



**PrimeGlobal**

*An Association of  
Independent Accounting Firms*

# DOING BUSINESS IN COLOMBIA





# COMPANY FORMATION IN COLOMBIA

## MAIN FORMS OF COMPANY/BUSINESS IN COLOMBIA

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In Colombia, a company is considered to be a national entity when it's effective management headquarters is in the Colombian territory, or if it meets any of the following conditions:

- a) It has the principal residence in Colombian territory; or
- b) It has been established in Colombia, according to the laws in the country

For a foreign company to set up permanent operations in Colombia, a branch office must be established within Colombian territory, with the following documentation registered at a notary: a legalized copy of the by-laws of the main office; Corporate Minutes from the main office which authorizes the incorporation of a Colombian office; and, documents which prove the existence of the main office and the legal status of its representatives in Colombia.

## SPECIFIC TAX CONCERNS RELATED TO ESTABLISHING A COMPANY

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In Colombia every entity or person must keep accounting records. Both, resident and non-residents must pay income tax, VAT and wealth tax (if you get higher income ranges established by law).

## LEGAL ISSUES RELATED TO ESTABLISHING A COMPANY

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When the investor is not within the country, he shall provide an authorization to a representative in Colombia with the purpose of creating the commercial vehicle.

In addition, if a foreign company will record as a shareholder of an investment vehicle in Colombia, it must prove:

- (I) its existence
- (Ii) delegation status whom is authorized
- (Iii) and fulfills its purpose in accordance with the laws of the respective country, and the documents needed in that county (must be apostille)

The documents issued in another language than Spanish must be translated by an official translator authorized in Colombia.

Requirements for Company Incorporation:

1. Formalizing the statutes of the company by public deed before a notary
2. In the case of SAS (Simplified Stock Company) statutes can be made through private document
3. Filling out the Form 1648 (Form Pre-RUT[1]) through the portal of the DIAN
4. Registration at the Chamber of Commerce, who issued the certificate of existence and legal representation (Provisional) with the entry "NIT is only valid to request the opening of a bank account"
5. Opening bank account
6. Conclusion of RUT DIAN



## DOING BUSINESS IN COLOMBIA

7. Provide photocopy of the certificate "RUT" before the Chamber of Commerce. Within 24 hours the final certificate of existence and legal representation issued
8. Activating the bank account. It must be submit the final certificate of existence and legal representation

### **CULTURAL CONCERNS RELATED TO ESTABLISHING A COMPANY**

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Currently in Colombia, foreign investment has the same constitutional treatment as national investment, providing the same conditions and stability. Besides, Colombia has several international investment agreements (including BITs) that ensure fair and transparent business operations. This proves the country's commitment and protection of international investment.

### **OTHER COUNTRY-SPECIFIC ISSUES RELATED TO ESTABLISHING A COMPANY**

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Colombia has additional tools that complement any economic activity undertaken in the country.

Within the strategy for improving trade relations undertaken by Colombia, the country has adopted Bilateral Investment Treaty (BITs) and Free Trade Agreements (FTAs).

Colombia has gained access to more than 45 markets through the network of free trade agreements and other trade agreements currently in force.

The purpose of these treaties is to include the commitments made by States in the protection and treatment of foreign investment.



## PERMANENT ESTABLISHMENT IN COLOMBIA: BRANCH OR SUBSIDIARY?

### DEFINITION OF A PERMANENT ESTABLISHMENT

The foreign investor is not required to have a partner or a local investor to be able to create any kind of business in Colombia by itself. With few exceptions, the entire capital of the companies may be foreign and there are no restrictions on repatriation, provided they have made registration as a foreign investment with the Central Bank. Therefore, any investor interested on having business in Colombia - permanently - shall constitute a legal vehicle such a commercial company or branch from a foreign company.

### DEFINITION AND MAIN DIFFERENCES BETWEEN A BRANCH AND A SUBSIDIARY

A company is a subsidiary or controlled when its decision-making power is subject to the will of another person or persons (legal or individual).

