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**TABLE OF CONTENTS**



## A full list of firms and representatives can be found on Page 192.

# ANGUILLA

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**Introduction: Purpose of the Narrative**

The purpose of this narrative is to provide a comprehensive overview of doing business in Anguilla. This includes information on the legal framework, company formation process, business operation, and the advantages of establishing a company in this jurisdiction. Additionally, the guide also highlights the promising avenues for Anguilla through its ownership of the .AI domain, showcasing exciting new opportunities and ventures facilitated by this unique digital asset.

**Overview of Anguilla**

Anguilla, a British Overseas Territory located in the Caribbean Sea, offers a favourable business environment characterised by modern infrastructure, a stable legal framework, and attractive tax regime.

1. **Country Overview**

   **Population:** As of 2023, Anguilla's population is approximately 15,000 residents.
   **Location:** Anguilla is situated in the Caribbean Sea, east of Puerto Rico and north of Saint Martin.
   **Climate and Ecosystems:** Anguilla experiences a tropical climate with a dry season from December to May and a rainy/hurricane season from June to November. Its ecosystems include coral reefs and sandy beaches.
   **Infrastructure:** Anguilla has a developing infrastructure with modern amenities such as telecommunications and essential utilities. The island is enhancing its accessibility with the opening of a brand-new ferry terminal in 2023 and the complete redevelopment and expansion of its international airport, designed to significantly increase capacity and offer expanded travel options to Anguilla.
   **Ports and Waterways:** The principal port in Anguilla is the Blowing Point ferry terminal, facilitating maritime transportation to and from neighbouring islands.
   **Airports:** Clayton J. Lloyd International Airport serves Anguilla, providing regional and international flight connections.
   **Water and Sanitation:** Anguilla maintains a reliable water supply system supported by desalination plants alongside effective sanitation infrastructure.
   **Electricity:** Electricity in Anguilla is supplied by the Anguilla Electricity Company (ANGLEC), responsible for the generation and distribution of power throughout the island.
   **Tourism:** Tourism is a pivotal sector in Anguilla's economy, attracting visitors with its pristine beaches, luxury resorts, and vibrant cultural offerings.

2. **Understanding the Legal Framework of Anguilla**

   **2.1 Legal System**

   Anguilla's legal system is based on English common law, supplemented by local statutes. The system is administered by the Magistrate's Court, the High Court, and the Court of Appeal of the Eastern Caribbean Supreme Court. There is a final right of appeal to the Privy Council in the UK. English case law precedents and those of other British Commonwealth countries are persuasive, providing a predictable and familiar legal environment for investors and businesses.

   **2.2 Anguilla Business Companies Act 2022**

   The Anguilla Business Companies Act 2022 represents a pivotal reform in Anguilla's corporate legislation, providing a comprehensive framework for the incorporation, operation, and regulation of businesses. This Act replaced the previous Companies Act, International Business Companies Act, and Protected Cell Companies Act, consolidating their provisions into a single, streamlined piece of legislation. The Act simplifies the incorporation process, enhances corporate governance, and ensures compliance with international standards, making Anguilla an attractive destination for global investors. By incorporating modern regulatory practices, the Act supports transparency, accountability, and effective corporate management, thereby reinforcing Anguilla's reputation as a leading jurisdiction for business operations.

**2.3 Commercial registry Electronic System (CRES)**

**Online Computerized Registration System**

In April 2022, Anguilla introduced the Commercial Registration Electronic System (CRES), a modern and customized registration platform. CRES includes the Customer Due Diligence Register, Beneficial Ownership Register, and Commercial Registry, enabling the reporting of entities engaged in relevant activities. This system supports a fully electronic company incorporation process, allowing businesses to be established from anywhere in the world, 24/7, throughout the year. CRES significantly streamlines the registration process, making it more efficient and accessible for global investors.

**Efficiency and Benefits**

The online platform facilitates quick operations, with companies typically becoming functional within 48 hours of submission. Utilizing the CRES system, Anguilla has modernized company formation, ensuring a fast and user-friendly registration experience. This system reduces administrative burdens and provides immediate access to corporate records.

## 3. Establishing a Business in Anguilla

**3.1 Choosing a Corporate Structure**

**Anguilla Business Companies:** These companies conduct business within Anguilla.
**Limited Liability Companies (LLCs):** A flexible structure often used for both domestic and international business.
**Limited Partnerships (LPs):** Consist of general partners (with unlimited liability) and limited partners (with liability limited to their investment).
**Non-Profit Organizations (NPOs):** Entities established for charitable, educational, religious, or other non-profit purposes.

**3.2 Company Formation Process**

**Initial Steps**

a) Choose the Type of Company: Decide on the type of company to form (e.g., ABCs, LLCs, LPs)
b) Select a Company Name: Choose a unique name and check its availability with the Anguilla Commercial Registry (ACR).

**Necessary Documents**

- Articles of Incorporation;
- By-Laws or Operating Agreement;
- Declaration of Compliance;
- Directors and Shareholders Information.

**Post-Incorporation Requirements**

- Hold an organisational meeting;
- Register for applicable taxes;
- Open a corporate bank account;
- Maintain annual compliance by filing necessary returns and paying annual fees.

**3.3 Advantages of Forming a Company in Anguilla**

**Tax Benefits**

Companies incorporated in Anguilla pay no income tax, capital gains tax, inheritance tax, corporate tax, or any other direct tax. Instead, Anguilla has implemented a Goods and Services Tax (GST) of 13% on all goods and services within the within the island. The Registered Agent will notify clients when they reach the threshold at which GST becomes payable on invoices.

**Flexibility**

The jurisdiction offers flexible corporate structures and minimal reporting requirements, allowing businesses to operate with greater freedom and adaptability.

### 3.4 Operating a Business

**Opening a Corporate Bank Account**

Prepare incorporation documents and apply for a corporate account at a local bank or through online platforms.

**Reporting Requirements**

Maintain financial records, hold annual general meetings, submit annual reports, and update business licenses annually.

## 4. Compliance and Legal Considerations

### 4.1 Director and Shareholder Requirements

ABCs require at least one director and one shareholder, who can be individuals or corporate entities. There are no residency requirements for directors or shareholders, providing flexibility in the management structure.

### 4.2 Maintaining a Registered Office and Agent

All companies must maintain a registered office and appoint a registered agent in Anguilla. The registered office serves as the official address for legal documents, and the agent facilitates communication with regulatory authorities. A registered agent assists in organising and documenting board meetings, resolutions, and other corporate governance matters. They help maintain corporate records, including minutes of meetings, share registers, and other essential documents required by law. Businesses in Anguilla must file annual returns and other statutory documents. A registered agent ensures these filings are done accurately and on time, avoiding penalties. Anguilla has stringent anti-money laundering (AML) regulations. A registered agent ensures that your business adheres to these laws, which is crucial for maintaining credibility and avoiding legal issues. Companies must pay registration fees, annual renewal fees, and any applicable service fees. Timely payment of these fees ensures continuous operation and compliance with legal requirements.

### 4.3 Obtaining a Business License

**Application Process**

Under the Licensing of a Business Act 2021, obtaining a business license involves several steps. Firstly, individuals or entities must identify the specific business activities they intend to undertake, ensuring alignment with the categories outlined in the Act. Next, applicants need to complete the prescribed application form, providing detailed information about their business, including its nature, location, and ownership structure. Supporting documents such as a business plan, proof of identity, and proof of business premises may be required. Upon submission of the application and payment of applicable fees, the licensing authority will review the submission. If approved, a business license will be issued, outlining the terms and conditions under which the business may operate. Compliance with renewal requirements is typically necessary to maintain the license validity.

**Fees and Validity**

Pay the applicable fees and renew the license annually. The fees vary depending on the type and size of the business. Timely renewal of the license is essential to maintain legal operation.

## 5. Real Estate

### 5.1 Legal Restrictions on Foreign Investors

Foreign investors must obtain an Alien Land Holding License to purchase property in Anguilla. This license regulates foreign ownership and ensures compliance with local laws.

### 5.2 Stamp Duty Payable on Transfer

A 5% stamp duty on transfer of land (or undivided share in land) and registration fees are customarily payable by a purchaser. For a foreign purchaser, an Alien Land Holding Licence is required from the government to legally acquire property which attracts an additional stamp duty of 12.5%. If the land purchased by a non-Anguillian is undeveloped, a 10% refundable deposit is payable by the purchaser pending completion of construction within a specified time noted on the Alien Land Holding Licence.

## 6. Tax Matters

### 6.1 Goods and Services Tax (GST)

Anguilla imposes a Goods and Services Tax (GST) on taxable supplies of goods and services. Registered businesses are responsible for collecting GST from their customers at a rate of 13%. They must file periodic GST returns, reporting collected GST and deducting any GST paid on business expenses.

### 6.2 Merchant and Importer Responsibilities

Merchants and importers operating in Anguilla must comply with customs regulations and pay applicable import duties on goods brought into the territory. Adherence to these regulations ensures smooth import operations and mitigates the risk of legal penalties.

## 7. Labour

Understanding the Anguilla Labour Code Act, Revised Statutes of Anguilla, Chapter L65, is crucial for businesses operating in Anguilla. This legislation sets out the framework for employment practices on the island, covering essential aspects such as employment contracts, working conditions, wages, holidays, and termination procedures. By complying with the provisions of this Act, businesses can ensure fair treatment of their workforce and mitigate legal risks associated with employment practices. Comprehending these regulations not only fosters a harmonious work environment but also contributes to the overall success and sustainability of business operations in Anguilla.

## 8. .ai domain and Governance in Anguilla

### 8.1 Introduction to the .ai Domain

Anguilla, a British Overseas Territory in the Caribbean, is known for its pristine beaches and tourism industry. However, in recent years, it has also gained prominence in the digital world through its country code domain ai. The .ai domain, initially designated for Anguilla, has become highly sought after by tech companies and artificial intelligence (AI) ventures due to its convenient abbreviation for AI.

### 8.2 Governance Policies

**Importance and Popularity**

The .ai domain has emerged as a coveted digital real estate for businesses involved in AI research, development, and commercialization. Companies and startups worldwide seek .ai domains to signify their focus on artificial intelligence, lending a modern and tech-savvy identity to their brands. This surge in demand has turned the .ai domain into a lucrative asset for Anguilla, contributing significantly to its economy.

**Governance and Management**

The management of the .ai domain is overseen by the Government of Anguilla. The responsibility for its administration has been delegated to the Anguilla Telecommunications and Regulatory Commission (ATRC), which operates under the Ministry of Infrastructure, Communications, Utilities, and Housing. The ATRC ensures that the registration and use of .ai domains comply with both local and international standards.

