

BRANCH OFFICES IN COLOMBIA

Article 469 of the Colombian Commercial Code states, "**Foreign companies are companies that are established in accordance with the laws of another country and their headquarters are abroad...**". Consequently, there are two premises to be considered a branch office: **i) it has been established under the laws of another country, and ii) it has its main headquarters abroad.**

Although Colombian law does not define a foreign company branch, the Commercial Code provides that if a foreign company wishes to carry out business in Colombia on a permanent basis, it must establish a branch with offices in the country.

By legal definition of a domestic branch, which applies to a foreign branch office, the law states that: "**----- business establishments opened by a company within or outside its territory to undertake any of the company's commercial activities, managed by agents with authority to represent the company ...**".

Thus, a foreign company branch should be viewed as a business establishment opened by a foreign company in Colombia to carry out permanent activities. The foreign company branch is not an autonomous legal entity different from the parent company; therefore, it does not enjoy independent legal status distinct from the foreign company.

Furthermore, for a foreign company to begin conducting business in Colombia on a permanent basis, it must establish a branch with offices in the country, as provided in the Commercial Code. Hence, it must be determined whether a foreign company's activity in the country is a "permanent activity" that requires it to establish a branch.

The Colombian Commercial Code does not define "permanent activity," and only sets forth broad some examples of activities that are considered "permanent":

- 1. Opening commercial establishments or business offices within Colombian territory, even if solely to provide technical or consulting services.**
- 2. Participation as a contractor in projects or the provision of services**
- 3. Participation in any way in activities related to the management or investment of funds obtained from the public (private savings)**
- 4. Participation in any of the segments or services of the mining industry**

5. Obtaining a “concession” from the Colombian Government, the assignment of it, or participation in the exploitation of the same in any manner.

6. Conducting shareholder, member, or board of directors meetings, or management or administration taking place in Colombian territory.

However, these provisions must be applied to each specific case according to the circumstances surrounding those activities (i.e., their nature, frequency, or duration) to determine conclusively whether they are permanent or transitory.

Since establishing a branch office in Colombia does not create a separate entity and Colombian Law requires that a foreign company’s experience, financial, legal, and organizational capacities must be proven through its registration in the Chamber of Commerce, I recommend creating a foreign branch office.

In accordance with Colombian Commercial law, the creation of the branch office must be carried out by executing a public deed, in a Notary, in the domicile chosen for the branch with the following documents from the :

- 1. The foundation documents of the foreign company.**
- 2. The company’s bylaws**
- 3. The Minute of the Board of Directors or the Organ of the foreign company contains the resolution which includes the decision to create the branch office in Colombia and authorize its opening. Said minute must include the following:**
 - **NAME:** As such, the branch does not have a distinct legal existence from its foreign parent company; it is given the same name as its parent, with the addition of the expression “Sucursal Colombia” (Colombia Branch).
 - **ASSIGNED CAPITAL:** Branches must have a certain amount of capital assigned to them by their home offices which, in essence, serves as a general guarantee for any liabilities incurred in Colombia. In addition, the assigned capital (stated in the branch’s documents of incorporation) must be fully paid in at the time of the branch’s establishment. The foreign company may also provide its branch with supplementary capital to the assigned capital (balance sheet account for the available assets, foreign currency, or services that remain in the current accounts of the home office during the year corresponding

to the earnings or contributions). The practical difference between the assigned capital and the supplementary capital is that if the home office decides to increase the capital assigned to the branch, it must amend the opening certificate, have it formalized through a public deed, and register it with the competent Chamber of Commerce. These steps are not necessary for supplementary capital.

- **APPOINTMENT OF A GENERAL AGENT AND A STATUTORY AUDITOR:** The branch must appoint a general agent to represent the branch, managing the establishment and representing the foreign company in transactions with third parties. Additionally, the law provides that branches of foreign companies are required to appoint a statutory auditor, who must fulfill the same functions as those appointed by corporations.

Decisions

Except for the general agent's authority to make administrative and ordinary course business-type decisions, decision-making authority rests with the appropriate corporate body at the home office in accordance with applicable corporate laws in the home office country of origin.

Special causes for winding up

Given that the branch depends on the home office, the causes for liquidating branches are the same as those for liquidating the home office.

Moreover, branches are subject to the general causes for the dissolution of Colombian companies compatible with their legal nature because of the assimilation between branches and companies.

4. Home Office's certification of good standing
5. Certifications issued by the Home Office prove the authority of their legal representatives.
6. The notary public will issue copies of the public deed containing the above documents.

One copy of the public deed must be filed with the Chamber of Commerce located in the branch's domicile. The Chamber of Commerce is responsible for supervising the registration of branches in Colombia.

At any person's request, the Chamber of Commerce will provide certifications that prove the branch's existence and legal representation, as well as information such as its name, corporate purpose, domicile, assigned capital, and the names of its legal representatives and financial auditors.

Finally, the foreign company branch must be registered with the National Tax and Customs Authority (DIAN) by filing a Unique Tax Registration Form (RUT) to receive a Tax Identification Number (NIT).

Once these procedures have been completed, the branch may initiate its activities in Colombia.

Profits

All profits generated by the branch can be transferred abroad upon compliance with specific reporting requirements established by law concerning foreign exchange transactions in Colombia.