



Doing Business in Columbia

This document describes some of the key commercial and taxation factors that are relevant on setting up a business in Columbia.



Background

Country Overview

Colombia is the fourth largest country in South America, with an area of 1,141,748 square km. The country is divided into 32 different states and has a population of about 48 million people, being the third largest Spanish-speaking population in the world. Colombia is a representative democracy with a central government. The country has also three branches of government: the Legislative, the Judiciary and the Executive. The presidential term lasts 4 years with the possibility of reelection. After more than 50 years of civil war and four years of negotiation, on 30 November 2016 the Colombian Congress approved a new peace agreement between the government and the Revolutionary Armed Forces of Colombia (FARC).

Economic Overview

Colombia is a free market economy, being the third largest in South America (\$322 billion, 2011 est.) and is heavily dependent on exports such as coffee, flowers and petroleum. Colombia is a founding member of the Pacific Alliance and has free-trade agreements with many nations including the U.S. The economy of the country has been growing faster than the average in South America and foreign direct investment (FDI) has increased fivefold since 2000. Colombia has been ranked as the third most "Business Friendly" country in Latin America by the World Bank and also ranks as first for investor protection. Colombia also has a flexible exchange rate which has helped against external economic shocks.

Some more key figures (2017):

- Labor force: 24.67 million
- Level of unemployment rate: 9.3%
- GDP per Capita: \$14,500 dollars

Transport Infrastructure

Colombia is currently undergoing large modernization efforts in transportation infrastructure throughout the country. One of the current government's most ambitious projects has been the Fourth Generation (4G) public-private partnership (PPP) infrastructure program, which has slowly has continued to advance since its inauguration five years ago. Colombia currently has over a 1.9 million-mile network of roads that connect ports, cities and neighboring countries including Ecuador and Venezuela. The country also has four privatized and modernized main ports that permit the efficient movement of 144 million tons of freight per year as well as additional ports that specialize in certain exports like coal. Colombia also has twelve international airports that receive flights from Latin America, North America and Europe.

Choice of Legal Form



In Colombia, the creation of commercial companies, private companies and branches of a foreign company are regulated by the Commercial Code. Any of the above modalities may be adopted by a foreigner in order to advance their business in Colombia. Our legal system identifies the partnership contract, as that by which two or more people (national or foreign) are obliged to make a contribution in money, work or other assets in order to share the profits generated by the growth of the company.

Corporation

In Spanish known as “Sociedad por Acciones”. Its creation, transformation and dissolution is made through a private document registered in the “Registro Mercantil de la Camara de Comercio” (the Chamber of Commerce’s

Mercantile Registry) where the corporation establishes its principal location, as long as no donations subject to public deed are received. In this case, its creation must be done through a notarized public deed according to article 5 of Law 1258 of 2008. It has a minimum of one shareholder and no maximum. Social capital is divided in freely negotiable shares. Capital formation is divided into three steps.

Authorization: A fixed quantity that determines the maximum capitalization of the corporation.

Subscription: the part of the authorized capital that the stakeholders compromise to pay in installments of a maximum of two years. At the moment of the creation of the corporation a payment is not needed, according to article 9 of the Law 1258 of 2008.

Payment: The part of the subscription that shareholders have effectively paid and deposited into the corporation. The stakeholders responsibility is limited to the amount of contributions and are not responsible for labor and tributary obligations, except on the case of law fraud or abuse of the simplified joint stock company to the disadvantage of a third party. The stakeholders have the possibility to determine an undefined term of duration for the company.

General Partnership

In Spanish known as "Sociedad Colectiva". Its creation, transformation and dissolution is made through a notarized public deed. It has a minimum of two shareholders and no maximum. The social capital of the partnership can be divided into various parts of social interest of equal value and must be completely paid off before the creation of the company. The parts of interest can be made though a kind payment, labor or capital. General partnerships answer solidarily and unlimitedly to social operations in agreement with article 294 of Codigo de Comercio (Code of Commerce).