**Economic Impact**

The popularity of the .ai domain has had a positive economic impact on Anguilla. Revenues generated from domain registrations provide a steady stream of income, which supports local development initiatives and enhances the island's technological infrastructure. This digital asset has become a vital part of Anguilla's diversification strategy, reducing its economic dependency on tourism alone.

**Future Prospects**

The .ai domain is poised to remain a valuable digital resource as the field of artificial intelligence continues to expand. With ongoing advancements in AI technology, the demand for .ai domains is expected to grow. Anguilla's proactive management and promotion of this domain can further solidify its position as a key player in the global digital economy.

## 9. Conclusion

### 9.1 Summary of Benefits

Anguilla offers a favourable business environment with tax benefits, confidentiality, and flexible corporate structures. The jurisdiction's modern infrastructure, legal framework, and supportive government policies make it an attractive destination for global investors and entrepreneurs.

With ongoing investments in infrastructure, technology, and governance, Anguilla is poised for continued growth and development. The integration of the .ai domain and other innovations will further enhance the business landscape, making Anguilla a premier choice for international business operations.

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# ARGENTINA


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## 1. Foreign Investment

The legal regime for foreign investment is governed by the Foreign Investment Act N° 21.382 *(Ley de Inversiones Extranjeras)* enacted in 1976 and amended in 1993. For the purposes of this law, there is no distinction between national and foreign investors, irrespective of the type of business they get involved in. Foreign investors have the same rights and obligations as local investors under the parameters stated by the National Constitution regarding the development of lawful economic activities in Argentina.

There are no limitations on the participating percentage of foreign ownership in a local entity regardless of the type of vehicle chosen.

Additionally, foreign investors have the right to repatriate their investments and to remit profits abroad at any time. In this connection, it must be noted that the capital repatriation is subject to the compliance of certain conditions set out in the Central Bank foreign exchange regulations. Please refer to Chapter 2 to this effect.

All guarantees available under the Foreign Investment Act N° 21.382 have been reinforced by several Bilateral Investment Treaties entered into by Argentina with third countries.

Argentina is a member of the Multilateral Investment Guarantee Agency, and the International Centre for the Settlement of Investment Disputes.

Treaties in force entered into by Argentina with third countries for the avoidance of double taxation are developed later in the Tax Matters section.

As explained in Chapter 2, the Argentine government has recently launched the Large Investments Incentives Regime (RIGI), creating a stimulus regime for investments over 200 million US dollars.

## 2. Foreign Trade

Overview of Foreign Trade
Argentina has a diverse and robust foreign trade sector, heavily influenced by its rich natural resources and agricultural production. The country's major trade partners include Brazil, China, the United States, and the European Union. Key exports are agricultural products like soybeans and corn, while major imports include machinery, chemicals, and fuels. The country's trade landscape is shaped by its position as a leading exporter of agricultural commodities and its reliance on imports for industrial and consumer goods.

Argentina's primary exports are agricultural products, particularly soybeans, corn, and wheat. The exportation of mining materials has significantly increased during the last years. The country also exports significant quantities of beef, wine, and automotive products. The leading export destinations are Brazil, China, the European Union, and the United States. The agricultural sector plays a pivotal role in Argentina's economy, with soybeans being the most significant export, followed by cereals and livestock products. The country is also known for its high-quality wines, which have a growing market in North America and Europe.

Argentina imports a wide range of goods, with machinery, chemicals, and fuels being the most significant. The country relies on imports from Brazil, China, the United States, and Germany to support its industrial sector and consumer market. Machinery and equipment are crucial for the country's manufacturing and agricultural sectors, while chemicals and fuels are essential for various industries, including energy, pharmaceuticals, and agriculture. The import market dynamics are influenced by domestic demand, currency fluctuations, and trade policies.

Trade Regulations and Policies

Argentina's foreign trade is governed by a comprehensive legal framework designed to regulate and facilitate international trade. The Customs Code (Law 22.415) is the primary legislation governing customs procedures, including import and export regulations, duties, and penalties for violations. Argentina is a member of the WTO (World Trade Organization) and has incorporated several WTO rules into its domestic law, including those on anti-dumping and customs valuation. The Central Bank of Argentina (BCRA) imposes various controls to regulate the inflow and outflow of foreign currency, including requirements for exporters to repatriate and convert foreign currency earnings within a specified timeframe; and for importers to comply with certain conditions to be able to acquire foreign currency for payments. There are also several laws which provide incentives for exporters, including tax benefits and financial support to certain specific industries, among them the Knowledge Economy Promotion Regime for ICT companies.

Engaging in foreign trade in Argentina requires businesses to navigate specific procedures. Companies must register with the National Tax and Customs Administration (AFIP) and obtain a unique importer/exporter code. Essential documents for import and export transactions include commercial invoices, bills of lading, packing lists, certificates of origin, and any necessary licenses or permits, particularly for products such as pharmaceuticals, chemicals, and food items. Goods entering or leaving Argentina must be declared to customs, detailing the nature, value, and origin/destination of the products.

The Argentine government has implemented several reforms to make foreign trade more accessible and transparent. These efforts include simplifying procedures by reducing bureaucratic red tape and introducing online platforms for trade documentation, lowering export taxes to enhance competitiveness, and implementing measures to expedite the movement, release, and clearance of goods in line with the World Trade Organization's Trade Facilitation Agreement.
The BCRA plays a critical role in regulating foreign exchange transactions to maintain economic stability and control inflation. Argentina operates a managed float exchange rate system, where the BCRA intervenes in the foreign exchange market to stabilize the peso. The BCRA imposes various controls to regulate the inflow and outflow of foreign currency, and companies involved in foreign trade must comply with reporting requirements to the BCRA, detailing their foreign currency transactions. Recent BCRA regulations have been aimed at deregulating the foreign exchange market, boosting Argentina's trade and economy.

Trade Agreements

Argentina is a member of the Mercosur trade bloc, which includes Brazil, Paraguay, and Uruguay, with Venezuela currently suspended. Mercosur, established in 1991, aims to promote free trade and the fluid movement of goods, people, and currency. It represents one of the world's largest economic blocs and plays a crucial role in Argentina's trade policy. Through Mercosur, member countries benefit from reduced tariffs on goods traded within the bloc, fostering economic integration and cooperation. Additionally, Mercosur has trade agreements with various countries and regions, including the European Union (the latter though not yet in force), providing preferential access to these markets and enhancing trade opportunities for Argentine businesses.

Customs and Duties

The General Directorate of Customs oversees all customs operations in Argentina, ensuring compliance with regulations and facilitating international trade. Goods imported into the country are classified under the Harmonized System (HS) to determine applicable duties and taxes. Customs value goods based on their transaction value, which includes the cost of the goods, freight, insurance, and other expenses incurred up to the point of importation. Physical inspections and/or document verifications are conducted to ensure compliance with regulations.

Import duties in Argentina consist of several components, including customs duty, which is the primary import tax calculated based on the goods' HS classification and value. A statistical tax (approx. 3%) is levied on imports to fund customs operations, and imports are subject to Value Added Tax (VAT), generally at 21%, although some goods are taxed at reduced rates. Specific goods, such as alcohol and tobacco, may incur additional excise taxes. Certain goods and sectors benefit from duty exemptions or reductions, such as those imported into designated free trade zones, which are exempt from customs duties and taxes. Special import regimes, like the Temporary Import Regime, allow companies to import goods temporarily without paying duties, provided the goods are re-exported after processing. Under Mercosur and other trade agreements, preferential tariffs or duty-free access is granted to goods from member countries.

Challenges and Opportunities

Foreign trade in Argentina faces several challenges, including bureaucratic hurdles, fluctuating economic policies, and infrastructure limitations. Businesses often encounter delays and additional costs due to complex customs procedures and regulatory compliance. However, opportunities exist in sectors like agriculture, renewable energy, and technology, supported by government initiatives to boost trade. The Argentine government has recently launched the Large Investments Incentives Program (RIGI) creating a stimulus regime for investments over 200 million US dollars, which provides for tax, customs, and foreign exchange incentives. Under the RIGI, investors may freely import and export goods for the construction, operation, and development of their forestry, tourism, infrastructure, mining, iron and steel, technology, energy, and/or oil & gas projects, without material restrictions. Investors will not be required to acquire goods from domestic suppliers; will be allowed to build and operate new infrastructure for the transportation and processing of project materials, and will not be challenged on any previous long-term export authorizations granted. These initiatives aim to reduce barriers, improve infrastructure, and create a more business-friendly environment.

## 3. CORPORATE MATTERS

For purposes of conducting business in Argentina, a foreign investor may either incorporate a company under one of the types provided for by the Argentine Law of Companies ("ALC") – subsidiary- or it may set up a branch of its company and appoint a representative thereto.

Both legal structures (subsidiaries and branches) require that the foreign investor be registered with the Public Registry in Argentina (within the City of Buenos Aires, the Public Registry is the "*Inspección General de Justicia*" or "IGJ").

Branches are registered under Section 118 of the ACL and this registration implies the establishment of a permanent representation.

In the case of subsidiaries, to participate in the incorporation of a company in Argentina, foreign entities must be registered under Section 123 of the ACL. Unlike branches, such registration does not imply the setting of a branch or permanent establishment of such foreign entity nor that such registration converts such entity into an Argentine taxpayer.

Foreign investors normally elect to set up a subsidiary under the type of Corporations *("Sociedades Anónimas" or "S.A.")* or Limited Liability Companies ("*Sociedades de Responsabilidad Limitada" or "S.R.L."*), for in both cases the foreign investors liability is limited to the stock capital amount invested in the subsidiary.

The Corporation is the most used legal entity in Argentina for the development of all kinds of activities and businesses. For its establishment, at least one shareholder is required, though it may be incorporated as a sole-member company ("S.A.U."), in which case the corporation is subject to a more stringent surveillance by the Public Registry.

Limited liability companies are not as common and in general they are used for smaller business. However, they may be eligible for preferential tax treatment under U.S. federal tax rules as a "pass through" entity, and hence, limited liability companies have become an increasingly favoured corporate structure.

The Simplified Corporations (*Sociedades por Acciones Simplificadas* or "SAS" as per its acronym in Spanish) constitute a new type of company recently created by the Entrepreneur Capital Support Law Nº 27.349[1].("ECSL"). Even though they have been introduced with the aim of supporting entrepreneurship, the new company´s legal use and scope are not restricted to entrepreneurs, and due to its streamlined structure, SASs may be adopted by many companies of all sizes. In this type of companies, partners also limit their responsibility to the payment of the shares subscribed by them. Unlike the SA or SRL, this company can be set up in a simple, fast way saving costs and going through fewer procedures.

The ACL includes other types of companies which are not so common as in such entities, partners do not enjoy limited liability ("*sociedad colectiva"*, "*sociedad en comandita"*, among others.)

