the initials “S.A.S.” (for Simplified Shares Corporation, in Spanish)	Name followed by the initials “S.A.” (for Incorporated Company or Corporation, in Spanish)	Name followed by the initials “Ltda” (Ltd., in Spanish)
Establishment	By public deed	By public deed	By private document (statutes), inscribed in the mercantile register.	By public deed	By public deed
Shareholder Liability	It is joint and unlimited.	For the acting partners it is joint and unlimited. For the sleeping partners it is limited to the amount of their respective contributions.	It is limited to the amount of contributions, except in the case of fraud.	Limited to the amount of the contributions.	Limited to the amount of the contributions, except when there is an agreement to assume greater liabilities.

Number of Partners	Requires a minimum of two (2) partners.	A minimum of one (1) acting partner and (1) sleeping partner.	It may be established by one or several natural persons or legal entities.	Requires a minimum of five (5) partners.	A minimum of two (2) persons and a maximum of twenty-five (25).
Duration	The term laid down in the deed which establishes it.	The term laid down in the deed which establishes it.	The term laid down in the act which establishes it; if not specified, it may be indefinite	The term laid down in the deed which establishes it.	The term laid down in the deed which establishes it.
Capital	Made up of the contributions of the partners in money or species	Made up of the contributions of the sleeping partners. The collective or active partners may also make capital contributions without their losing that status.	<p>Represented by shares. The act which establishes it must indicate the authorized, subscribed and paid up capital. A period of up to two (2) years is allotted for its payment. The percentage or minimum and maximum amount of shares controlled by a shareholder may be established (variable capital rules)</p> <p>Equally, different kinds of shares may be authorized, even those with multiple votes.</p>	Made up of shares of equal value. The act which establishes it must indicate the authorized, subscribed and paid-up capital. At least half of the authorized capital must be subscribed and at least a third of the subscribed capital must be paid up.	Made up of shares or parts of equal value. The whole must be paid up when the company is established.
Corporate Purpose	It must be limited to a series of specific activities.	It must be limited to a series of specific activities.	May be indefinite, providing that it is a legal commercial activity.	It must be limited to a series of specific activities.	It must be limited to a series of specific activities.
Administration	Corresponds to each and every one of the partners, who may delegate it to their fellow	The responsibility of the collective or acting partners, or through their delegates.	In accordance with the stipulations of the statutes. It is not obliged to have a board of directors.	Responsibility of the Board of Directors, which is elected by the General Assembly. The	Corresponds to each and every one of the partners, formed into the board of partners. However, these

	partners or outsiders, subject to prior authorization .		<p>When there is a single shareholder, he or she may exercise the faculties of the General Assembly and Legal Representative.</p> <p>It does not require a fiscal auditor, except for a few legal exceptions.</p>	<p>Board, in turn, elects a legal representative.</p> <p>It requires a fiscal auditor.</p>	<p>may delegate it to a legal representative.</p> <p>Requires a fiscal auditor.</p>
Profits	<p>Distributed in accordance with the paid-up part of the shares or part of the interest of each associate, unless the contract otherwise stipulates.</p> <p>Profits may not be distributed unless the losses of previous financial years have been covered.</p>	Done in the form stipulated in the contract between the acting and sleeping partners.	<p>Except when a different quorum is agreed on, this is decreed through a majority vote of those present at the meeting</p> <p>There is no minimum for the amount to be distributed.</p>	<p>They are shared out in proportion to the subscribed shares, subject to the prior decision of the General Assembly</p> <p>The minimum amount to be distributed is 50%.</p>	Follows the rules for corporations.
Dissolution	For general causes; also due to (i) the death of some of its partners; (ii) the supervening incapacity of	For general causes; also due to (i) those which apply to a general partnership with respect to its acting partners; (ii) the	For general causes; also due to losses which reduce the net worth to less than 50% of the subscribed capital.	For general causes; specifically when: (i) there occur losses which reduce the net worth to less than 50% of the	For general causes; specifically due to (i) losses which reduce the capital to less than 50%; (ii) the number of partners rises to more than 25.

	some of its partners; (iii) the opening of a procedure for obligatory liquidation of one of its partners (iv) The involuntary sale of the interest of one of its partners; The resignation or justified retirement of one of its partners.	disappearance of one of the two categories of partners; (iii) losses which reduce the capital to a third or less.		subscribed capital or (ii) 95% or more of the subscribed shares are concentrated in one person.	
Regulation	All commercial companies are subject to the inspection and eventually, the vigilance and control of the Superintendency of Companies (Superintendencia de Sociedades), with regard to compliance with certain requisites relating to their partners, revenues and assets, except when that responsibility has been assigned to another Superintendency in line with the company's corporate purpose.				

