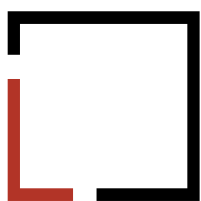


Starting a Business in Colombia

An Introduction

We are an innovative international law firm that offers comprehensive legal services to clients in Colombia and around the world



Starting Your Business in Colombia

Growing your business in a foreign jurisdiction requires a comprehensive understanding of local legal and regulatory obligations.

Deciding to Register Your Business is Just the Start

Anyone who has visited Colombia over the past decade will tell you that international business investment has transformed the country into one of the most dynamic and successful economies in the entire region. From tourism and hospitality to technology development and outsourcing, Colombia has become the destination of choice for many international investors.

For many of these foreign investors, growing a successful business in Colombia starts with retaining a local law firm with the knowledge and experience necessary to ensure that your business is managed correctly from day one.

Our Business Startup Services

Langon provides comprehensive assistance to foreign investors interested in starting a business in the local Colombian market.

Langon clients can take advantage of the following:

Unparalleled Service:

If you have ever dealt with service providers in Colombia you already know that client service is often lacking. Documentation is not always provided by set deadlines. Phone calls are not always returned promptly. Emails go unanswered. Unlike local alternatives, Langon is committed to providing our clients with world-class client service.

Experience:

Langon has registered hundreds of businesses throughout Colombia since 2011.

English-Language Service:

Our legal services are managed by English-speaking attorneys for the convenience of our international clients.

Our Firm

We are an innovative law firm that offers comprehensive legal services to businesses, private equity entities and high net worth individuals in Colombia and around the world. At Langon, we distinguish ourselves by offering an internationally focused, multi-jurisdictional and multi-disciplinary approach to client service.

The depth and breadth of our practice allows us to provide our clients with creative legal solutions tailored to their specific needs. From securing Colombian visas and negotiating multi-million dollar M&A transactions to developing tax-efficient international expansion strategies, Langon Colombia can help your business navigate the legal and regulatory landscape in Colombia from day one.

Langon has helped hundreds of foreign investors start their businesses in the Colombian market since 2011.



Preliminary Considerations

Below are key considerations when starting a business in Colombia.

Registering a Company in Colombia

Please review the Preliminary Considerations section of our "Registering a Company in Colombia" publication for more information regarding the company registration process in Colombia. Much of this content will be relevant to any foreign investor interested in (1) starting a local business or (2) expanding an existing business into the local market.

Tax Considerations

Foreign investors interested in starting a business in Colombia should first conduct a comprehensive tax analysis in order to determine the most tax-efficient way to structure their operations. This analysis should focus on the best ways to book profits locally as well as how individual shareholders can properly repatriate those profits back to their home countries in a tax-efficient manner. Foreign investors are also encouraged to conduct a separate transfer pricing analysis in order to determine the best way to invoice business entities under common control. This will be key if a local subsidiary is set up to



invoice a parent company and/or affiliates of the parent company outside of Colombia.

Ownership Structure

One of the most important decisions foreign investors will need to make is how to structure their business in Colombia. Below are three main options available to foreign investors:

- 1. Local Subsidiary:** Most foreign investors structure their Colombian businesses as local subsidiaries. This usually means that their main operating company outside of Colombia will own all or a majority of the ownership interests in the local business entity. This structure has several advantages including, but not limited to:
 - **Liability Buffer:** Most local civil liability risks will be limited to the local Colombia subsidiary. This includes potential employment liability claims which tend to be the most frequent and expensive for companies operating in Colombia.

- **Tax Efficiency:** Local corporate tax obligations are limited to the local Colombian subsidiary.
 - **Corporate Governance Efficiency:** Decision-making is managed locally while allowing corporate parent to maintain control. This is not the case in other ownership structures including in structures involving Branch Offices where action by the corporate parent is required whenever a decision is taken by the Colombian subsidiary.
- 2. Direct Ownership:** Some foreign investors choose to own a local business entity directly, bypassing the need for corporate ownership. This means that these foreign investors prefer to personally own all or a majority of the ownership interests of the local business entity. Foreign investors may choose this structure because they (i) are budget-conscious; (ii) are being consistent with an overall tax strategy; (iii) prefer to maintain direct, personal control over the local business; or (iv) prioritize receiving a Company Owner Visa in connection with their personal investment.