[1] Enacted on March 29th, 2017, and published in the Official Gazette on April 12nd, 2017

Foreign investors seldom prefer the branch structure, as unlike corporations, limited liability companies and SAS, branches do not enjoy limited liability. Branches are not considered to be a separate entity from their parent companies, and therefore, all acts carried out by the branches are considered as directly performed by the parent company itself. This implies that foreign entities are fully liable for all the transactions carried out by their branches.

Below, we describe the regime and main differences between a branch, a corporation, a limited liability company and a SAS.

**a) Branches:**
Registration:
It is necessary to register the Parent Company Articles of Incorporation and By-laws and the decision to register the branch in Argentina before the Public Registry. The branch will operate in accordance with the Parent Company By-laws. Within the City of Buenos Aires, a foreign corporation must file a registration application with the IGJ together with documents evidencing the existence and good standing of the foreign entity.

The foreign corporation must also provide written evidence of the disclosure of its shareholders and compliance with at least one of the following conditions outside Argentina: (i) the existence of one or more agencies, branches, or permanent representations; or (ii) the ownership of equity interests in other companies, which under Generally Accepted Accounting Principles would be considered non-current assets; or (iii) the ownership of fixed assets at its place of incorporation, the existence and value of which shall be proved as the equity interests mentioned in (ii) above.

Capital:
There is no required assignment of capital to the branch except for branches acting in certain industries such as banking or insurance. In these cases, a minimum capital should be assigned to the branch. The capital must be paid up in full at the time of incorporation.

Management:
The branch may be managed by one or more individuals appointed by the Board of Directors as legal representatives of the foreign corporation. The legal representatives of the Argentine branch shall be subject to the same standards and rules pertaining to liability as those applicable to managers of local companies. No meetings are required.

Books and records:
Only the Daily Journal and the Book of Inventory and Balance Sheets are required.

Financial statements, balance sheets and accounts:
Branches must keep separate accounting in Argentina. Revenues in Argentina must be consolidated in the parent company financial statements if the rules and regulations applicable to parent company require said consolidation. The financial statements of the branch must be submitted to the Public Registry.

Annual Information Regime
Within the City of Buenos Aires, foreign companies must comply with an annual reporting obligation with the IGJ by showing that their main activity is performed outside of Argentina.

**b) Corporations:**
Registration:
The incorporation of a corporation is made under the form of a *Sociedad Anónima* and requires filing a request with the Public Registry, including the name reservation and proposed articles of incorporation and bylaws. When the corporate name contains the expressions “of Argentina” or “Argentina” that might indicate its ownership by foreign companies, it will be necessary to evidence the existence of said companies and their authorization to use the corporate name. On the other hand, a deposit for at least 25% of the subsidiary’s capital, if payable in cash, must be made.

A minimum of two shareholders is required to form a corporation. Corporations may be incorporated as a sole-member company ("S.A.U."), in which case the corporation is subject to a more stringent surveillance by the Public Registry. The shareholders or partners can be companies or individuals, and no nationality or residency requirements apply.

To participate in the incorporation of a company in Argentina, foreign corporations must first produce evidence to the Public Registry that it has been duly organized under the laws of its home country[2]. This registration is required to hold participation in a local entity, but it does not imply the setting of a branch or permanent establishment of such foreign entity nor does such registration convert such entity in an Argentine taxpayer[3].

Within the city of Buenos Aires, a foreign corporation willing to have an interest in an Argentine subsidiary must file with the IGJ similar documents to those mentioned above for the registration of a branch.

Foreign shareholders must also comply with an annual reporting obligation with the IGJ by showing that their main activity is performed outside of Argentina.

Capital stock:
Currently a minimum capital of AR$30,000,000 (at present roughly equivalent to US$ 30,000) is required to form a corporation. In case of contributions in cash, at least 25% of said capital must be paid up at the time of incorporation of the corporation. The remaining 75% must be contributed within a term of two years as of that moment. Contributions in kind must be paid in 100% at the time of incorporation.

Management:
Corporations are managed by a Board of Directors appointed by the Shareholders' Meeting. Directors are not required to be shareholders, but the majority must be resident in Argentina. The Board may function with even one member if the By-laws establish such a minimum, except for the corporations included in Section 299 of the ACL, which must appoint at least three regular directors. If the corporation does not have a supervisory body, an alternate member should be appointed. The Board of Directors must hold meetings at least quarterly.

If there is more than one class of stock, the bylaws may provide for the election of one or more directors by the holders of each such class. The ACL provides minority shareholders the right to appoint up to one-third of the total members of the Board of Directors through cumulative voting. Cumulative voting shall not be available, however, when the bylaws of the company expressly provide that, due to the existence of different classes of shares, holders of each class of shares are entitled to appoint a specific number of directors.

Directors are responsible for the management of the corporation and have broad powers on all matters except those reserved for shareholders. The nature and extent of the duties and liabilities imposed on directors under the ACL may not be reduced under bylaw provisions or by a shareholder's decision. Directors may be removed by a shareholders' meeting. Directors are subject to the standard of loyalty and diligence of a good businessman. Failure to meet such standards (e.g., for mismanagement or violation of the law or the company's bylaws, fraud, or negligence) will normally result in being held jointly and severally liable to the corporation, its shareholders, and third parties. Although the general rule is that directors may not be held personally liable for the obligations of the *Sociedad Anónima,* they may face liability in connection with unpaid taxes, import and export duties, foreign exchange regulations and social security contributions.

[2] Section 123 of the ACL.
[3] A simple registration with the Argentine federal tax authorities ("AFIP") is required for identification purposes only. Furthermore, the legal representative of a foreign entity is subject to an information regime in case it participates in certain transactions vis-à-vis the company in which the foreign entity holds a participation (i.e., transfer of capital contributions in the legal representative account for further transfer to the Argentine company).

Shareholders Meetings:
The Shareholder's Meeting is the governing body of the corporation. Depending on the matters to be dealt with, shareholders' meetings may be ordinary or extraordinary. At least one ordinary shareholders' meeting must be called annually to consider the financial statements, the Board of Directors report, allocation of profits, and appointment of directors and statutory auditors as basic subjects. Extraordinary shareholders' meetings are called to consider special matters (e.g., amendment of bylaws, capital increase, redemption of stock, merger, and liquidation), which are subject to greater quorum and majority requirements.

The shares of the company may be ordinary or preferred. Preferred shares receive special benefits such as a fixed dividend or a repayment privilege in the event of liquidation. The shares of nominative, non-endorsable, or registered form should be followed by a written notice to the company to have the transfer registered in its Stock Registry.

Books and records:
The following registered commercial books are necessary: Board of Directors' Meetings Minutes Book, Shareholders' Meetings Minutes Book, Book of Deposit of Shares and Registry of Attendance to Shareholders' Meetings, Stock Registry, Daily Journal, Inventory and Balance Sheets.

Financial statements, Balance Sheets and Accounts:
Annual financial statements must be submitted for the consideration of the Shareholders' Meeting and filed with the Public Registry. The financial statements must be audited by an independent public accountant.

**c) Limited Liability Companies:**
Registration
A minimum of two quota holders is required to form a limited liability company. No more than 50 quota holders are permitted in the limited liability companies. The quota holders or partners can be companies or individuals, and no nationality or residency requirements apply.

Just as in the case of the corporation, it is necessary to previously register the Articles of Incorporation and By-laws of the foreign company forming a subsidiary, with the Public Registry.

Capital:
No minimum capital is required to form a Limited Liability Company. In case of contributions in cash, at least 25% of the capital must be paid up at the time of incorporation and the remaining 75% must be contributed within a term of two years as of that moment. Contributions in kind must be paid in 100% at the time of incorporation.

The capital must be divided into quotas of equal value, which shall be freely transferable unless the agreement imposes restrictions thereto. A clause prohibiting the transfer of the quotas, however, shall be deemed null and void.

Management:
Are managed by managers who are appointed indefinitely or by the Quota holders' Meeting. Managers are not required to be Quota holders and the majority must be resident in Argentina. The managers have the same rights and obligations as directors of corporations.

The S.R.L. can choose to have a supervisory committee, but if the capital of the corporation exceeds a certain amount, the supervisory committee becomes mandatory.

Quotaholders Meetings
Limited liability companies: resolutions are adopted by a Quota holders' resolution as set forth in the act of incorporation. At least one ordinary quota holders' meeting must be called annually to consider the financial statements, the managers' report, allocation of profits, and appointment of managers and statutory auditors as basic subjects.

Amendments to the by-laws, should a sole partner represent the majority vote, require the vote of another partner.

Books and Records
Only a Meetings of Managers and Quota holders Book, Daily Journal, and Book of Inventory and Balance Sheets are required.

Financial statements, Balance Sheets and Accounts.
Annual financial statements must be submitted for the consideration of the Quota holders' Meeting. They must be filed with the IGJ only if the capital stock of the SRL exceeds the amount of AR$ 2,000,000,000.

**d) Simplified Corporations (*Sociedades por Acciones Simplificadas* or "SAS")**
Registration
The SAS may be incorporated with a sole partner, as a Single-member SAS. However, a Single-member SAS is not entitled to incorporate or participate in another Single-member SAS. Also, the SAS can be physical persons, local legal entities or foreign legal entities.

Capital:
The minimum capital stock shall be equivalent to two (2) minimum vital and mobile salaries, which as of May 2024 represent $405,600 (approximately US$ 400). The capital stock may be paid through a) payments in cash: 25% should be paid at the time of incorporation and the balance within a term of two years; b) noncash payments: initial capital contributions in kind will be accepted at the value agreed by the partners.

Management:
Partners may choose the name and structure the administrative body as they may consider suitable. The body may be managed by one or more persons, partners or not, appointed for a determined or undetermined period. If the SAS will not have a supervisory body, an alternative should be appointed. At least one of the members appointed should have real domicile in the country.

Partners Meetings:
Meetings may be self-convened if they are held in the presence of all members and resolutions are adopted pursuant to the majority foreseen in the by-laws. In other related issues, the dispositions of ACL in relation to SRL will be supplementarily applied.

Books and Records:
SAS shall have the following compulsory digital records: Minutes book, Registry of Shares book, Daily Journal and General Account Book.

Financial statements, Balance Sheets and Accounts:
SAS shall carry its accounting and issue financial statements which shall comprise state of its net worth and state of results. The same will have to be recorded in the inventory and accounts book. There is no obligation to file those financial statements before the Public Registry.

**Joint Venture:** A joint venture agreement in Argentine legislation is known as UT ("*Unión Transitoria*"), which is a contract that has to be registered with the Public Registry, whereby two or more existing companies pool their resources without creating a legal entity for a specific venture. In the event of profits or losses, due to the absence of legal personality of the UT, these fall directly on the individual assets of the participants.

