

Registering a Company 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 a Business in Colombia

Whether you are expanding an existing business into the Colombian market or starting a new local venture, it is essential that you understand the complexities of registering a business in Colombia.

Registering a Company is Key:

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 multinationals looking to expand locally to foreign tech companies interested in outsourcing their existing operations, 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 you register your local business correctly.

Our Company Registration Services:

Langon provides comprehensive assistance to foreign investors interested in starting a business in Colombia.

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 helps foreign investors develop the right corporate and legal structure necessary to grow their business.



Preliminary Considerations

Below are key considerations when registering a company in Colombia

Choosing a Corporate Form

There are a variety of corporate forms to choose from in Colombia. These include:

- the S.A.S. ("Sociedad por Acciones Simplificada");
- the S.A. ("Sociedad Anónima");
- the Ltda. ("Sociedad de Responsabilidad Limitada"); and
- the "Sociedades en Comandita" (abbreviated as S. en C. AND S.C.A.).

However, ever since it was introduced back in 2008, the vast majority of business entities in Colombia have been registered via the S.A.S. structure.

S.A.S.

Registering a S.A.S. business entity is often your best bet

when starting a business in Colombia. Here are the basic characteristics of a S.A.S.:

- 1. Corporate Structure:** At a minimum, the S.A.S. form requires a shareholder(s) and a legal representative. A board of directors is not required. An auditor may be required depending on the industry.
- 2. Corporate Flexibility:** The S.A.S. form has a great deal of flexibility: (i) one person may own all the ownership interests in the S.A.S.; (ii) the same person can be the sole shareholder, legal representative and manager; (iii) allows for the creation of any number of share classes, including preferred shares; (iv) business may have perpetual existence; (v) no obligation to maintain a reserve on its books (as is the case with other legal forms); (vi) no obligation to pay a minimum dividend (as is the case with other legal forms); and (vii) allows for private mediation/arbitration of disputes between shareholders.
- 3. Registration Process:** Registration via (i) written bylaws that are signed and notarized under Colombian

law or (ii) written bylaws that are signed at a local Chamber of Commerce. Registration is valid only after the company is listed on the business registry ("Registro Mercantil") of the local chamber of commerce.

- 4. Company Name:** You can use whatever name you want with certain limitations. For example, the name of your company cannot be similar to the name of another company already registered. In addition, you cannot use certain names that are considered against the public interest. At the end of the name, you can include "sociedad por acciones simplificada" or, the more traditional, "S.A.S."
- 5. Business Purpose:** To register a S.A.S. you will need to specify at least one purpose for the company, though you can also add that it may conduct any business allowed under Colombian law.
- 6. Limited Liability:** The S.A.S. form grants shareholders broad limited liability. Corporate veil may be pierced due to actual fraud and/or failure to maintain corporate formalities.

Legal Representative

Unlike in other countries, the title of “legal representative” is crucial in a Colombian company. A legal representative will have complete access to the company’s books and bank accounts and will be able to bind the company when signing legal agreements. Keep in mind that the legal representative should be someone who is based in Colombia because they will need to sign documentation on a regular basis. This is why many foreign investors will retain a “primary” legal representation title while granting “supplementary” legal representation status to a local office manager or partner that they trust. In addition, make sure that your local legal representative has a local national ID card (“cédula”) so they can manage your local corporate bank accounts. Finally, note that Langon offers a legal representation service to our foreign clients under certain circumstances.

Company Owner Visa

If a foreign investor plans to apply for a Company Owner Visa based on their personal investment in the local S.A.S. entity, they will need to ensure that the value of the company’s paid-in capital meets or exceeds the standard threshold of 100 times the local minimum wage prior to applying for a visa. Most foreign investors will register a company with the requisite value from the start, though they could register a company at a lower value and eventually

increase the value before actually applying for a visa.

Banking Restrictions

One significant headwind for many foreign investors is the fact that local banking institutions often restrict international wire transfers for new corporate bank accounts for a period of 6 months. In practice, this means that while a newly registered company will not face any actual restrictions locally (i.e., the company can pay employees and vendors, receive payments from clients, etc...), it cannot receive direct transfers from abroad for 6 months.

The most popular workaround is where the shareholder(s) of the newly registered company opens a local brokerage account. These accounts are popular for foreign investors because they do not have any transfer restrictions. Foreign investors can capitalize and fund their local businesses by first transferring funds into Colombia via their own brokerage accounts. Once funds are available in Colombia, foreign investors can then transfer funds to the corporate bank account of their local company.