Control can be economic, political or commercial and may be exercised mainly by a majority or decisive participation in the capital of the subordinate, or by entering into a contract or an act with the capacity to exercise dominant influence in the decisions of subsidiary.

If the subordinate supports such control directly, is called subsidiary; if you suffer with the competition or through subordinate matrix, it is called subsidiary.

It is important to highlight the following points:

- The legislation recognizes that there may be subordination of one entity to another without any participation in the capital
- It is recognized that the control can be exercised by individual or legal entities
- The majority stake in the capital may be speculative or with strategic purposes, not necessarily with the intention to set up a business group

To determine the existence of an economic group composed of several legal entities, in addition to the relationship of subordination, there must be unity of purpose and direction between the various entities.

The control status and /or Business Group, must be register at the Chamber of Commerce in order to inform this fact to third parties who contract with the entities involved.

#### BRANCHES - FROM FOREIGN COMPANIES

They are commercial establishments opened by a company for the development of its corporate purpose, that's why do not have a different legal status than the parent, which is to say that the branch and society (main office) are the same legal person. Therefore, the branch in any case has a legal capacity is greater than its headquarters legal capacity have.

For the opening of a branch of a foreign company in Colombia, should rise to public write before notary, the following documents:

- Headquarters' statutes
- A copy of the decision to open a branch in Colombia, approved by the competent corporate body
- Documents certifying that officials have the authority to represent the company



The aforementioned documents must be duly legalized and apostilled or certified by the competent consular official in the country and should be different from the Castilian language must be translated by an official translator.

The decision to open the branch adopted by the main office must contain at least the following information:

- The Branch's name
- Businesses that intends to develop
- The amount of allocated capital and from other sources
- Branch's address

Branches of foreign companies are required to appoint and have a Statutory Auditor, regardless of their income levels obligations for tax representation. A local bank account is required.

### TAX AND ACCOUNTING OBLIGATIONS

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Branch or subsidiary must pay national taxes as VAT, Income Tax, Wealth Tax (If the case requires) and CREE. Transfer pricing must be set for transaction between subsidiaries or intra-group.

### REGISTRATION FORMALITIES

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All investments abroad - whatever their class or form - must be register at the Central Bank as a requirement for the foreign investor.

The registration procedure is formalized at the Central Bank either through an authorized foreign exchange broker or directly (by himself or his attorney).

The corresponding procedure is done under the parameters and conditions set out in the Circular No 83 DCIN of the central Bank (Chapter 7) using exchange forms.

### STANDARD LEGAL OBLIGATIONS AND FORMALITIES FOR A BRANCH

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#### INSPECTION, SURVEILLANCE AND CONTROL

Every commercial company is subject to inspection, and eventually surveillance and control under Superintendence of Companies. Exceptionally, in consideration of the activity that constitutes the corporate purpose, these powers of supervision or control may be assigned to another superintendence (Financial, Utilities, Health, Port, Vigilance and Private Security, etc.).

Every single investment of foreign capital must be channeled through the Exchange market. This could be either by intermediaries (local banks) or through a bank account in a foreign financial institution called "compensation account" registered at the Colombian Central Bank.

Any irregularity will be reported by the Central Bank to any of the three control entities according to the specific matter:

1. Tax and Customs Authority (DIAN): controls several matters that have not been included in the scope of the Financial Superintendence or the Superintendence of Corporations
2. Financial Superintendence: controls the financial institutions engaged in the exchange market
3. Superintendence of Corporations: international investments



# HOW TO HIRE MY FIRST EMPLOYEE IN COLOMBIA

## MAIN LEGAL STEPS TO FOLLOW TO HIRE A FIRST EMPLOYEE

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Once the company has settle down, it is imperative to follow throw the local labor law, between the requirements:

- Contribution to the social security system
- Have a contract (shall be verbal or written) where you established the obligations between the parties
- Follow the special labor local law

## DESIGN AND CONTENTS OF AN EMPLOYMENT CONTRACT

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We work directly with a team of lawyers that would be available to produce any employment contract required, according to your necessities and business activity.