The Argentine Commercial and Civil Code states that both Argentine and foreign companies registered with the Office of Corporations, as well as individual businessmen domiciled in the country, may join to perform a specific work, service, or supply inside or outside Argentine territory by entering a UT agreement. To form part of a UT, foreign corporations must previously establish a branch or permanent representation in Argentina and comply with the local registration procedures described previously. To form a UT, the interested parties must enter a written private or notarized agreement, which should include the identity of the members, the purpose for the formation of the UT, the capital contributions to be made by the members to a common operating fund (*fondo común operativo*), and the means of financing their common activities.

Joint and unlimited liability is not legally presumed for activities to be performed by the members of the UT and for obligations assumed with third parties. All agreements or resolutions taken by the members of the UT must be based on unanimous decisions, unless otherwise stipulated in the basic contract. Bankruptcy, incapacity, or death of any member does not cause the termination of the UT, which may continue its activity upon agreement between the remaining parties regarding the consideration due to the principal.

Failure to register the UT with the Office of Corporations does not render it illegal per se, although the UT will be deprived of any standing vis-à-vis third parties and will be considered a mere private agreement valid exclusively among the parties involved. The registration of UTs with the Office of Corporations enables this agency to disclose clauses agreed to by the UT members. As a direct consequence of this, some interested parties usually choose either not to comply with registration proceedings or to submit a basic agreement keeping the main arrangements undisclosed, and thus unregistered.

## 4. Labor Matters

A general Employment Contract Act (ECA), complemented by additional laws and statutes related to specific activities, governs employment conditions throughout the country, together with the relevant Collective Bargaining Agreements, depending on the employer's activity.

The Argentine labor Contract Law provides the following alternative contracts as modes of hiring personnel:
(i) permanent; (ii) part time; (iii) fixed term; and (iv) temporary, for specific activities. Case (i) is the general rule, whereas the other three are aimed at special and exceptional situations than do not fall within a permanent relationship.

Argentina has fairly complex labor legislation designed to protect the rights of employees and workers, by setting special rules concerning the employment of women, as well as rules governing working conditions and working hours, providing for payment of salaries during illnesses, setting surcharges on salaries for overtime and unhealthy work, establishing annual vacations, and requiring the payment of indemnification in the event of wrongful dismissal. Labor accident compensation has been replaced by compulsory insurance that must be taken out by any employer. The amount of the premium payment depends of the kind of activity conducted by the employer. This means that those employers offering safer labor conditions are supposed to bear a lower premium or contributions to the system.

Trial period:
In Argentina the trial period is 6 months. However, Collective Bargaining Agreements may extend the trial period up to 8 months in companies with 6 to 100 workers and up to 1 year in companies with up to 5 workers.

Salary:
A minimum wage has been established and is adjusted from time to time. However, the minimum wage is generally exceeded by the basic salaries established in the collective bargaining agreements. These basic salaries vary from one activity to another.

Wages can be paid monthly, weekly, bi-weekly, or daily. Payment can be made in cash, by check, or deposited into the employee's savings account. Salary increases are allowed. However, salary decreases may result in the employee considering themselves constructively dismissed

Employees are entitled to a statutory annual bonus, called *Aguinaldo*. It is payable in two semiannual installments, falling due on June 30 and December 31, and each installment is equal to 50% of the highest monthly salary accrued during the corresponding semester.

Employers must pay compulsory life insurance for all employees.

Annual leave:
Employees are entitled to an annual leave period when their service with their employer has been rendered for over six months. holidays are compulsory, and the employer must grant them between October 1 and April 30. The holidays duration ranges from fourteen days for employees with less than five years of service, to thirty-five days for those with more than twenty years of service, unless increased benefits are established in the applicable collective bargaining agreement or in the employment agreement, if any.
The compensation corresponding to the vacation period is slightly higher than normal salary. The employer should pay the employee for their holiday in advance.
It is possible to transfer one-third of the unused vacation days to subsequent years, and compensation for unused vacation days is only possible upon termination of employment.

National holidays must be observed, and the corresponding salary should be paid twice whenever services are actually performed during those days. There are other compulsory leaves of absence on the grounds of childbirth, marriage, mourning, or educational examinations.

In the case of maternity leave, the pregnant woman is prohibited from working during the 45 days prior to the birth. However, the person concerned may choose to have the pre-birth leave reduced to 10 days, accumulating the remaining period to the postpartum period.

Dismissal of employees:
Dismissal of employees is subject to specific rules. Although there are some ceilings for highly paid employees, any employee is entitled to one month's salary per year of service plus one or two months as prior notice, the latter depending on the employee's seniority. Those amounts do not apply in case of dismissal for just cause. Employees on a trial period, i.e., during the first six months of employment, are not entitled to severance payment, exception made to prior fifteen-day notice, which, if not given, must be paid to the employee.

An unfair or wrongful dismissal entails the employer's obligation to pay the employee the following:
(i) severance compensation (a monthly salary per year of service or fraction over three months capped to three times the salary of the applicable collective bargaining agreement—note that there are certain Supreme Court cases that declared this limit unconstitutional), (ii) indemnification in lieu of notice (notice to be provided between 15 days and 2 months in advance, depending on the seniority of the employee), (iii) pending days through the end of the month of dismissal, (iv) indemnification for unused vacation, and (v) statutory annual bonus (proportional amount of the thirteenth salary *aguinaldo* described above).

These severance compensations for dismissal without cause may be replaced, through a collective bargaining agreement, by a "severance fund". The implementation of such a fund or system will be regulated by the Executive Power.

The Law of Bases and Starting Points for the Freedom of Argentines incorporates:

(a) The possibility of dismissing with cause those who actively participate in blockades or takeovers of establishments when: (i) the freedom to work of those who do not adhere to the measure is affected; (ii) the entry or exit of persons or assets of the establishment is prevented; (iii) damage to property within the establishment is caused.

(b) A "discriminatory" dismissal is no longer considered "null and void." Instead, the employer must pay an additional indemnity equal to 50% of the seniority indemnity specified in article 245 of the Labor Contract Law. Depending on the severity of the case, judges may increase this indemnity up to 100%.

The Law of Bases and Starting Points for the Freedom of Argentines eliminates Sections 43 to 48 of Law 25,345, which mandated penalties for failing to provide the necessary certificates and for not paying the social security contributions deducted from the worker.

Independent contractors:
The Law of Bases and Starting Points for the Freedom of Argentines excludes from the application of the ECA, the hiring of work, services, agency and all those regulated in the Argentine Civil and Commercial Code.

Section 23 of the ECA is amended to specify that the assumption of an employment relationship when providing services will not apply to contracts for the leasing of work or professional services, or trades that require the provider to issue official receipts or invoices.

Trade unions
Trade unions and employers' associations encompass all types of labor activities and handle not only matters directly connected with labor relations, but also health services, recreational amenities, and other activities. Workers are guaranteed the right to organize themselves into unions, and individual workers have rights to choose whether or not to join.

Unions and federations must keep the Labor Ministry informed of data concerning their assets, names of members and officers, etc., and may be audited by the authorities. Official recognition is granted only to the most representative union for an activity, but a rival group may replace it when it has a significantly greater number of members. Only the officially recognized union may engage in collective bargaining and collective agreements.

Argentina has subscribed to the I.L.O. Resolution dated June 3, 1981, relating to collective bargaining.

Officers and delegates of officially recognized unions may not be dismissed from their jobs while they hold office and for one year thereafter. When they work full time for the union, the employer should not bear the cost of their remunerations and payroll contributions while they hold office, but they must be re-engaged afterward.

The right to resort to strikes on the part of the unions is guaranteed by the National Constitution. However, prior to the declaration of a strike, it is mandatory for the parties in conflict to submit to a conciliation process that is handled by the Ministry of Labor. In addition, essential services like those rendered by hospitals or affecting the population's health are subject to specific rules in this regard.

Under the regulations currently in force, all employees over the age of 18 are covered by a national retirement pension scheme funded through employee withholdings of 11% of their gross salary and employer fixed contributions; the percentage of the employee's contribution depends on the type of activity. Employees are subsequently entitled to collect a pension when they reach retirement age (65 years for men and 60 years for women, in most cases). Healthcare plans exist for all employees, entitling them to free medical treatment and hospital care. These are funded through employer contributions amounting to 6% of salaries and employee withholdings of 3%.

In case of an employee's death or disability, insurance coverage mandatorily acquired by the employer with a labor risk insurance company known as ART applies, with the insurer giving financial aid and assistance to the injured employee. Only accidents in connection with labor duties and a restricted list of occupational diseases are covered by this regime.

Below a summary of the highlights related to Argentina's remote employment law[4]:

- Work Tools: The employer must provide the remote worker with equipment, including hardware and software, work tools and the necessary support for the performance of their tasks, assuming the costs of installation, maintenance and repair, or compensation for the use of the person's own tools.

[4] The Remote Employment Law was announced in the Official Gazette on August 14, 2020. It includes 19 sections that outline the basic legal rules for remote work. This law also changes the Labor Contract Law (LCT) by adding section 102 bis, ensuring that remote workers have the same rights as those who work in-person. On February 5, 2021, Resolution No. 54/2021 of the Ministry of Labor, Employment and Social Security was published in the Official Gazette, ordering the entry into force of Remote Employment Law No. 27,555 and its regulations, as of April 1, 2021. The regime was further amended by Decree N°70/2023.

Under the Regulation, the provision of working tools will not be considered remunerative nor will it be part of the remuneration base for the calculation of any item emerging from the employment contract, or union or social security contributions.

In 2012, the Labor Risks Superintendency (SRT) issued Resolution No. 1552/2012, by which in section 3 it set out that the employer must provide remote workers with (i) an ergonomic chair; (ii) a portable fire extinguisher (1 kg HCFC 123 fire extinguisher); (iii) a first aid kit; (iv) a mouse pad ("mouse pad"), and; (v) a Manual of Good Health and Safety Practices in Remote Work published on the website of the Labor Ministry. Based on Executive measures to reduce the spread of COVID-19, the SRT issued Resolution No. 21/2020 that set out that employers who work remotely must notify their Work Risk Insurer: (i) the payroll of remote personnel, (ii) the address from which they render services, and (iii) the working hours of each employee.

From April 1, 2021, employers must comply with Resolution No. 1552/2012 of the SRT and must deliver the material listed in section 3 mentioned in the previous paragraph.

- Compensation of Expenses: Remote workers will have the right to compensation for the costs of connectivity and/or consumption of services. The Regulation provides that compensation for expenses, even without proof, will not be considered remunerative.

## 5. TAX MATTERS

Below is a brief overview of Argentina's fiscal regime for corporate entities[5].

**Corporate Income Tax**

- Rate: Starting from January 1, 2021, corporate income will be subject to tax at progressive rates ranging from 25% to 35%.
- Scope: Legal entities in Argentina are taxed on both domestic and foreign-source income, with the ability to credit similar taxes paid abroad against their foreign-source income.
- Branches: The same tax rate applies to net taxable profits from both Argentine-source and foreign business activities carried out by branches of foreign entities.