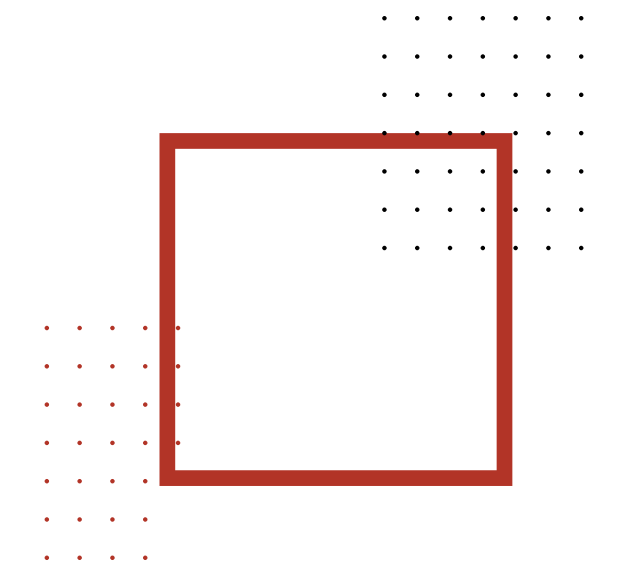
Powers of Attorney

Foreign investors who will not be physically present in Colombia during the company registration process will need

to execute powers of attorney to allow their local attorney to proceed with the registration process in their absence. If the foreign investor can physically travel to Colombia, they should execute powers of attorney at a local notary. If the foreign investor cannot physically travel to Colombia, they should execute powers of attorney at a Colombia consulate or possibly apostille powers of attorney that are notarized under the laws of their home country.

Patience is a Virtue

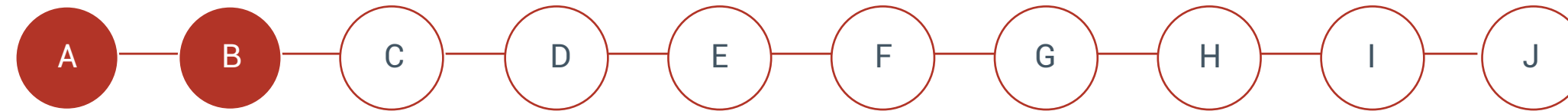
Like most other legal processes, registering a business entity in Colombia can be challenging, even if everything is handled correctly. From having public entities misplace documentation and persistent delays to officials misinterpreting applicable laws and regulations, foreign investors are well advised to be patient throughout the company registration process.





Registering a Company in Colombia: A Timeline

Below is a summary of what transpires during the company registration process. Keep in mind that actual timing depends on any number of factors including which Chamber of Commerce you will use to register your company.



A. Draft Key Documentation

Drafting the right legal documentation is essential when starting a business in Colombia, particularly where a foreign investor intends to work with local partners/investors. Of primary importance for a S.A.S. will be the following:

- **Company Bylaws (“Estatutos”):** These serve as a quasi-constitution for the local S.A.S. entity and will determine everything from how corporate decisions will be made to what happens if there is a dispute between investors.
- **Shareholder Agreement (“Acuerdo de Accionistas”):** This agreement is executed by all the shareholders of the company. If an issue involves the ownership interests of the company and/or the relationship between shareholders it will likely be outlined in the Shareholder Agreement.

Beyond these two main agreements, the shareholders of the company may want to negotiate and execute additional agreements including, but not limited to:

1. Partnership Agreements (or “Contratos de Promesa de Sociedad”);
2. Buy-Sell Agreements; Confidentiality Agreements (or “Acuerdos de

Confidencialidad”); and

3. Indemnification Agreements (or “Acuerdos de Indemnidad”).

B. Choose a Legal Representative

Of all the decisions a foreign investor will make when starting a business in Colombia none may be as consequential as who will serve as the legal representative for their business. The legal representative is, essentially, the day-to-day manager of the company. Only the legal representative can:

- sign legal documentation and bind the company;
- hire and fire employees;
- make general business decisions on behalf of the company; and
- have direct access to the financial accounts of the company, including the corporate bank account.