Corporate Control

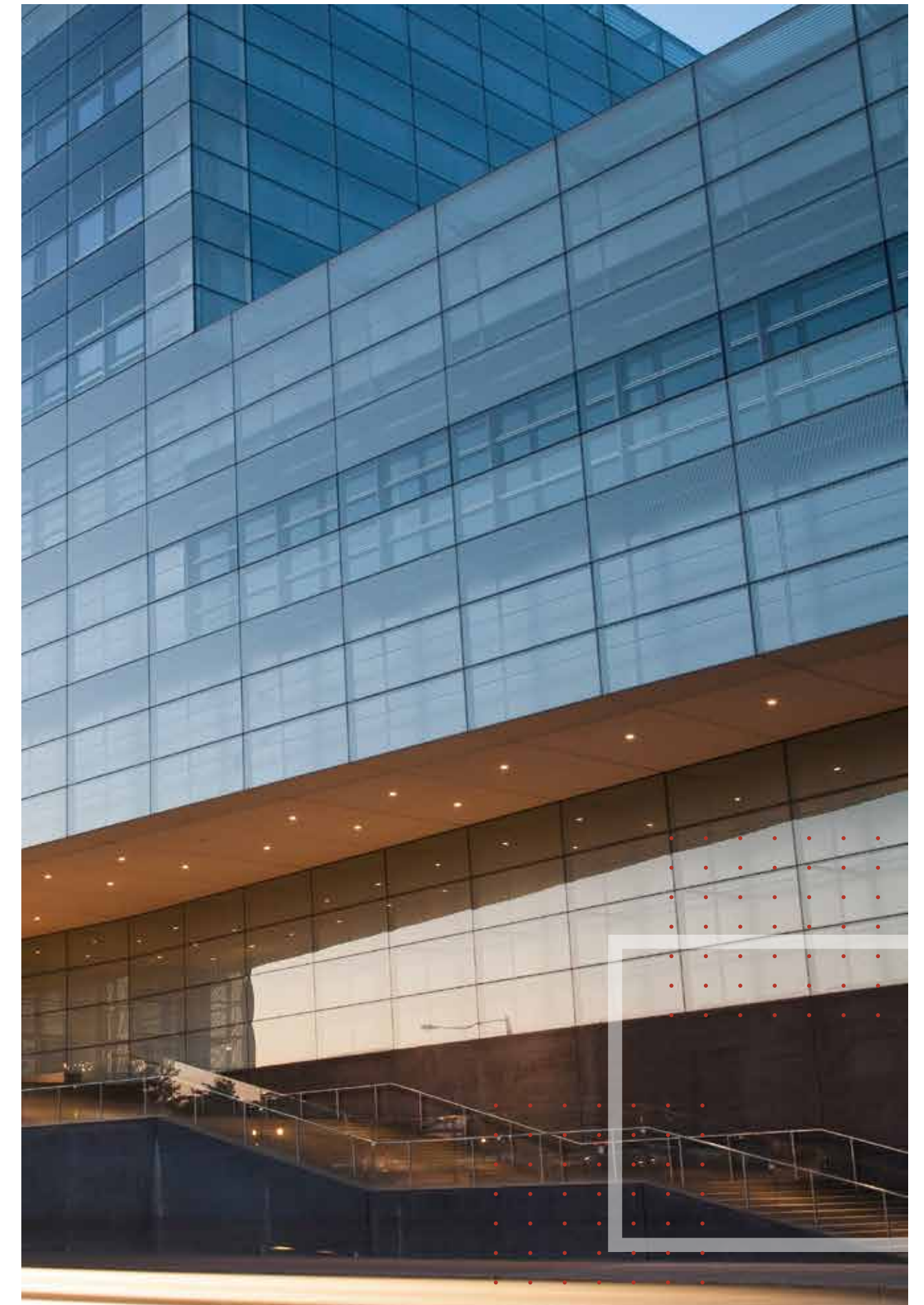
Another key threshold decision for any business expanding into the Colombian market is how to maintain control over the local business entity. In particular, it is essential that foreign investors choose the right decision-making mechanism that makes sense for their business while also focusing on implementing proper oversight over local Legal