**Withholding on Dividends**

- Rates: 7% on distributions from FY 2021 earnings to non-residents or local individuals.

**Value Added Tax (VAT)**

- General Rate: 21% on the sales value of goods and services made within the territory of Argentina, including professional services.
- Exceptions: Certain goods are taxed at 10.5%, and some services at 27%. Exports of goods and services are taxed at 0%, with the possibility of crediting or refunding input VAT.
- Digital Transactions: As of the 2017 tax reform, digital services provided by non-residents to Argentine customers are subject to 21% VAT if used in Argentina.

**Turnover Tax**

- Application: Imposed by each of Argentina's 24 jurisdictions on gross revenues from goods and services sales.
- Rates: Typically, 3% to 5% for trade and services, and 0% to 2% for industrial activities.
- Exemptions: Generally, exports of goods are exempt.

[5] The Law Fiscal, Palliative and Relevant Measure published on July 8th, 2024 introduced relevant modifications to the current tax system, including the implementation of a regime for the regularization of tax obligations and a regime for asset disclosure. In addition, the Bill also contemplates amendments to the Personal Assets Tax which provides for an extraordinary advance payment scheme to cover amounts up to the 2027 fiscal period, amendments to Income Tax for employees as well as Simplified Regime for Small Taxpayers. It also provides for the repeal of the Real Estate Transfer Tax and the creation of the Tax Transparency Regime for Consumers.

**Wealth Tax**
- Liability: Payable by Argentine companies on shares/units owned by individuals or foreign-residing companies.
- Rate: 0.50% of the value of the ownership interest, calculated based on financial statements as of December 31 each year.

**Excise Taxes**
- Scope: Various items like automobiles, tobacco, alcoholic beverages, insurance, luxury goods, and certain non-alcoholic beverages are taxed at different rates.

**Tax on Financial Transactions**
- Rate: 0.6% on bank account credits and debits. Transactions without a bank account and other fund dispositions are taxed at 1.2%.
- Credit: One-third of the tax paid can be credited against Income Tax.

**Stamp Duty**
- Application: Levied on documents or agreements evidencing transactions of valuable consideration, executed in Argentina or abroad, when the effects are produced in one or more relevant jurisdictions
- Rate: Depends on the regulations of each jurisdiction but the general rate is 1% of the economic value of the agreement.

**Import & Export Duties**
- Import Duties: Ranging from 0% to 35%, with preferential rates for goods from LAIA and MERCOSUR countries.
- Export Duties: Vary from 0% to 35%, with reductions for certain commodities and mining.

**Social Security Taxes**
Employer Contributions
- Rates: 26.4% for service or trade companies with high sales volumes, and 24% for other companies.

Employee Contributions
- Rates: Total 17%, including 11% for pensions, 3% for health care, and 3% for social services.

**Tax Incentives**

**Mining and Forestry**
- Mining: Law No. 24196 provides a 30-year fiscal stability and incentives for mining investments.
- Forestry: Law No. 25080 offers similar tax benefits for forest-related activities.

**Knowledge-Based Activities**
- Law No. 27506: Promotes software, digital services, and other tech activities with tax reductions and social security credits.

## 6. INCENTIVE REGIME FOR LARGE INVESTMENTS (RIGI)

The Law of Bases and Starting Points for the Freedom of Argentines published on July 8th, 2024, created an Incentive Regime for Large Investment to foster domestic and foreign investments involving an investment amount of at least USD 200 million. The RIGI will be applicable to projects in the following areas:
- Forestry industry,
- Tourism
- Steel industry
- Infrastructure
- Mining
- Oil and gas
- Energy
- Technology.

The deadline to join the RIGI shall be two years from its entry into force (July 9th, 2024). This deadline will be extendable for a further one year.

Accessions will be canalized through the so-called Single Project Vehicles (VPU), which may include joint stock companies, limited liability companies, foreign companies, joint ventures and other associative contracts, as well as dedicated branches that meet the requirements.

VPUs joining the RIGI will enjoy benefits in the following areas:
a) Tax
b) Customs
c) Exchange

**Main Tax and Customs Incentives:**
1) Income Tax:
- Fixed rate of 25%, without applying the progressive scale provided by the Income Tax Law.
- Reduced rate of 3.5% for dividends as from the seventh year.
- Depreciation of goods according to the promotional regime prior to the RIGI, or the regime foreseen in the RIGI
- Tax loss suffered by the VPUs in a tax period may be deducted from the taxable profits obtained in the immediately following years, without time limit, if it cannot be absorbed with the taxable profits of the same period.

2) Value Added Tax: Under certain conditions, VPUs may pay VAT to their suppliers, or to the AFIP in the case of imports of goods, through the delivery of Tax Credit Certificates.

3) Tax on debits and credits in bank accounts: VPUs may compute 100% of the amounts paid and/or received as income tax credit.

4) VPUs may keep their accounting records and financial statements in US dollars using International Financial Reporting Standards.

5) Free import and export of goods for the construction, operation and development of the eligible projects.

6) Import Duties: Inputs and capital goods required for the implementation of the project may be exempted from import duties.

7) Export Duties: exemption from three years after joining to RIGI.

Fiscal and Customs Stability: The regime guarantees tax and customs stability for a period of 30 years from the date of accession.

**Main Exchange Incentives**
1) The RIGI proposes a stepped availability of foreign exchange generated through exports:
- First year: 20%.
- Second year: 40%.
- Third year onwards: 100%.

2) Foreign exchange from local or external financing in favour of the VPU will not be subject to restrictions on its availability.

3) The VPU will have no limits on the holding of liquid foreign assets, although it may have future restrictions on access to the foreign exchange market based on the holding of liquid foreign assets.

4) The right to pay profits, dividends and interest is guaranteed through access to the single free foreign exchange market without the need for prior approval.

Exchange Stability: The regime guarantees exchange stability for a period of 30 years from the date of accession.

**Method of Dispute Resolution**

It is provided that all disputes arising between the National State and the VPUs under the RIGI that cannot be resolved through amicable negotiations shall be submitted to arbitration. VPUs may choose between the following rules and institutions: (a) the Permanent Court of Arbitration, (b) the International Chamber of Commerce, and (c) the Additional Facility of the International Centre for Settlement of Investment Disputes.

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# BRAZIL

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## 1. CORPORATE MATTERS

Although there are numerous types of corporate entities in Brazil available for foreign investors, two (2) are more commonly used: limited liability companies (*sociedades limitadas* or Ltda.) and stock corporations (*sociedades anônimas* or S.A.), both very similar to their respective counterparts normally seen in common law jurisdictions (i.e., limited liability companies and stock corporations). Recently a new type of corporate entity was created in Brazil, the so-called individual limited liability company (*empresa individual de responsabilidade limitada* or *EIRELI*) subsequently replaced by the single-member limited liability company (*sociedade limitada unipessoal* or SLU), which is detailed in section 1.3.

### 1.1. Limited Liability Company (*Sociedade Limitada*)

#### 1.1.1. Overview

This corporate type is the most common in Brazil, and it is regulated by Law No. 10.406, dated January 10, 2002 (the Brazilian Civil Code). *Sociedades limitadas* are incorporated and organized by the articles of association, which provide, among other things, for equity ownership (there must be at least two (2) members, either a person or a legal entity). The articles of association must state: (i) the corporate name (which will contain, in Portuguese, the main purpose of the company); (ii) the name and identification of all members and their legal representatives (in case of members, person or legal entity, not domiciled in Brazil they need to be represented by a legal representative domiciled in Brazil, and the respective powers-of-attorney must authorize, among others, powers to receive summons on behalf of the members for the purposes of the Federal Revenue Service's Normative Rule No. 2.119/2022 , and respective amendments thereto, and Law No. 6.404/1976's article 119 ); (iii) the corporate purpose, as specifically as possible; (iv) the address of the principal place of business; (v) the amount of the company's' capital, number of unitss, par value [usually one Real (R$1.00) each], and form of contribution (either by cash, credit, or appraisable property); (vi) management structure (should the officer or director fail to be domiciled in Brazil, they must also be represented by a legal representative domiciled in Brazil); (vii) corporate representation (as mentioned in items "ii" and "vi" of this Article 1.1.1.; (viii) closing date of the fiscal year (generally coinciding with the calendar year); (ix) quorum for corporate decisions (usually more than half of the unitss representing the capital stock, but a higher quorum may be mentioned in the company's articles of association); (x) rules on liquidation, dissolution, withdrawal or exclusion ofmembers (including cases of entry heirs or successors), and the corresponding settlement of assets); and (xi) dispute resolution (in court or by arbitration).
After the registration of the articles of association with the board of trade of the state in which the principal place of business is located, the company must be enrolled with federal, state, and municipal authorities and with other governmental entities, depending on its corporate purpose. *Sociedades limitadas* that only render services are not required to register before state authorities.

#### 1.1.2. Legal Aspects

The rules for *sociedades limitadas* are defined in the Brazilian Civil Code, according to which the liability of each member is restricted to the corresponding equity interest, once the company's capital is fully paid-in. The capital of the company is divided into units of equal par value, and unless otherwise provided for in the articles of association, the members may assign all or part of their units to other members, for which the consent from the others is required and need to be expressed in the amendment to the articles of association in which the assignment was resolved..
The company must have at least one officer, who may or may not be a member, which need to be stated in the articles of association, and if the officer does no reside in Brazil a legal representative domiciled in Brazil must be appointed, as mentioned in item "vi" of Article 1.1.1. above.

The articles of association may provide for the supplementary applicability of Law No. 6.404, dated November 15, 1976 (Corporation Act), which regulates stock corporations and deals with matters that are not provided in the Brazilian Civil Code such as shareholders' agreement and board of directors, among other matters.

The Brazilian Civil Code also provides for specific quorum for some specific deliberations:

- By those holding more than half of capital:
  - To amend the articles of association
  - To perform a merger, consolidation, dissolution, or liquidation.
  - To appoint and dismiss officers
  - To decide on their remuneration
  - To request the company's insolvency
  - To approve the accounts of the management
  - To appoint and dismiss a liquidator and evaluate the corresponding accounts.

The annual members' meetings must be held once a year within four (4) months after the close of the fiscal year to discuss the matters provided by the Civil Code (i.e., approve the accounts, approve profits distribution, and elect the management and establish their remuneration, if applicable). Special meetings can be convened to discuss other matters whenever necessary. Differently from a stock corporation, in a *sociedade limitada* members may decide, if so provided under the articles of association, to distribute profits disproportionally from their respective equity holdings in the company.