With respect to labor obligations, article 36 of the Código Sustantivo del Trabajo (Substantive Code of Labor), general partnerships are solely responsible for labor obligations only until the limit of responsibility to each partner. With respect to tributary responsibilities, article 794, subsection 1 of the Tributary Statute establishes: "Partners must answer solidarily for taxes, upgrades and pro-rata interests of their contribution to the partnership during the taxable period."

In the case of a partner's release, the yielding part is not freed from the immediate previous obligations, instead it is held responsible until a year following the release. The duration of the partnership is limited by the terms establish by in the statues.

Limited Liability Partnership

In Spanish known as Sociedad por Responsabilidad Limitada Ltda, it is one of the most common business structures in Colombia. It can be created through a public deed signed in the presence of a Notary and needs a minimum of two shareholders, who can be either individuals or corporate bodies, and has a maximum of 25 stakeholders. Although the limited liability company will need to appoint a Colombian resident as the company's legal representative, it can appoint at least 2 directors who can be of any nationality and do not necessarily have to reside in the country. The Ltda is not required to appoint an auditor, unless if by the end of the year it has a total of net assets an amount higher than 5,000 legal minimum wages or has a revenue higher than 3,000 legal minimum wages. The social capital is divided in quotas or parts of equal value. All capital must be paid off before the creation of the company. The transfer of quotas implies a statutory reform. In the case of the death of a partner, capital will stay with the partner's heirs, unless stipulated otherwise. Representation rests on all partners, unless it is delegated to a third party. Partners are only responsible for the amount of their contributions, however, stipulations could be made for a greater responsibility

Public Company

In Spanish known as “Sociedad Anonima”. A public company can be established through the ordinary procedure established in the Commercial Code for the other commercial companies, or through successive subscription of its shares. It must have at least five shareholders and has no maximum. The shareholders respond for the company's obligations up to the amount of its contribution. The capital of the public company is divided into shares of the same value that are represented through negotiable securities. Such shares may be ordinary or privileged according to the rights granted to the shareholder. The legal representative, the board of directors and the general shareholders' assembly are in charge of the management and administration of the company.

Joint-Stock Company

In Spanish known as “Empresa por Acciones Simplificadas SAS”. Its creation, transformation and dissolution can be done through a private document registered in the Mercantile Registry of the Chamber of Commerce of the place where the company establishes its principal location, as long as they do not receive contributions subject to public deed, in which case the creation must be made by Public Deed before a notary, as provided in Article 5 of Law 1258 of 2008. A Joint-Stock Company has a minimum of one shareholder and does not have a maximum limit. Shareholders respond up to the amount of their contributions. A Joint-Stock Company must have a Fiscal Auditor when gross assets as of December

31 of the immediately preceding year are equal to or greater than 5,000 legal minimum wages in force and / or whose gross income is equal to or greater than 3,000 legal minimum wages in force.

Branch of Foreign Company

Any foreign company that tries to develop permanent activities in Colombia must establish a branch in Colombia. Even when it a foreign company develops activities that are not considered permanent by commercial legislation, it has the possibility to establish a branch in the country. For its creation it is necessary to register documents showing the existence and legal representation of the foreign company, and the resolution or act stating the decision of the foreign company to establish a branch in Colombia. The constitution requires a public deed of protocolization, which is registered in the chamber of commerce of the location chosen in the country. Technically, the branch of a foreign company is a business establishment of its parent company and for that reason it does not have legal status. The capital of the branches is determined by their parent company and it constitutes the general guarantee of their obligations in Colombia. The representation of these branches is carried out by a general representative who represents the company in the country and with third parties of the parent company.

Audit Requirement



Some companies have within the forms of internal control of their administrative bodies established the fiscal audit as the appropriate institution to safeguard the interests of both partners and creditors, especially in the case of bad corporate practices like fraud and inefficiency in the fulfillment of social purposes. Commercial companies whose gross assets as of December 31 of the immediately preceding year exceed 5,000 salaries and / or whose gross income during the immediately preceding year is or exceeds 3,000 legal minimum wages are required to have a tax auditor.