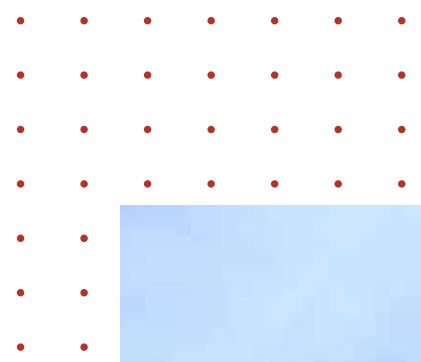
Representatives (see the Preliminary Considerations section of our ["Registering a Company in Colombia" publication](#) for more information regarding Legal Representatives). Options are often tied to the actual ownership structure that is chosen for the local business entity:

- 1. Local Subsidiary:** Many foreign businesses organize a local board of directors with members of their own foreign management team serving as local directors. Alternatively, foreign businesses can bypass the need for a board and instead vote their shares in the local business entity when making corporate decisions. The local Legal Representative would then act consistent with the decisions taken by either the local board of directors, the local shareholders or both.
- 2. Direct Ownership:** While foreign investors can certainly act via a local board of directors or as shareholders, many choose to make decisions as Legal Representatives, particularly where they are sole shareholders, are physically in Colombia on a regular basis, and can secure the right type of visa that would allow them to act as local Legal Representatives.

Legal Representative Risk Management

As explained in the Preliminary Considerations section of our ["Registering a Company in Colombia" publication](#), a Legal Representative is required in order to manage





day-to-day business operations in Colombia. However, local Legal Representatives can sometimes generate certain risks for foreign investors precisely because they are so indispensable. These risks range from a disgruntled Legal Representative using their position as leverage against foreign owners in business disputes to actual fraudulent activity.

For this reason, foreign investors should seriously consider implementing any number of risk-management strategies in order to minimize any potential issues. These include:

1. Corporate Restrictions: Foreign investors can build in specific restrictions in corporate documentation that limits the Legal Representative's ability to act without the express, written approval of the board of directors, shareholders and/or specific company officers. This can include things like limiting the type of legal agreements Legal Representatives can sign on behalf of the local company or even assigning a maximum monetary value to legal agreements that Legal Representatives can actually sign. It should be noted that any restrictions will need to be balanced against the practicalities of running the local business. For example, requiring shareholder approval for even minor decisions may not be all that practical. In addition, keep in mind that local banks may not like significant restrictions that create headwinds from an account management perspective.

2. Banking Restrictions: Foreign investors can also place

specific restrictions on the type of access Legal Representatives can have to company financial accounts.

3. Employment Agreements: Foreign investors should also include specific restrictions in any employment agreement signed by their local Legal Representatives to ensure compliance with company policies.

4. Supplementary Legal Representative: Many foreign investors will direct their local attorneys to serve as "supplementary" Legal Representatives in order to limit any risk posed by their existing, "primary" Legal Representatives.

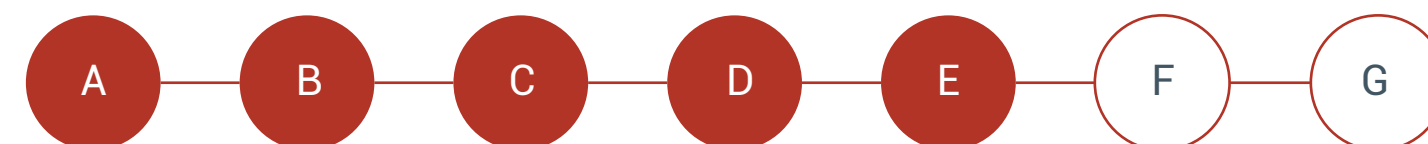
Industry-Specific Headwinds

Keep in mind that certain industries in Colombia receive additional regulatory scrutiny by local authorities. Companies that focus on mining, financing and/or micro-lending, any aspect of the cryptocurrency/blockchain business as well as those that are involved in the manufacture of CBD products and/or cannabis cultivation can face significant headwinds establishing a local business and registering a local corporate bank account. Foreign investors planning to expand into these industries should consult with our Firm in order to evaluate viable expansion strategies applicable to their businesses.



Starting a Business in Colombia: A Timeline

Below is a summary of key steps foreign investors should keep in mind when starting a business in Colombia. Keep in mind that any timeline will depend on a variety of factors including business structure, specific tax strategy and the industry involved.



A. Identify Key Information

Choose a company name that is not currently registered, an applicable business purpose, a registered office, and capital needs. If all this information is not clear from the start, the process may be delayed.