### 1.2. Stock Corporation (*Sociedade Anônima)*

#### 1.2.1. Overview

Stock corporations are regulated by Law No. 6.404/76, and they are incorporated through an incorporation meeting to approve and execute the bylaws, which will provide for the: (i) corporate name; (ii) corporate purpose; (iii) principal place of businessaddress; (iv) capital; (v) form of payment and equity interest held by the shareholders; (vi) types and classes of shares; (vii) management bodies; (viii) rules on dividends distribution; (ix) fiscal year; (x) dispute resolution etc.
To operate as a legal entity, the corporation must have its bylaws registered with the board of trade of the state in which the principal place of business is located. After such registration, the corporation must enroll with federal, state (except for service providers), and municipal entities, among other governmental bodies, depending on its corporate purpose. And the following corporate books: (i) book of register of nominative shares ( for registration of the shares of each shareholder); (ii) book of register of transfer of nominative shares (for the registration of changing of ownership); (iii) shareholders attendance book; (iv) book of the registration of the shareholders' general meeting; (v) book of the registration of the board directors' meeting and their instrument of investiture, if installed; (vi) book of the registration of the officers' meeting and their instrument of investiture.

#### 1.2.2. Legal Aspects

In a stock corporation, shareholders' liability is also limited to their equity contributions. Differently from a *sociedade limitada*, a corporation may be publicly traded on the stock market.
The capital of a stock corporation is divided into shares and may be paid for in cash, credit, or appraisable property. Differently from a *sociedade limitada*, in a stock corporation, whenever the capital contribution is paid- in with assets, there must be an appraisal by three (3) experts or by a specialized company. It is also worth noting that at least ten percent (10%) of the total initial capital must be paid-in at the moment of its incorporation.
Shares may or may not have a par value and may be common or preferential. Preferential shares may not carry voting rights, subject to one or all preferences attributed to them in the Corporations Act, and they shall not exceed fifty percent (50%) of the total number of the issued shares.
Shareholders, person or legal entity, not domiciled in Brazil need to be represented by a legal representative domiciled in Brazil, and the respective powers-of-attorney must authorize, among others, powers to receive summons on behalf of the shareholder for the purposes of the Federal Revenue Service's Normative Rule No. 2.119/2022, and respective amendments thereto, and Law No. 6.404/1976's article 119 ).

Shareholders' general meetings must be held once a year within four (4) months after the close of the fiscal year to discuss the matters provided by the Corporations Law (i.e., approve the accounts, approve dividend distribution, and elect the management and establish their remuneration, if applicable). Special meetings can be convened to discuss other matters whenever necessary. The management bodies of the company are the: (i) board of directors (which is only mandatory for publicly traded corporations or corporations that have authorized capital); and (ii) board of officers, whose members if not resident in Brazil, must appoint a legal representative which resides in Brazil. A corporation may also have an audit committee.

### 1.3. Single-Member Limited Liability Company (SLU)

Since September 20th, 2019, it has become possible to incorporate an SLU in Brazil, according to Law No. 13,874, which amended the Brazilian Civil Code, substituting EIRELI. It is important to highlight that the rules applicable to limited liability companies regulate this type of legal entity on a supplementary basis.

#### 1.3.1. Overview

This corporate type, as EIRELI, also allows a single person to incorporate a limited liability company, moving away from the previous mandatory need of a minimum of two (2) members to incorporate a limited liability company, however, in this case there is not a specific amount of capital stock to be paid-in in the moment of incorporation.

#### 1.3.2. Legal Aspects

A SLU may be incorporated by a Brazilian or a foreign person or legal entity.
The corporate name shall contain the term LTDA. at the end and not SLU (considering that SLU is a type of limited liability company). The corporte name of the company shall also contain a designation of its activity in Portuguese. The minimum wage of the corporate capital is not stated by law. The single-member's liability is limited to the amount of the corporate capital, although the corporate veil may be pierced in limited circumstances (i.e., the same circumstances applicable to *sociedades limitadas* and corporations: fraud, acts performed in discordance with the bylaws or articles of association, and the commingling of assets).
Single-members, person or legal entity, not domiciled in Brazil need to be represented by a legal representative domiciled in Brazil, and the respective powers-of-attorney must authorize, among others, powers to receive summons on behalf of the shareholder for the purposes of the Normative Rule No. 2.119/2022 of the Federal Revenue Service, and respective amendments thereto, and to Law No. 6.404/1976's article 119 ).
Officers of SLU not resident in Brazil, must appoint a legal representative who resides in Brazil.

## 2. Power of Attorney

Any foreign investor that holds equity in a Brazilian legal entity must appoint an attorney-in-fact residing in Brazil to be represented before such legal entity. The attorney-in-fact must be expressly empowered to exercise voting rights on the grantor's behalf for corporate decisions; to act as a representative before the appropriate governmental authorities, before the Central Bank of Brazil; and to receive service of process in Brazil (including, among its powers, authority to comply with the provision of the Normative Rule No. 2.119/2022 of the Federal Revenue Service).

If the foreign investor resides and signs the power-of-attorney in a jurisdiction with which Brazil does not have a bilateral treaty, the document shall be locally notarized and legalized in the nearest Brazilian consulate, before it can be sent to Brazil to be translated by a sworn translator and registered with a local Brazilian Notary Office. It is worth noting that Brazil is not a signatory of the Hague Convention that deals with apostille.

If the foreign investor resides and signs the power-of-attorney in a jurisdiction with which Brazil has a bilateral treaty (the Hague Convention), the document shall be locally apostilled by the notary public, before being sent to Brazil. Once received in Brazil the power-of-attorney in will have its apostilled (certifying the notarization) sworn translated and registered at a local Brazilian Notary Office.

### 3. Investor Registration with the Secretariat of Internal Revenue (RFB)

All foreign investors (whether individuals or legal entities) holding equity in legal entities in Brazil must be enrolled with the RFB.

In such case, the foreign investor shall also appoint an attorney-in-fact residing in Brazil to represent the foreign investor before the RFB, with express powers to receive service of process in Brazil in matters involving local taxation.

### 4. Foreign Labor

To enter Brazil, a foreigner must obtain a visa with a Brazilian consulate and have it registered in his or her passport.

There are numerous types of visas suitable for each purpose in the following categories: transit, tourist, temporary, permanent, official, and diplomatic.

The most appropriate visas for a foreigner intending to work in Brazil are the temporary and the permanent visas.

A temporary visa is applicable in case of (i) research, teaching or academic extension; (ii) health treatment; (iii) humanitarian aid; (iv) study; (v) work; (vi) working vacations; (vii) religious activity or voluntary service; (viii) investment or activity of economic, social, scientific, technological or cultural importance; (ix) family reunion; (x) artistic or sporting activities with a fixed-term contract; (xi) when the immigrant is a beneficiary of a visa treaty; or (xii) to attend the interests of national migration policy.

A permanent visa may be granted to foreigners that come to Brazil on a permanent basis (but not indefinitely) in case they are elected as officers of a local company. In this case, the company abroad that sends the foreigner to an officer position in Brazil must evidence an investment in the Brazilian company of at least R$600,000.00 or R$150,000.00, the latest subject to the employment of at least ten Brazilians in the next two years.
In both cases, such investment must be registered with the Central Bank of Brazil as set forth later under section 6.
However, a foreigner who has invested his or her own funds in a local company in the amount of R$500,000.00 is also eligible to obtain a permanent foreign investor visa, by submitting an Investment or Business Plan. Such investment must also be registered with the Central Bank of Brazil.

The investor visa will also be granted when the investment is below R$500,000.00, and provided that it is not less than R$150,000.00 for the entrepreneur who intends to settle in Brazil for the purpose of investing in innovation, basic or applied research, of a scientific or technological nature.

### 5. Intellectual Property

#### 5.1. Trademarks

Under Brazilian law, a trademark is a distinctive sign whose main functions are to identify the origin and distinguish products or services from other identical, similar or related products of different origin.

Once the company has been registered and enrolled with the appropriate governmental bodies, it is important to have its trademarks registered with the National Institute of Industrial Property (INPI) for its local protection. The trademark ownership is protected through valid registration with the INPI, which assures the owner the exclusive use throughout Brazil.

Trademarks may be used for products or services, and they can be presented in the following forms: word, figure, mixed (a combination of word and figure), three-dimensional, or position.

The validity of a trademark registration is ten years from the date the trademark registration was granted. This period may be extended at the request of the owner for equal and successive periods.

There are some obligations concerning the ownership of a trademark. For example, the owner is obliged to use the trademark in order for its registration to remain valid, and the trademark has to be used within five years counted from the date the registration was granted. If a third party tries to register a registered trademark, the owner will have to evidence its use.

The registration may be assigned, and the assignment must include all registrations or applications, in the assignor's name, of equal or similar trademarks related to an identical, similar product or service, under the risk of cancellation of the registrations or denial of the assignment.

The INPI will have the assignment registered on the certificate of registration for the assigned trademarks. The registration will be effective in relation to third parties on the date of its publication in the official gazette of INPI (*Revista da Propriedade Industrial* or RPI).

Registered owners or applicants may execute agreements to license the use of the trademark, without prejudice to their right to effectively control the specifications, nature, and quality of the respective products or services. The license agreement must be registered with INPI to be effective in relation to third parties.

### 5.2. Patents

A patent, on the other hand, is the official document issued by INPI that provides for the ownership of a person or legal entity over what has been created or invented.

There are some types of patents in order to protect either an invention (a new product or manufacturing process) or a utility model (a known object to which modifications are made to improve the intended function).

Inventions that meet the requirements of novelty, inventive activity, and industrial application are patentable in Brazil.

Patent owners or applicants may execute patent license agreements, which must be registered with INPI to be effective in relation to third parties.

A patent of invention is valid for twenty years, and a utility model patent is valid for fifteen years after the date of filing with INPI. During these terms, the owner is allowed to avoid third parties from acting without the owner's consent to produce, use, offer for sale, sell, or import a:

- Product covered by the patent
- Process or product obtained directly through the patented process.

## 6. Central Bank of Brazil

Brazilian monetary policy and foreign exchange rules prohibit the transfer to other countries of sums that are not registered with the Brazilian Central Bank. Therefore, for all remittances into or from Brazil, foreign investors shall obtain a Taxpayer's Number (CNPJ for legal entities or CPF for individuals) and an Investor's Number (CADEMP and SCE-IED) from the Brazilian Central Bank.

Accordingly, after the inflow of foreign capital into Brazil as capital contribution or as loans to persons or entities located in Brazil, it is necessary to proceed with the registration of such investment or loan with the Brazilian Central Bank.

It is only after registration with the Brazilian Central Bank that dividends and/or interest can be remitted offshore and capital can be repatriated to the country of origin.

## 7. Social Security and Labor Aspects

### 7.1. Overview

Employment relationships in Brazil have specific features—the most important could be considered the fact that only subordinated work is governed by labor law and protected by specific labor legislation. An additional peculiarity of this type of agreement is its informality. In other words, an employment agreement may exist explicitly, whether in writing or orally, or implied, without the parties' express intention to create a labor relationship.