## CAN SOMEBODY DO BUSINESS FOR ME AND NOT BE AN EMPLOYEE?

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Yes, Colombia has multiples contracts to hire people without the necessity of being an employee. Usually they are classified as independent workers.



## HOW TO READ FINANCIAL STATEMENTS IN COLOMBIA

### Separate Report – Statements of financial position

For the years ended December 31, 2015, 2014, and on January 1, 2014 - ESFA (values expressed in thousands of Colombian pesos)

ASSETS	Notes	2015	2014	01/01/2014
<b>CURRENT ASSETS</b>				
Cash and cash equivalents	7	11.647.043	24.350.969	15.938.653
Commercial Accounts Receivable & other current Accounts Receivable	8	92.082.306	91.339.028	74.644.869
Other non-financial assets	9	9.922.085	430.283	2.641.563
Current inventories	10	6.461.463	5.345.522	3.862.670
Current tax assets	11	4.646.091	12.868.867	18.152.112
<b>TOTAL CURRENT ASSETS</b>		<b>124.758.989</b>	<b>134.334.669</b>	<b>115.239.868</b>
<b>NON-CURRENT ASSETS</b>				
Investments in associates	12	10.687.426	10.332.630	5.385.952
Property, plant and equipment	13	52.985.478	75.513.602	79.696.049
Other intangible assets difference in capital gains tax	14	2.790.890	3.083.086	3.404.860
Deferred tax assets	23	5.813.757	4.157.486	2.572.152
Other non-financial assets – non-current	15	478.676	171.322	0
<b>TOTAL CURRENT ASSETS</b>		<b>72.756.227</b>	<b>93.258.127</b>	<b>91.059.014</b>
<b>TOTAL ASSETS</b>		<b>197.515.216</b>	<b>227.592.796</b>	<b>206.298.882</b>
<b>EQUITY AND LIABILITIES</b>				
<b>CURRENT LIABILITIES</b>				
Trade Accounts Payable and other Accounts Payable	17	32.612.736	33.995.875	22.552.049
Financial liabilities	18	45.617.038	22.478.212	6.956.723
Other current non-financial liabilities	19	3.350.721	11.260.166	2.490.228
Current tax liabilities	20	5.792.099	13.115.056	16.451.244
Benefits/Profits to employees	21	2.887.740	6.346.480	7.864.886
Estimated liabilities and provisions	22	-	966.213	0
<b>TOTAL CURRENT LIABILITIES</b>		<b>90.260.334</b>	<b>88.162.002</b>	<b>56.315.129</b>
<b>NON-CURRENT LIABILITIES</b>				
Non-current financial liabilities	18	-	40.490.858	60.627.603
Deferred tax liabilities	23	12.524.612	14.260.098	3.291.012
<b>TOTAL NON-CURRENT LIABILITIES</b>		<b>12.524.612</b>	<b>54.750.956</b>	<b>63.918.615</b>
<b>TOTAL LIABILITY</b>		<b>102.784.946</b>	<b>142.912.958</b>	<b>120.233.744</b>
<b>EQUITY ATTRIBUTABLE TO OWNERS</b>				
Issued Capital	24	35.321.924	35.321.924	35.322.840
Retained earnings – convergence effect		26.253.044	26.253.044	26.253.044
Retained earnings – result for the financial year		10.174.280	32.203	(0)
Retained earnings – result previous financial year		(43.300.889)	(42.433.644)	(41.956.327)
Premium reserve		48.268.482	48.268.482	48.268.482
Other comprehensive income		(121.939)	(897.540)	-
Other reserves		18.135.369	18.135.369	18.177.099
<b>TOTAL EQUITY</b>		<b>94.730.270</b>	<b>84.679.838</b>	<b>86.065.138</b>
<b>TOTAL EQUITY AND LIABILITIES</b>		<b>197.515.216</b>	<b>227.592.796</b>	<b>206.298.882</b>

The accompanying notes are an integral part of these Financial Statements.