Here are your options when selecting a legal representative for your Colombian business:

1. **Foreign Investor Serves as Legal Representative:** This

option is only viable if:

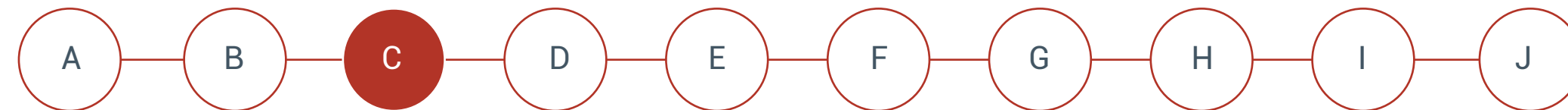
- foreign investor is a natural person and not a foreign business entity;
- foreign investor already has a Colombian visa and has an active “cédula” (a local government ID); and
- foreign investor is in Colombia on a regular basis so that they can sign all applicable legal documentation when necessary.

2. **Key Employee Serves as Legal Representative:** If a foreign investor has a key local employee or business partner that they trust they can appoint that employee/partner to serve as either sole or even supplementary legal representative for the company. Note that serving as a legal representative creates potential liability risk for that individual so expect your employee/partner to request additional compensation.

3. **Local Attorney/Law Firm Serves as Legal Representative:** If a foreign investor cannot serve as a legal representative and cannot locate a third party to serve in this capacity, they can appoint their local attorney.

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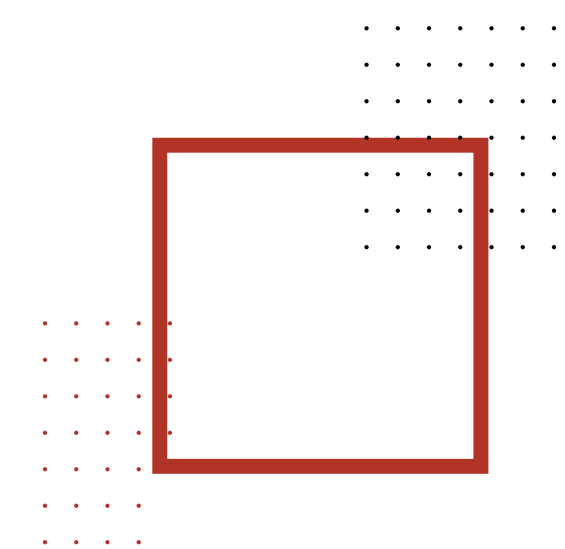


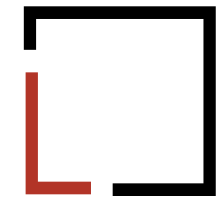
C. Choose Registration Strategy

The logistics of registering a company in Colombia can be challenging. Here are some standard options:

- 1. Executing Documentation in Colombia:** If the foreign investor will serve as sole legal representative and they already have a "cédula," the simplest and least expensive option will be to sign relevant legal documentation at a local notary when they are physically in Colombia. This will also be the case if the foreign investor selects a local attorney or other trusted local agent to serve as the supplementary legal representative.
- 2. Executing Documentation at Foreign Consulate:** If the foreign investor and/or their supplementary legal representative are outside of Colombia, they will need to execute legal documentation at a foreign Colombian consulate and courier originals back to Colombia. Note that this process will be more expensive than via a local notary given the notary fees charged by the foreign consulate.

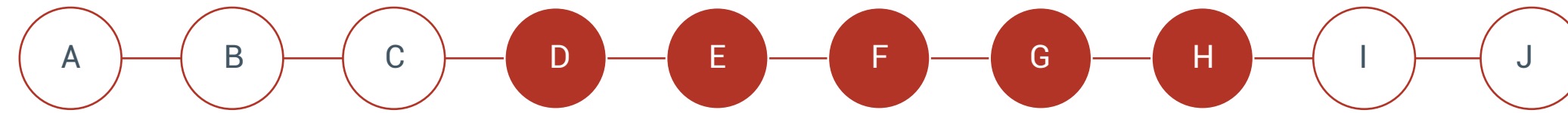
- 3. Notarizing and Apostilling Documentation:** If the foreign investor and/or their supplementary legal representative are outside of Colombia but cannot get to a foreign consulate, they may need to notarize and apostille relevant documentation for use in Colombia.
- 4. Local Attorney Registers and then Transfers Ownership:** If timing is an issue, Langon may be able to register the company in the name of our local law firm and then transfer ownership to the foreign investor in order to fast-track and simplify the registration process.





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D. Submit Documentation to Chamber of Commerce

Once the foreign investor(s) executes key legal documentation it will be submitted to a local Chamber of Commerce in order to commence the registration process. Processing times can vary widely depending on the Chamber of Commerce involved but expect approval between 1 and 10 business days from the date documentation is submitted.