Social security is funded by charges collected from both employee and employer. Payroll charges payable by the employer are due on a monthly basis at 20%, plus occupational insurance and contributions to other government-related bodies around 6.8% to 8.8%, potentially reaching up to 11.8% if the company has a high number of accidents.

The company is also expected monthly to deposit with a government bank (*Caixa Econômica Federal*) 8% of the employee's salary as Unemployment Compensation Fund (FGTS). Such deposits are made in addition to other charges that the employer shall pay, such as annual paid vacations, plus one-third of a salary, thirteenth salary, and all the benefits established under the collective bargaining agreement executed with the respective workers' union.

**7.2. Main Features of the Employment Agreement in Brazil**

An employment agreement must provide the following information.

An employment relationship must have five simultaneous requirements: individual (i) has to be a natural person; (ii) shall earn a salary; (iii) shall work under subordination; (iv) shall render services on a regular basis; and (v) shall personally render the services, which means that the employee is not replaceable by another individual during the employment relationship. In relation, the company is forbidden to implement contractual amendments in detriment to the employee, such as salary and/or benefit reduction.

As a general rule, employment agreements are effective for an indefinite term. Notwithstanding, local labor laws adopt four exceptions: (i) probation agreement (not to exceed ninety days); (ii) if the company's purpose is the performance of transitional activities (not to exceed two years); (iii) if the employee will render services on a provisory basis (not to exceed two years); (iv) under an agreement executed with the respective workers' union (not to exceed two years); and (v) temporary agreement.

Brazil has a special code governing labor-related laws known as CLT (Brazilian Labor Code). Nevertheless, the Constitution has a chapter specifically providing for labor laws, and there are specific rules issued by the Executive and by the Ministry of Labor and Employment (particularly providing for occupational safety and inspection related issues). In addition, there are agreements executed with the workers' unions with rules that are exclusively applicable to the group of employees connected to the professional category represented by the respective workers' union.

**7.3. Basic Employee's Rights**

An employee is entitled to enjoy thirty days of paid vacation every twelve months of work. The employee is entitled to 30 days of vacation for each year worked, with an additional one-third of their salary paid at the time of their vacation. Employees should also be annually paid thirteen salary payments.

The Constitution provides for eight daily working hours and forty-four weekly working hours, with the option of offsetting and reducing working hours under a collective bargaining agreement.

Upon termination of the employment agreement by the employer without cause, the employer shall give a termination notice with at least thirty days in advance which can extend up to 90 days depending on the length of employment, pay proportional vacation (corresponding to one-twelfth per month worked within a period of twelve incomplete months), and a proportional thirteenth salary payments.

On termination without cause, 40% of the total in the employee's FGTS account is also payable as a penalty fee paid for contract termination.

**7.4. Salaries**

Regarding salaries, the company must pay the employee at least once a month, in local currency, consisting of a fixed amount, commissions, or a mix of both (fix amount plus commissions). Regardless, employees will be ensured a minimum amount, which is the minimum wage (or minimum union salary, whichever is higher).

In addition to the salary, the company may provide benefits as stipulated by law, collective agreements, or company policy. The main benefit established by law is transportation assistance. Common benefits specified in collective agreements include meal or food allowances, health insurance, life insurance, and private pension plans. It is important to note that for these benefits to be tax-exempt, they must be granted equally to all employees within the legal entity.

In Brazil, there is no law providing for salary policy (adjustments on its amount, form, and periodicity), which means that the employer is not bound by law to grant salary adjustments at certain and specific times. The free negotiation of the parties prevails. Notwithstanding, once a year (in the so-called data basis month), companies are obliged to discuss bargaining agreements with the respective employee's unions, which agreement always include a salary adjustment.

The constitution prohibits any reduction of either salaries or benefits. The sole exception for implementing salary reduction is through a collective bargaining agreement executed with the union.

**7.5. Forms and Legal Consequences Arising from the Termination of the Employment Agreement**
Under the labor laws, employees are not entitled to job tenure. Accordingly, the employer has the unilateral right to terminate the agreement whenever it deems convenient, and it suffices that the employer makes the severance payments mentioned above. There are some legal exceptions for employees eligible for tenure, established by law or under union agreements—for example, union leaders (during their terms of office and for one year more after the end thereof) and pregnant employees (as of the acknowledgement of pregnancy and up to five months after the childbirth).

**7.6. Beware of Outsourcing**
Outsourcing is permitted in Brazil according to Law No. 6,019/74. However, three aspects must be paid special attention to: purpose, reach, and liability.

Outsourcing is intended for the performance of services and not the mere and simple lease of manpower. In case of misuse, a direct employment relationship will be deemed to exist (on an implied basis) between the company obtaining the services and the service provider.

Additionally, a company that uses outsourcing will always be jointly liable with the company providing the outsourcing services in connection with labor and social security related issues.

**7.7. Temporary Agreement**
Temporary agreements may be executed with employees according to Law No. 6,019/74. Rendering services under a temporary agreement is permissible (i) whenever a company's employee must be replaced on a temporary basis or (ii) due to an additional demand for services, which must be duly evidenced.

Meeting the legal requirements in the case of extraordinary service increase is expected to be thoroughly supported by evidence. The maximum term of a temporary agreement is one hundred and eighty days, with the possibility of extension for 90 days if the demand persists.

Under a temporary agreement, when the final date is reached, the employee, if not permanently hired, will not be entitled to the payment of termination notice, or the 40% penalty over the deposits made to the FGTS. If the agreement is terminated by the employer earlier than the previously established date, the employer is expected to pay the employee half the amount of the compensation that would otherwise be payable until the final term of the agreement. If the termination is by the employee, the employer shall be compensated for the losses resulting from termination.

## 8. TAX ASPECTS

A company is subject to a great variety of taxes in Brazil, outlined as follows.

### 8.1. Federal Taxes and Contributions

#### 8.1.1. Legal Entity Income Tax (IRPJ)

IRPJ is a federal tax on profits earned by legal entities. Profits are classified as actual profits (accounting profits with certain adjustments defined by law), deemed profits (percentage on gross revenue), or arbitrated profits (determined by the tax authorities). Profits are ascertained quarterly or annually (with monthly payments) at the rate of 15%, plus an additional 10% on profits above R$60,000.00 in the quarter or R$240,000.00 in the year.

#### 8.1.2. Contribution on Net Profits (CSLL)

CSLL is a federal contribution levied on the profit of legal entities, ascertained and calculated in the same way as IRPJ, at a 9% rate (except for financial institutions, which are subject to a 15% CSLL tax).

#### 8.1.3. Contribution on Social Integration Program (PIS)

PIS is levied on the gross revenue of legal entities and due monthly at a 1.65% rate, with the possibility of setting off the value monthly due with the amount charged on certain inputs purchased by the company to manufacture its products or render its services (noncumulative system). Other companies follow a different system whereby the rate of 0.65% applies to the entire calculation base, without entitlement to the credit.

#### 8.1.4. Federal Contribution to Finance Social Security (COFINS)

COFINS is levied on the gross revenue of legal entities and is due monthly at a 7.6% rate, with the possibility of setting off the value monthly due with the amount charged on certain inputs purchased by the company to manufacture its products or render its services (noncumulative system). Other companies follow a different system whereby the rate of 3% applies to the entire calculation base, without entitlement to the credit.

#### 8.1.5. PIS and COFINS Contributions on Imports

PIS and COFINS are federal contributions that are levied on the importation from abroad of foreign assets (rates of 2,1% and 9.65%, respectively, in general) or services (rates of 1.65% and 7.6%, respectively). The calculation basis for such taxes is either the customs value of the assets or the payment, credit, delivery, use, or remittance of amounts to individuals or legal entities residing or domiciled abroad in consideration of services provided. The contribution is a burden to the importer in Brazil, and the taxpayer subject to PIS/COFINS on a noncumulative system may set off contributions on importation with those due on the gross revenue, if the assets or services imported are used as inputs for the importer or for the resale. Specific rates apply for a number of products, which demands consult to the legislation in each case.

#### 8.1.6. Excise Tax (IPI)

IPI is a federal tax that is due monthly and applies to the exit of manufactured products from industrial or similar establishments (mainly as a result of sales). The rates vary according to the essentiality of the respective product. The taxpayer may offset the amount owed against the amount charged on the input materials purchased by the company to manufacture its products.

#### 8.1.7. Import Tax (II)

II is levied on all imports by companies or individuals domiciled in Brazil, without prejudice to cases of exemption or zero rate as provided for by law. The calculation basis for this tax is the value of the imported product, and the rate varies according to the classification in the Mercosur Nomenclature of Goods (harmonized system). A zero rate applies, for example, to a great variety of machinery and equipment.

#### 8.1.8. Contribution for Intervention in the Economic Domain (CIDE)

CIDE is levied at a 10% rate on the amounts paid, credited, delivered, used, or remitted by a legal entity headquartered in Brazil to beneficiaries residing or domiciled abroad under agreements for:

- Transfer of technology
- Rendering of technical assistance (technical assistance services/specialized technical services)
- Rendering of technical services, administrative assistance, and similar services
- Trademark assignment and license
- Patent assignment and license.

CIDE is paid by the company remitting the amounts abroad, which will thus support the respective tax burden.

#### 8.1.9. Social Contribution on Gross Revenue

A number of specific sectors, defined by the federal government as being important to Brazilian foreign trade, have the possibility to opt, until December 31, 2027, to paying a specific type of social contribution, which will temporarily replace the contribution on payroll. Such contribution will be calculated at rates from 1% to 4.5% (depending on the activity developed) on gross revenue of the benefited activity, thus resulting in a proportional reduction of the 20% social contribution on payroll. Please note that most of such activities will have an increase of 1% on COFINS on imports for the same period (see section 8.1.5).

#### 8.1.10. Tax on Financial Transactions (IOF)

IOF is levied on a number of financial transactions, among them exchange transactions and loans to a Brazilian individual or legal entity. For loan transactions agreed for liquidation within up to 360 days (or liquidated before this term, even if agreed for a longer one), the rate on the exchange transaction will be 6%, while loans for a longer term will have the benefit of zero rate of IOF. The income of values for capital increase in a Brazilian company is taxed at a 0.38% IOF rate.
Other rates are applicable for internal transactions—for example, loans made by legal entities (even if they are not financial institutions), which are subject to IOF on a daily basis, limited up to 1.5% per year, plus an additional 0.38%.

### 8.2. State Taxes

The State Sales and Services Tax (ICMS) is paid monthly and is levied on the:

- Exit of goods from manufacturing and commercial premises
- Importation of goods, including fixed assets
- Rendering of transport, communication, and power supply services.