Once the kind of company has been chosen, the investor must define details for the writing of the corresponding statutes, such as its legal representation, members of the board of director and capital, taking into account the legal requirements for such matters.

B. Procedure for the Establishment of a Company and Subsequent Activities

Except in the case of a simplified shares corporation, the establishment of a company in Colombia requires a public deed. Table 2.2 gives a brief description of the steps needed to formalize a company.

Table 2. 2. Establishment of a Company

No.	Procedure	Duration	Approximate Costs at the Time of Publishing this Guide
1	Formalize the company statutes by a public deed. In the case of a simplified shares corporation one has only to authenticate the signatures on the private document (statutes) at a notary's or a Colombian	1-2 days.	2.7 per 1.000 pesos (US\$0.50) of the capital of the company + 16% VAT. There is an additional cost for notary's fees.

	consulate abroad.		
2	Registration at the Chamber of Commerce	2-3 days ¹ .	<ul style="list-style-type: none"> • Trade registration, in accordance with the company's assets and the rates expressed in ranges of the minimum legally established monthly wage (SMLMV). • Registry tax: equivalent to 0.7% of the amount of the company's capital • Registry form: COP\$ 3.600 approximately (US\$ 2) • Inscription of books: COP\$ 27.000 (US\$ 13.5) Fees for inscription of each book COP\$ 27.000 (US\$13.5)
3	Registration with the Directorate of National Taxes and Customs (Dirección de Impuestos y Aduanas Nacionales- "DIAN") and obtention of the Single Tax Registration (Registro Único Tributario – "RUT")	1 day.	Has no cost.
4	Obtention of Tax Identification Number (Número de Identificación Tributaria – "NIT") issued by the DIAN.	1 day.	Has no cost
5	Buy and register the company's books with the Bogota Chamber of Commerce.	1 day.	US\$ 10(US\$ 3 for each book).
6	Open a bank account.	1 day.	Has no cost.
7	When resources are brought from abroad (foreign currency), they must be registered with the Banco de la República (Colombian central bank)	1 day.	Has no cost.

Source: Doing Business in Colombia (2010).

When the partners or future share-holders are not present for the realization of the abovementioned procedures, whether to establish a commercial company or a branch of a foreign company, a written power² of attorney may be prepared and granted to a third party to undertake such procedures. However, certain procedures may come to require a personal appearance at the Chamber of Commerce or notary's, which is why it is important to examine the procedure applicable in each case.

C. Branch of a Foreign Company

¹ Please note: these days may be extended if the Chamber of Commerce has some observations to make about the documents which constitute the company.

² Through a power of attorney, one person grants another the power to undertake the procedures for the establishment of a company with the corresponding authorities. For it to be valid, the signatures of those who grant it must be authenticated at a notary. When it is granted to a foreigner, it must bear an apostille in order to be valid.

The other possibility open to an investor who wishes to create a company in Bogota is through the creation of a branch of a foreign company. In this case, the branch shares the same juridical nature as the parent company, thus the branch is not treated as a company independent of the home office. It does not have different partners or share-holders, but does have its own assigned capital, defined corporate purpose and fiscal auditors.

The branch of a foreign company is understood to be a business establishment opened by the parent company for conducting permanent activities in Colombian territory.

For that reason, when a foreign company undertakes permanent business activities in the country, if it does not establish a subordinate company of the home office, it must do it through a branch of a foreign company³.

Table 2.3 outlines the main requisites for a branch of a foreign company

Table 2.3. Requisites for a Branch of a Foreign Company

Establishment	By public deed
Corporate name	Name of the parent company, followed by the word “sucursal” (branch).
Shareholder Liability	It is a business establishment; as a consequence, it follows the destiny of the parent company and the latter, in turn, assumes a direct responsibility for the actions of its branch.
Duration	As indicated in the act which establishes it
Capital	The amount assigned by the parent company in the resolution which authorizes its formation. It is understood that the whole amount must be paid up when it is established.
Administration	A chief executive, with one or more deputies, designated by the parent company in the act which establishes it. It requires a fiscal auditor
Corporate purpose	Designated by the parent company in the act or resolution which creates the company
Profits	Follows the treatment laid down by the parent company.
Dissolution	Follows the same causes which apply to the main company, for being a simple extension of it.

Procedure for the Establishment of a Branch of a Foreign Company

³ The Colombian Code of Commerce (article 474) defines a permanent activity or business as: (i) the opening of mercantile establishments or business offices; (ii) intervention as a contractor in the execution of works or the provision of services, (iii) participation in activities whose aim is the management, exploitation or investment of funds from private savings; (iv) any branch or service of extractive industries; (v) obtaining a state concession or participating in the exploitation of the same; and (vi) the functioning of managerial or administrative bodies in Colombian territory.