Legal representative

Certified Public Accountant

Auditor





## Separate report - Statements of comprehensive income

For the years ended 31 December 2015 and 2014 (values expressed in thousands of Colombian pesos)

	Notes	2015	2014
<b>PROFIT OR LOSS FOR THE PERIOD</b>			
Revenues from ordinary activities	25	189.542.974	212.713.286
Cost of sales	26	(164.621.649)	(172.547.336)
<b>GROSS PROFIT</b>		<b>24.921.325</b>	<b>40.165.950</b>
Others revenues	25	8.230.394	6.443.304
Administrative expenditures	27	(17.134.090)	(22.550.669)
Other expenses	28	(8.951.398)	(7.692.836)
Other profit (loss)		-	-
<b>GAIN (LOSS) FROM ORDINARY ACTIVITIES</b>		<b>7.066.231</b>	<b>16.365.749</b>
Financial incomes	25	32.066.226	15.772.079
Financial costs	29	(22.398.951)	(17.239.774)
<b>GAIN (LOSS) BEFORE TAXES</b>		<b>16.733.505</b>	<b>14.898.054</b>
Deferred Tax	23	3.391.757	(10.102.612)
Income (expense) by Tax	20	(9.950.983)	(4.763.239)
<b>GAIN (LOSS)</b>		<b>10.174.280</b>	<b>32.203</b>
<b>COMPONENTS OF OTHER COMPREHENSIVE INCOME THAT WILL BE RECLASSIFIED TO TAX NET PROFIT RESULT</b>			
<b>EXCHANGE DIFFERENCE FROM CONVERSION</b>			
Gains (losses) from Exchange conversion, net of tax		(121.939)	(897.540)
Reclassification adjustment on Exchange difference from conversion, net of taxes		-	-
<b>OTHER COMPREHENSIVE INCOME, NET OF TAXES, DIFFERENCE ARISING FROM CONVERSION</b>		<b>(121.939)</b>	<b>(897.540)</b>
<b>CHANGE IN VALUE FROM THE INTEREST EXCHANGE RATE SPREAD IN FOREIGN CURRENCY</b>			
Gain (loss) by changes in the value from the interest Exchange rate in foreign currency, net of taxes		-	-
Reclassification adjustments by changes in the value from the differential value from the Exchange rate in foreign currency, net of taxes		-	-
<b>OTHER COMPREHENSIVE INCOME, NET OF TAXES, CHANGES IN THE VALUE OF INTEREST – EXCHANGE RATE IN FOREIGN CURRENCY</b>		<b>-</b>	<b>-</b>
Participation from other comprehensive income of an associate of a venture accounted for, using the participation method which will be reclassified at net income recognized in income statement.		-	-
<b>TOTAL OTHER COMPREHENSIVE INCOME TO BE RECLASSIFIED AT NET INCOME RECOGNIZED IN INCOME STATEMENT</b>		<b>-</b>	<b>-</b>
<b>Total other comprehensive income</b>		<b>(121.939)</b>	<b>(897.540)</b>
<b>TOTAL COMPREHENSIVE INCOME</b>		<b>10.052.341</b>	<b>(865.337)</b>

The accompanying notes are an integral part of these Financial Statements.

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## Separate Report - Statements of Changes in Equity

For the years ended December 31, 2015 and 2014 (values expressed in thousands of Colombian pesos)