B. Conduct Tax Analysis

As mentioned in the Preliminary Considerations section of this publication, foreign investors expanding into the Colombian market should first conduct a comprehensive tax analysis in order to determine the most tax-efficient way to structure their operations. In general, there are two main considerations:

- 1. Overall Tax Strategy:** Foreign investors should have a clear idea what type of tax obligations will apply to their local business as well as company shareholders. In practice, this often means conducting a comprehensive analysis involving Colombian-based accountants as well as tax specialists licensed in the foreign jurisdiction where the parent company is based and/or where shareholders of the company reside.

- 2. Transfer Pricing Analysis:** Another key analysis that foreign investors are encouraged to conduct is a formal transfer pricing analysis. This type of analysis is key where the local business entity invoices the foreign parent company and/or other corporate affiliates. It is also recommended for risk management and tax audit purposes.

C. Choose Ownership Structure

As mentioned in the Preliminary Considerations section of this publication, one of the most important threshold decisions facing foreign investors is how to structure their business in Colombia. Choosing between a local subsidiary structure or even direct ownership of the local business entity will determine everything from how the business is managed to how profits are repatriated outside of Colombia.

D. Choose Corporate Control Strategy

As mentioned in the Preliminary Considerations section of this publication, determining how to maintain control over a local business entity is essential for foreign investors. The

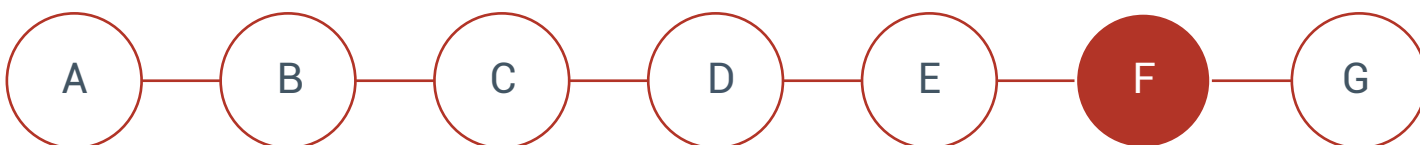
focus should always be on finding the right balance between ensuring that local decisions reflect the wishes of foreign investors while implementing a corporate control strategy that is efficient and not overly burdensome.

E. Choose a Legal Representative Risk Management Strategy

As mentioned in the Preliminary Considerations section of this publication, foreign investors should consider how best to minimize the risk involved in utilizing a local Legal Representative for their business. Solutions will vary depending on any number of factors including whether the foreign investor(s) will be physically present in Colombia on a regular basis, whether the local Legal Representative will have direct access to financial accounts, and whether foreign investors prefer to have a supplementary Legal Representative in order to ensure adequate oversight over the primary Legal Representative.

Starting a Business in Colombia: A Timeline

Below is a summary of key steps foreign investors should keep in mind when starting a business in Colombia. Keep in mind that any timeline will depend on a variety of factors including business structure, specific tax strategy and the industry involved.



F. Proceed with Registration Process

At this stage, foreign investors can proceed with the standard company registration process as outlined in our [Registering a Company in Colombia](#) publication. While the content in that publication will be largely applicable to how existing foreign businesses expanding into the local market will actually proceed with the registration process, there are some key differences:

- 1. Additional Documentation:** Foreign investors interested in registering a local subsidiary will be required to provide internal corporate documentation in connection with the registration process. This often means ongoing coordination between foreign counsel and local Colombian attorneys in order to identify, draft, execute, notarize, translate and legalize applicable documentation. This can delay the registration process and increase overall legal and administrative fees.
- 2. Added Corporate Control Requirements:** By definition, the process of drafting, finalizing and executing

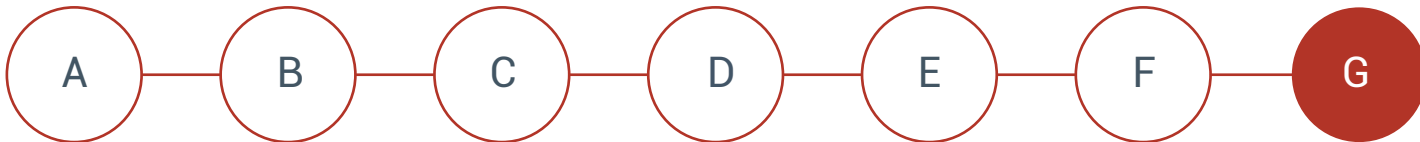
registration documentation will be more complicated for local subsidiaries than having a foreign investor become a shareholder of the company directly.

