



SAS

Simplified Stock Corporation

Vienna, Jan. 16, 2013



Francisco Reyes Villamizar

CONTENTS



Common Problems in Company Law
in Developing Jurisdictions

The Success of the Colombian SAS

Basic features of Colombian and OAS laws

Conclusions



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Common Problems in Company Law in Developing Jurisdictions



- Codification of Company Law and other Rules
- Private Law Dichotomy
- Regulatory Nature of Company Law Rules
- Multiple Member Ownership and Other Formalities



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Common Problems in Company Law in Developing Jurisdictions



- ⦿ Limited Enforceability of Shareholder Agreements
- ⦿ Annullment of Company Law Contracts and Clauses
- ⦿ Several Exceptions to Limited Liability
- ⦿ Obsolescence of Company Registries



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Common Problems in Company Law in Developing Jurisdictions



- ⦿ Excessive Incorporation Formalities
- ⦿ Negative Impact of Ultra vires doctrine
- ⦿ Inefficient enforcement mechanisms



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OAS LEGAL COMMITTEE

April 2011



“The lack of a progressive Company Law Framework that allows for the expedited formation of business entities is a great obstacle to economic development”



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OAS LEGAL COMMITTEE

April 2011



“The Colombian Law on Simplified Stock Corporations (SAS) is the first and most succesful effort in Latin America to correct this situation by demading only those formalities that can have a functional and beneficial effect on the market”



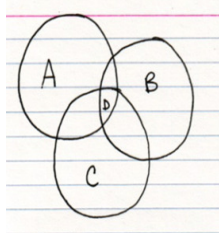
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What's the purpose of Hybrid Business Entities?



They allow to resolve four basic problems:

1. Allocation of Control
2. Risk of Loss
3. Economic Performance
4. Duration

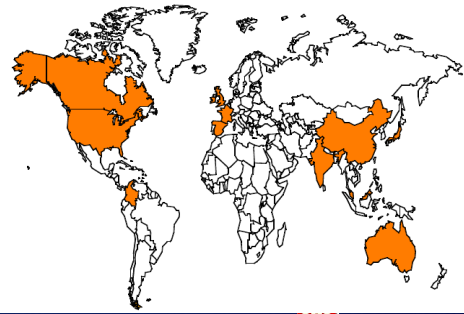


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The Rise of Hybrid Business Forms



El auge de los tipos societarios híbridos



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Statistical Analysis



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Data on SAS Dec. 2008



December	160	7.42%
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Data SAS, 2009



JANUARY	293	11%
FEBRUARY	629	19.8%
MARCH	1019	33.8%
APRIL	1184	39.4%
MAY	1424	47.6%
JUNE	1544	53.6%
JULY	2052	59.4%
AUGUST	1773	62.4%
SEPTEMBER	2316	66.5%
OCTOBER	2183	67.8%
NOVEMBER	1872	70.2%
DECEMBER	1551	74.2%

Data SAS, 2010



JANUARY	2422	70%
FEBRUARY	3091	71%
MARCH	3364	74%
APRIL	2817	74%
MAY	2879	77%
JUNE	3069	79%
JULY	2923	78%
AUGUST	3448	81%
SEPTEMBER	3734	82%
OCTOBER	3414	83%
NOVEMBER	3275	84%
DECEMBER	2935	82%

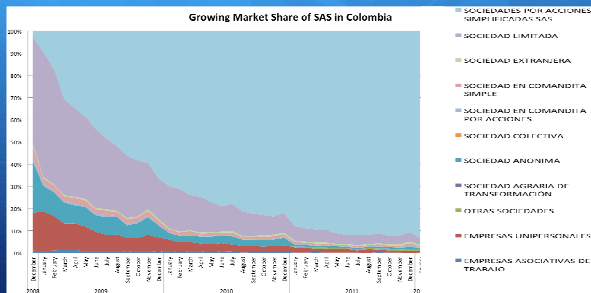
Data SAS, 2011



JANUARY	4.196	88%
FEBRUARY	4.759	89%
MARCH	5.604	89%
APRIL	4.680	90%
MAY	5.109	91%
JUNE	4.943	92%
JULY	4.538	92%
AUGUST	4.618	92%
SEPTEMBER	4.717	91%
OCTOBER	4.073	92%
NOVEMBER	4.160	92%
DECEMBER	4.204	93%

Evolution of Colombian SAS

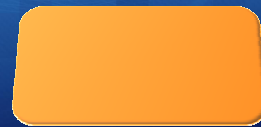
Sociedad por Acciones Simplificada - Colombia



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NUMBER OF SAS AS OF NOVEMBER 2012