E. Submit Business Locale Permit Registration

Unless your business will operate completely virtually, your local business will be required to secure a business locale permit or "establecimiento de comercio." This permit allows your company to operate from a specific business location, regardless whether it is client-facing or not.

F. Submit "Control" Status Registration

Colombian law requires that foreign investor(s) submit documentation showing applicable controlling interests in the local S.A.S. entity where (1) there is a sole controlling shareholder or (2) there are multiple shareholders but one owns in excess of 50% of the ownership interests in the company. Note that this process can get fairly complex where controlling shareholder is a foreign business entity.



Processing times can vary widely depending on the Chamber of Commerce involved but expect approval between 2 and 10 business days from the date documentation is submitted.

G. Submit SIRE Registration

Colombian law requires that the company identify any foreigner who either provides any "benefits" to OR receives any benefits from the S.A.S. entity. In practice, this usually means identifying any foreign shareholders, legal representatives and employees but could be interpreted to include any number of other parties that have a tangential relationship to the S.A.S. entity.

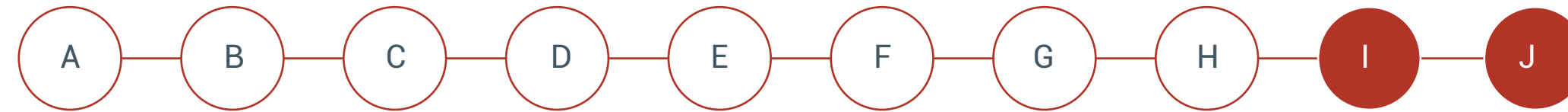
H. Request Local Tax ID Number

Foreign investors will need to request a local tax ID number (the so-called "NIT") by submitting legal and corporate documentation to the local tax authority (the "DIAN"). Processing time is usually just 1 business day from the date documentation is submitted, though actual timing will depend on the schedule of the DIAN. Note that many local



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I. Submit Municipal Tax Registration

Foreign investors will also need to register their new S.A.S entity with the local municipal tax authorities. Processing times can vary widely but can range from between 10 and 20 business days from the date documentation is submitted. Note that many local Chambers of Commerce may allow you to process this request as part of the company registration process.

J. Open Corporate Bank Account

Once new business entity is properly registered and a new local tax ID number is secured, the legal representative of the company can register a business bank account. Note that most local banks will require that the legal representative have a valid "cedula" in order to sign the registration documentation. Processing times can vary widely but typically takes from between 1 and 5 business days from the date documentation is submitted. Note that most foreign investors will also need to apply to get access to an online portal accessible via an electronic token. This process can take an additional 5 to 10 business days.





Cheat Sheet

Below are definitions for some of the most important terms that may come up during the company registration process in Colombia.



“Acuerdo de Accionistas”: A Shareholder Agreement is executed by all the shareholders of the company. If an issue involves the ownership interests of the company and/or the relationship between shareholders it will likely be outlined in the Shareholder Agreement.

“Cámara de Comercio”: Local Chamber of Commerce. Unlike in other jurisdictions, these public/private entities manage the company registration process in Colombia.

“Cédula”: Local national ID card that is issued to foreigners who are approved for a visa. Foreign investors who want to have direct access to local business bank accounts will require a “cédula”.

“Certificado de Existencia y Representación Legal”: This is the official registration certificate that is issued by the Chamber of Commerce outlining basic registration information, the paid-in capital of the company and who serves as the official legal representative.

“Dirección de Impuestos y Aduanas Nacionales” or “DIAN”: This is Colombia’s local tax authority. New business entities will be required to secure a local tax ID number as part of the registration process.

“Estatutos”: Company Bylaws that serve as a quasi-constitution for the local S.A.S entity and will determine everything from how corporate decisions will be made to what happens if there is a dispute between investors.

“Industria y Comercio”: This is a tax registration that is made at the municipal level that allows a local company to pay applicable municipal taxes.

“Registro Mercantil”: Business Registry managed and maintained by local Chambers of Commerce for all business entities in Colombia.

“Registro Único Tributario” or “NIT”: This is a local tax ID number that new business entities in Colombia are required to secure from the DIAN.

“Representante Legal”: Legal Representatives manage local companies and make day-to-day decisions.

“Sistema de Información Para el Reporte de Extranjeros” or “SIRE”: This is a database that is managed by the Colombian government. Companies are required to report any foreigner who either provides OR receives any benefits from their business.

“Sociedad por Acciones Simplificada,” or “S.A.S.”: Flexible corporate form akin to an S-Corp. The vast majority of business entities in Colombia have been registered via the S.A.S. structure since 2008.



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