The procedure, length of time and cost are the same as those for the establishment of a society found in Table 2.2 about the establishment of a society. The difference lies in the documents which are subject to formalization by public deed and subsequent registration with the corresponding entities, which, in the case of a branch, are those laid down in a previous section of this chapter.

Documents Required to Establish a Branch of a Foreign Company

The establishment of a branch of a foreign company requires, in the first place, a series of documents (See Table 2.4) so that one can subsequently undertake the legal process for its establishment.

Table 2.4 Documents Required for Establishing a Branch of a Foreign Company

No.	Document
1	True copy of the statutes of the foreign company.
2	True copy of the documents which accredit the existence of the foreign company.
3	True copy of the document or resolution issued by the foreign company, in which it agrees to the establishment of a branch in Colombia. This document must contain: <ul style="list-style-type: none"> • The name of the branch • The business activities which are meant to be developed • The amount of assigned capital and that which originates from other sources, when it exists. • The place chosen as the legal domicile of the branch. • Length of the term of the business activities undertaken in the country and causes for the termination of the same. • Designation of the legal representative or general manager.

The above documents must be legalized with an apostille, so that they may be subsequently formalized at a notary's in Colombia, with the aim of incorporating the conditions in a public deed.

If the documents are written in a language other than Spanish, they must be duly translated by a certified translator⁴ and must include the respective certification of the "Apostille".

⁴ A person who has passed the qualifying examination in the language, given by the competent authority designated by the government, which in this case is the Colombian Ministry of Foreign Relations.

Once the corresponding public deed is obtained, one must proceed to obtain the trade registration of the branch at the Bogota Chamber of Commerce for the purposes of legalizing the branch of the foreign company in Colombia.

D. Programs to help the investor

“Crear Empresa” (“Creating a Company”)

This tool (internet portal) provides the investor or person who is interested in creating a company with simple instructions on the procedures and steps which must be followed to achieve that aim. It provides information on contacts as well as the possibility of undertaking some of these procedures online.

For further information one may consult the following website:

www.crearempresa.com.co.

Business Attention Centres (Centros de Atención Empresarial –“CAE”)

This service, created by the Bogota Chamber of Commerce, makes it possible to undertake, in a single place and single step, all of the procedures needed to formalize a business enterprise.

The “CAE”s provide:

- Services of consultancy and guidance
- The undertaking of procedures
- Virtual access to related entities
- Links

For further information, you may consult the following site: www.ccb.org.co.

E. Related Entities

Bogota Chamber of Commerce

In the process of creating companies in Bogota, the Bogota Chamber of Commerce is responsible for registering the new companies or branches and exercising control over existing ones (mercantile register).

Website: www.ccb.org.co.

Directorate of National Taxes and Customs (DIAN)

This is the entity which is concerned with guaranteeing the fiscal security of the State through the administration and control of due compliance with tax, customs and foreign exchange obligations, and the facilitation of foreign trade operations in conditions of equity, transparency and legality. In the process of creating companies, it is responsible for the tax registration of new companies and assigning them a tax identification number as a requisite necessary for their establishment

Website: www.dian.gov.co.

Banco de la República (Central Bank)

The Colombian central bank, responsible, among other functions, for issuing, managing and controlling monetary movements in the country, as well as emitting the country's national currency, the Colombian peso. In the same manner, it has a role in the process of registering foreign investment, a subject which will be covered in a subsequent chapter (Foreign investment in Colombia).

Website: www.banrep.gov.co.

Superintendency of Companies

It is the government entity through which the President of Colombia undertakes the inspection, vigilance and control of mercantile companies, and exercises the powers related to other legal entities or natural persons assigned to the President by law.

Website: www.supersociedades.gov.co.

F. Applicable Legal Framework

- Colombian Commercial Code. Second book, article 98 and following
- Law 222, of 1995. Available at: www.secretariassenado.gov.co
- Law 1258, of 2008. Available at: www.secretariassenado.gov.co

Warning

The information outlined in this chapter has been prepared on the basis of the current norms. However, they may be modified by subsequent regulations. Thus, before incorporating and establishing a company in Colombia, it is recommended that the applicant verify the contents of the documents and procedures which have to be fulfilled for that purpose with the different entities involved and specialists in

the field, as well as the specific regulations for each kind of activity which the applicant is going to develop in the country.

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Invest in Bogota is the investment promotion agency for Bogota and Cundinamarca, a public-private partnership between the Bogota Chamber of Commerce, the Bogota City Government and the Government of Cundinamarca.

Our mission is to support investors that are exploring opportunities in Bogota and Cundinamarca.

In 2009 we were ranked as the top non- OECD investment promotion agency in the World by the World Bank.

We have a multidisciplinary team with sector-specific expertise, which allows us to provide prospective investors with value added advice and information.

We offer, free of charge, and in absolute confidentiality, services for investors during each stage of their investment process.

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