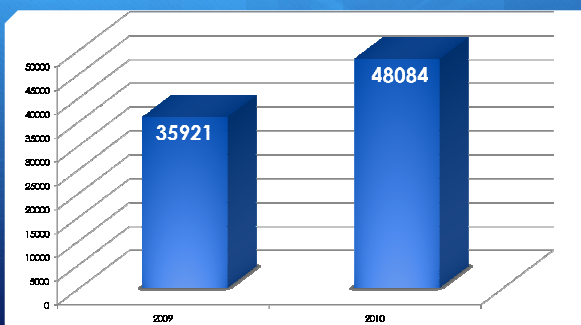
181.742





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Growth in formalización of business entities between 2009 y 2010 (25.3%)



ELECTRONIC INCORPORATION - BOGOTA

EB CAMARA
CHAMBERA DE COMERCIO

Quénes somos • English • FAQ • Sugerencias, quejas y felicitaciones • Contáctenos • Mapa del sitio

INICIO / Servicios en línea / Selección de procesos

Consulte

- Instructivos del servicio
- Órdenes de compra
- Consulta de formularios

Soporte y ayuda en línea

- Línea de Respuesta Inmediata 800010
- Chat
- Llamada virtual

Medios de pago

Transferencia Bancaria • Tarjetas de Crédito • En puntos de venta y supermercados

Constitución virtual de Sociedades por Acciones Simplificadas (SAS)

Maria Fernanda Diago
Identificación: 1129576216
e-Mail: mafiadiago@hotmail.com

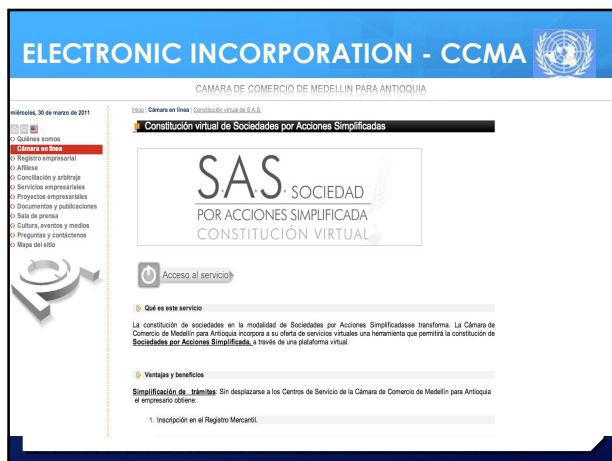
Para crear una nueva solicitud de inscripción virtual de SAS, por favor haga clic en la opción "Crear nueva solicitud".

Si, por el contrario, usted tiene solicitudes pendientes por terminar, haga clic sobre la respectiva solicitud en el listado que aparece a continuación para retomar el proceso.

Listado solicitudes activas

Id Solicitud	Razón Social	Fecha Inicio
3333	Sin datos en la carátula	10/14/2010 5:11:37 PM

[Regresar](#) [Crear nueva solicitud](#)



SUMMARY

- ✓ Today there are more than 180,000 SAS in Colombia
- ✓ SAS market share is above 95%
- ✓ 20% of large corporations are SAS
- ✓ In 2012 the average SAS inc. was above 5,000 per month

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Basic features of Colombian and OAS laws on SAS

1. **Redefining the Concept of Business “Associations”:**
 - a. **Concerning Multiple Member Ownership**
 - b. **With Respect to the participation of Persons**
 - c. **Regarding the Distribution of Profits and Allocation of Losses**

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[illegible]

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Basic features of Colombian and OAS laws on SAS



6. Enhanced Dispute Resolution Mechanisms

Standards for:

Abuse of Right

Piercing the Veil

Fiduciary Duties of D & O



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7. Unrestricted purpose clause and perpetuity of existence



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8. Freedom to define internal structure



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9. New Rules on Capital, Classes of Stock and Share Transfer Restrictions



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10. Special rules on restructuring transactions



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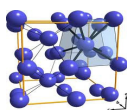


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Proposed legislative structure



1. Independent statute or law
2. Default provisions
3. Procedural and substantive rules
4. Adaptation to local legal environment



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Final Notes



- ✓ The easy adaptation of hybrid business forms facilitates their transplant into any legal system
- ✓ The Colombian SAS shows that it is viable to undertake a material change in a legal system through comparatively simple reforms
- ✓ The impact in the economic system of such a change can be measured empirically



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Final Notes



- ✓ **The international expansion of these entities is a good evidence that most criticisms to hybrid forms are unsubstantiated**
- ✓ **It is foreseeable that in the future HBF will play an important role in most economic systems**



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Many Thanks

societario@gmail.com