- 3. Added Registration Expenses:** Local public/private entities, including the Chamber of Commerce, may charge additional fees when facilitating any process involving local subsidiaries of foreign businesses.



Starting a Business in Colombia: A Timeline

Below is a summary of key steps foreign investors should keep in mind when starting a business in Colombia. Keep in mind that any timeline will depend on a variety of factors including business structure, specific tax strategy and the industry involved.



G. Proceed with Local Compliance Requirements

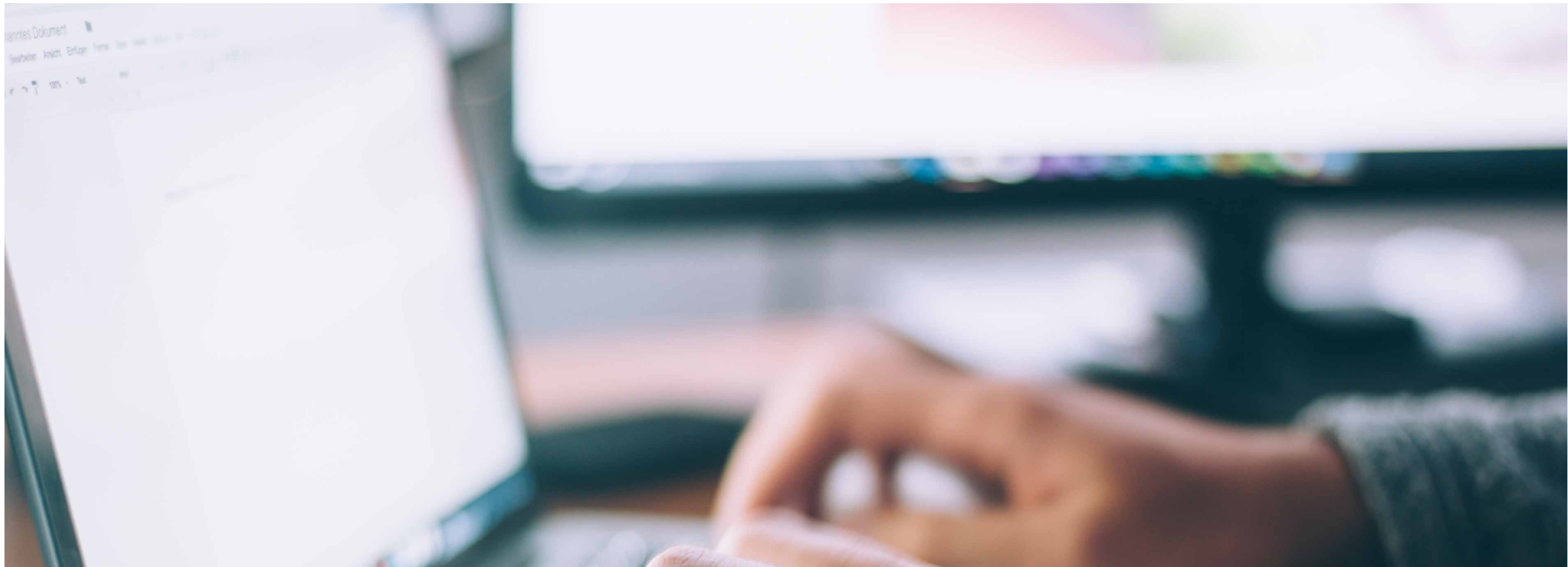
Once your local business entity is registered it will need to comply with local business, regulatory and accounting/tax obligations:

- 1. Business/Regulatory Obligations:** As outlined in our [How to Manage a Business in Colombia publication](#), local businesses will need to focus on:
 - **Employment Law Compliance:** This can include everything from drafting appropriate Employment/Independent Contractor Agreements, Employee rules and policies as well as benefits management.
 - **Ongoing Business Compliance Matters:** This can include updating the company's business license with the local Chamber of Commerce, filing declaration forms with the National Bank and even annual "Superintendendencia" obligations.
 - **Industry-specific Compliance:** This involves determining whether the local business entity requires specific licenses/permits and will vary depending on the specific industry/sector of the local



business entity.

- 2. Accounting/Tax Obligations:** As outlined in our [How to Manage a Business in Colombia publication](#), local businesses will also need to ensure that they are complying with accounting and tax requirements enforced by the DIAN (national tax authority) as well as municipal tax entities.



www.langoncolombia.com

info@langoncolombia.com -  (+57) 3136214260

    @langoncolombia