	Notes	Share Capital	Premium Reserve	Retained Earnings- Convergence Effect	Retained Earnings- Profit or loss for the previous period	Retained Earnings - Profit or Loss for the period	Other Comprehensive Income - ORI	Other Reserves	Total IAS
<b>Balance as of Jan 1, 2014</b>		35.322.840	48.268.482	26.253.044	-48.214.896	6.258.569	0	18.177.099	86.065.138
Dividends		0	0	0	0	0	0	0	0
Restatement IFRS		-916	0	0	-497.557	0	0	-41.730	(540.203)
Income for the year		0	0	0	0	32.203	0	0	32.203
Transfer Financial Return	20	0	0	0	6.278.809	-6.258.569	0	0	(897.540)
Other Comprehensive Return		0	0	0	0	0	-897.540	0	(897.540)
<b>Total comprehensive return</b>		(916)	0	0	5.781.252	-6.226.366	-897.540	-41.730	(1.405.540)
<b>Balances as of December 31, 2014</b>		<b>35.321.924</b>	<b>48.268.482</b>	<b>26.253.044</b>	<b>(42.433.644)</b>	<b>32.203</b>	<b>(897.540)</b>	<b>18.135.369</b>	<b>84.679.838</b>
<b>Balance as of Jan 1, 2015</b>									
Dividends		0	0	0	0	0	0	0	0
Restatement IFRS	20	0	0	0	0	0	0	0	-
Profit year	21	0	0	0	0	10.174.280	897.540	0	11.071.820
Transfer financial return	20	0	0	0	-867.245	-32.203	0	0	-899.447
Other comprehensive return		0	0	0	0	0	-121.939	0	(121.939)
<b>Total Comprehensive return</b>		0	0	0	-867.245	10.142.077	775.601	0	10.050.434
<b>Balances as of December 31, 2015</b>		<b>35.321.924</b>	<b>48.268.482</b>	<b>26.253.044</b>	<b>(43.300.889)</b>	<b>10.174.280</b>	<b>(121.939)</b>	<b>18.135.369</b>	<b>94.730.270</b>

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## Separate Report - Statements of Cash Flow

For the years ended December 31, 2015 and 2014 - ESFA (values expressed in thousands of Colombian pesos)

CASH FLOWS FROM YEAR OPERATIONS	NOTE	2015	2014
<b>COMPREHENSIVE INCOME FOR THE YEAR</b>		<b>10.052.341</b>	<b>(865.337)</b>
<b>MORE (LESS) INCOME (EXPENSES) NOT AFFECTING WORKING CAPITAL</b>			
Depreciation		6.727.040	6.975.659
Amortization of other assets		741.619	590.632
Participation Method		-354.796	0
Deterioration of inventory		468.780	0
Provision for income tax and complementary		5.555.601	4.930.763
Cost recovery		-3.235.274	-2.318.729
Lost sales or withdrawal in property, plant and equipment, inventories and other assets		-761.119	298.971
Other movement in equity that does not affect the working capital		-1.908	-519.964
<b>Cash generated into the operation</b>		<b>19.192.286</b>	<b>9.091.995</b>
<b>NET CHANGES IN ASSETS AND LIABILITIES</b>			
Commercial accounts receivable and other current accounts receivable		-743.278	-16.694.159
Current inventories		-1.584.721	-1.482.852
Current tax assets	11	8.222.775	5.283.246
Profit from the sales of fixed assets		0	0
Other non-financial current assets		-9.491.802	2.211.279
Commercial Accounts Payable and other Accounts Payable		-1.383.139	11.443.826
Current tax liabilities		-12.878.558	-8.266.951
Labor liabilities		-3.458.739	-1.518.406
Financial liabilities		23.138.826	15.521.490
Other non-financial current liabilities		-4.674.171	11.088.669
Estimated current liabilities and provisions		-966.214	966.213
<b>Cash provided (used) by operating activities</b>		<b>15.373.264</b>	<b>27.644.350</b>
<b>CASH FLOWS BY INVESTMENT ACTIVITIES</b>			
Increase of intangibles		-449.424	-268.858
Increase of investments		0	-4.946.678
Tax Assets		-1.656.270	-1.585.334
Other assets – non-financial, non-current		-307.354	-171.322
Commercial current accounts receivable and other non-current accounts receivable		0	0
Property, plant and equipment acquisitions		16.562.203	-3.092.184
Deferred income tax liability		-1.735.487	10.969.087
<b>Cash provided (used) by investing activities</b>		<b>12.413.668</b>	<b>904.711</b>
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>			
Non-current financial liabilities		-40.490.858	-20.136.745
<b>Cash provided from financing activities</b>		<b>-40.490.858</b>	<b>-20.136.745</b>
Cash increase		-12.703.926	8.412.316
Cash from the beginning of the year	7	24.350.969	15.938.653
<b>Cash at year-end</b>	7	<b>11.647.043</b>	<b>24.350.969</b>

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