The main functions of the fiscal auditor are:

- To oversee that the operations carried out by the company are in accordance with the provisions of its bylaws and those agreed by the shareholders' board.
- To report to the administrative bodies of the company the irregularities that occur in the development of the corporate purpose.
- To collaborate with government entities that perform inspection and surveillance functions, rendering the necessary reports.
- To carry out the accounting of the company and keep the correspondence and account vouchers that support the current states.
- To summon the assembly or board of members to extraordinary meetings when it deems it necessary, and if summoned to the deliberations of such bodies, the reviewer shall have the right to intervene.

Taxation



In Colombia there are national and regional taxes, the former apply to natural and legal persons, the latter are regulated by each department or municipality.

National Taxes

- **Income Tax:** It is a tax of National Order that taxes the generated profits in a taxable period. It is of collected annual and its rate is 34%. As a complement to this tax, there is the occasional income tax, which corresponds to the income from the profits of the activities that are not specific to the business, such as the sale of shares or assets, among others. Its rate is 10%.
- **Wealth Tax:** In Spanish known as "Impuesto a la Riqueza". It taxes the gross assets of the taxpayers. The gross assets refers to the totality of goods and rights of a person or company of the immediately preceding taxable year equal or superior of \$ 1,000 million pesos in its gross equity less debts.
- **Value Added Tax:** In Spanish known as "Impuesto al Valor Agrado or IVA". It is an indirect tax of national order. It taxes the provision of services, sale of goods, and the importation of movable tangible property. It is indirect because it is paid by each taxpayer at the moment of making a purchase or acquiring a service with some very specific exceptions Its rate is 19%, 5% and 0%.
- **Withholding at the source:** In Spanish known as "Retencion en la fuente". It is a mechanism of anticipated collection of a tax. In Colombia there is withholding at the source for the income tax, IVA and industry and commerce.

- **Consumption Tax:** It is an indirect tax that taxes the vehicle, telecommunications, beverages and food sectors. Its rate is 4%, 8% and 16%.
- **Tax on Financial Movements:** It is a National Order tax that is applied to the financial transactions made by the users. In general it taxes the withdrawals of the checking or savings accounts, or management checks. Its rate is 0.4%. (4 per thousand).

Regional Taxes

- **Industry and Trade Tax:** It taxes industrial, commercial or service activities carried out in each municipality by a taxpayer with or without establishment. Its frequency and rate is established by each municipality and the rates are from 0.2% to 1.4%.
- **Property Tax:** It annually taxes the right of property, usufruct or possession of real estate located in Colombia and is collected and administered by each municipality.

Each municipality raises other taxes such as vehicles, liquor consumption, among others.

Employment



Social Security

Workers are affiliated by employers to Social Security in Pension, Health, Occupational Hazards and other contributions (welfare, study, etc.). These contributions are calculated as a percentage of the worker's salary as follows:

- Pension 13.5%
- Health 12.5%
- Occupational Risks 1% (varies according to the activity to be performed)
- Family Compensation Fund (welfare, housing, recreation) 4%
- SENA (contribution to technical and technological studies) 3%

Additional charges for the employer Some employers within the contract agreed with the workers, provide other benefits of variable value, such as:

- Prepaid medicine
- Bonus for transport and / or Communications
- Representation expenses.

These benefits do not add to the salary base for purposes of calculating social security contributions.

Withholding Taxes



Interest

Payments for consulting services, technical services and technical assistance, provided by non-residents or not domiciled in Colombia, are subject to withholding at the single rate of fifteen percent (15%), at title of income taxes, whether they are provided in the country or from abroad.

Royalties

The income tax rate for non-residents is 15% and in the case of occasional earnings it will be 10%.

Dividends

The rate of income tax corresponding to dividends, received by foreign companies without principal domicile in the country, by individuals without residence in Colombia and by illiquid successions of persons who were not residents of Colombia is five percent (5%).

This document is provided by JAHV McGregor SAS as a general overview of matters to be considered when setting up an overseas business in Columbia. It is essential to take advice on specific issues. No liability can be accepted for any action taken or not taken arising from the information provided in this publication.

If you are setting up a business in Columbia, the members of DFK International can help you to achieve this efficiently. You will receive practical advice on business issues, tailored to meet your objectives, from experienced business advisers.

For further information on the services available from the DFK member firms in Columbia please see overleaf.



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