In the majority of Brazilian states, the ICMS rate is 18% on the value of the transaction; however, there are reduced rates for specific transactions. Like other value-added taxes, the ICMS is noncumulative, and the tax paid on the purchase of goods or raw materials may be deducted from the tax levying on the exit of merchandise goods previously purchased or produced from the raw material.

### 8.3. Local Taxes

The most important of the various local or municipal taxes is the Local Service Tax (ISS), levied monthly on the value of the services rendered at a rate set by each municipality (varying between 2% and 5% on the service value). ISS must be paid monthly.
ISS is also applicable to services from abroad or whose rendering had originated abroad. In such events, the tax will be payable in the place where the one receiving or intermediating the services is established or, in case there is no such place, where it is domiciled. In general, the service amount is the basis for the tax calculation.

### 8.4. Tax Incentives (Income Tax)

The Brazilian Income Tax legislation gives certain incentives for companies:

- Incorporated in the north and northeast regions of Brazil (a 75% reduction in the income tax is granted for the company therein incorporated), depending on prior governmental authorization (projects presented and approved until December 31, 2028)
- That carry out cultural projects
- That carry out projects for support of sports practice
- That carry out projects involving technological innovation.

Many state and local governments have passed regulations that provide tax incentives to companies that install themselves in their territories. State governments tend to facilitate ICMS payments, and local governments often finance the purchase of land and infrastructure for the installation of the companies and exemption from the Municipal Real Estate Tax (IPTU).

### 8.5. Export Incentives

There are a few tax incentives for exports:

- For the physical exit of any raw materials or semi-finished or manufactured goods destined for other countries, export companies enjoy IPI and ICMS exemption.
- Exemption from COFINS and PIS is granted for products and services exported directly by the provider and for indirect foreign sales through trading companies, export companies, etc.
- Services provided to a foreign contractor, which results happen abroad, are exempt from the incidence of ISS.

### 8.6. Remittances Abroad

Remittances made by Brazilian individuals or legal entities established abroad are subject to a series of taxes, levied in the occurrence of one of the following events: (i) payment (transfer of money to the beneficiary located abroad); (ii) credit (recognition of the obligation of the paying source in favor of the beneficiary located abroad); (iii) delivery (availability of the amount to a representative of the beneficiary); (iv) employment (use of the amount in favor of the beneficiary); or (v) remittance (sending overseas, by means of the authorized channels of the Central Bank of Brazil), regardless of their order of occurrence and provided that the benefit to the counterpart overseas is characterized in any circumstance:

| **Modality** | **Withholding Income Tax (a)** | **CIDE Contribution** | **PIS/COFINS on Imports** | **Municipal Tax on Services (ISS)** |
|---|---|---|---|---|
| Profits and dividends | Exempt (b) | N/A | N/A | N/A |
| Interest | 15% (c) | N/A | N/A | N/A |
| Royalties for the use of patents in connection with inventions, processes, and manufacturing formulations, or for the use of trademarks (d) (e) | 15% (c) | 10% | N/A | N/A |
| Technical services and scientific, administrative, or similar assistance (e) | 15% (c) | 10% | 9.25% (f) | 2–5% |
| **Tax Burden** | **Beneficiary (g)** | **Paying Source** | **Paying Source** | **Beneficiary** |

**Notes:**

(a) 0% rate applicable to a number of specific situations.
(b) Payment or credit of profits and dividends by a Brazilian legal entity is exempt from income tax for the beneficiary, whether a natural person or legal entity, located in Brazil or abroad.
(c) 25% for beneficiaries situated in tax havens or tax-privileged entities (see section 8.7).
(d) Deductibility and possibility of remittance is limited by certain percentages of gross revenue, variable on the activity benefited by the payment of the royalties.
(e) Deductibility of payment to related parties abroad subject to the arm's length principle (see section 8.7).
(f) Applicable in the payment for services performed in Brazil, or performed overseas, whose results are verified in Brazil.
(g) Possibility of withholding tax credit for the beneficiary will depend on the internal law of the respective country and/or whether there is any treaty in force to prevent double taxation.

### 8.7. Payments Made to Related Parties Abroad

The payments made to related parties overseas in connection with the purchase of goods or the rendering of services are subject to the transfer pricing legislation, based on the arm's length principle (since January 1st, 2024 by the OECD rules), under which terms and conditions of any commercial or financial relationship (e.g. interest) between two or more related parties, established or performed either directly or indirectly, shall be measured through the same parameters that would be applied for non-related parties, in comparable transactions. Such terms are applicable without prejudice to the conditions of already existing deductibility conditions, relative to the need, usualness, and regularity of expenses to the source payer.

Transfer pricing legislation applies to operations performed by individuals or legal entities established in Brazil, with, among others:

- Individuals or legal entities established abroad and linked with the Brazilian entity
- Individuals or legal entities established in tax havens (i.e., a country or a dominion that does not tax income, or taxes it at a rate below 17%)
- Individuals or legal entities established in a country or a dominion with legal restrictions on the disclosure of the legal entities' capital, or of their ownership
- Individuals or legal entities under "tax-privileged" regimes, i.e., those which national legislation grants certain tax advantages equivalent to that found in tax havens.

Additionally, financing transactions commissioned by a Brazilian company with related parties overseas, even when such transactions are registered with Central Bank of Brazil, have certain limits in relation to the net worth of the latter, as shown in the following table.

| Criterion | Counterpart located in a tax haven or under a tax-privileged regime | Related party, located abroad, with an interest in the Brazilian company | Related party, located abroad, with no interest in the Brazilian company |
|---|---|---|---|
| Cap amount of the indebtedness on the date interests are appropriated | 30% of the net worth of the legal entity residing in Brazil, considering all entities in this situation | Twice the interest amount in the net worth of the legal entity residing in Brazil | Twice the net worth of the legal entity residing in Brazil |
| Total cap amount of the sum of indebtedness on the date interests are appropriated | | Twice the amount of the sum of interests of all related parties in the net worth of the legal entity residing in Brazil | Twice the amount of the sum of interests of all related parties in the net worth of the legal entity residing in Brazil (or of the net worth itself, in case there are no bound persons with interest in the capital) |

These rules are not applicable to the payment of royalties and those in connection with technical, scientific, administrative, or similar activities, which are subject to specific conditions, already mentioned.

**8.8. Brazilian Tax Reform**

In December 2023 Brazilian National Congress has approved an amendment to the Constitution, which will deeply modify the Brazilian Tax System with regards to taxation on sales, consumption and revenue. The most relevant for legal entities in Brazil are:

- Creation of the Tax on Goods and Services (IBS), due to States, Municipalities and the Federal District, and of the Federal Contribution on Goods and Services (CBS), both intended to embrace operations on almost any product, right or service. Such taxes – which will share rules regarding triggering events, calculation bases, immunities, noncumulative incidence (with full right to credit on acquisitions) etc. – will gradually replace ICMS, ISS, PIS and COFINS through a transition period ranging from 2026 to 2033. IBS and CBS rules will be uniform for the whole country, although rates may vary in the former case (both taxes will have reductions to some products and activities);

Creation of the Selective Tax (federal), on the production, extraction, commercialization or importation of goods and services that are to be defined as harmful to health or the environment. Such tax will be due only in the initial operation involving such goods or services. It is intended to replace IPI (which will remain, but mostly at a zero rate) starting in 2027.

## 9. DATA PROTECTION

### 9.1. Processing of Personal Data

The Brazilian General Data Protection Law ("LGPD"), which aims to protect fundamental rights to freedom and privacy, as well as the free development of the natural person's personality, provides that its rules and guidelines must be observed in any processing operation carried out by a natural person or by a legal entity, public or private, regardless of the means, the country of its headquarters, or the country where the data are located, provided that:

(a) The processing operation is carried out in Brazil;
(b) The processing activity aims at the offer or provision of goods or services or the processing of data of individuals located in Brazil; or
(c) The personal data undergoing processing have been collected in Brazil.

Among other hypotheses, the LGPD shall not apply when the processing of personal data is carried out by a natural person for exclusively private and non-economic purposes; for academic purposes (provided, whenever possible, anonymization of the data); or when personal data come from outside Brazilian territory and are not the subject of communication, shared use of data with Brazilian data processors, or international transfer of data to other countries than the country of origin, provided that the country of origin provides a level of protection of personal data adequate to that provided for in the LGPD.

### 9.2. Categories of Personal Data

The LGPD defines personal data as any information related to an identified or identifiable natural person, and sensitive personal data as any personal data related to racial or ethnic origin, religious belief, political opinion, union membership, or to a religious, philosophical, or political organization, data relating to health or sex life, genetic or biometric data, when linked to a natural person.

For each category of personal data, the controller must define a legal basis that underpins and legitimizes the processing of the data. For the processing of trivial personal data, there are ten legal bases that may be used, and for the processing of sensitive personal data, there are eight legal bases.

### 9.3. Principles of Personal Data Processing

All activities of personal data processing shall observe good faith, in addition to the following principles:

- Purpose: processing carried out for legitimate, specific, explicit, and informed purposes to the data subject, without the possibility of subsequent processing incompatible with these purposes;
- Adequacy: compatibility of the processing with the purposes informed to the data subject, according to the context of the processing;
- Necessity: limitation of the processing to the minimum necessary for the achievement of its purposes, encompassing pertinent, proportionate, and not excessive data in relation to the purposes of data processing;
- Free access: guarantee to data subjects of facilitated and free consultation on the form and duration of processing, as well as on the completeness of their personal data;
- Data quality: guarantee to data subjects of accuracy, clarity, relevance, and updating of data, according to the need and for the fulfillment of the purpose of their processing;
- Transparency: guarantee to data subjects of clear, accurate, and easily accessible information about the processing and the respective data processing agents, observing commercial and industrial secrets;
- Security: use of technical and administrative measures capable of protecting personal data from unauthorized access and from accidental or unlawful situations of destruction, loss, alteration, communication, or dissemination;
- Prevention: adoption of measures to prevent damage due to the processing of personal data;
- Non-discrimination: impossibility of processing for illicit or abusive discriminatory purposes;
- Accountability: demonstration, by the controller, of the adoption of effective measures capable of proving compliance with and observance of the rules for the protection of personal data, including the effectiveness of these measures.

**9.4. Rights of Data Subjects**

The LGPD also guarantees that the data subject has the right to obtain from the controller, at any time and upon request:

(a) Confirmation of the existence of processing;
(b) Access to the data;
(c) Correction of incomplete, inaccurate, or outdated data;
(d) Anonymization, blocking, or deletion of unnecessary, excessive, or unlawfully processed data in accordance with the provisions of the LGPD;
(e) Portability of data to another service provider or product supplier, upon express request, in accordance with the regulations of the National Data Protection Authority, while observing commercial and industrial secrets;
(f) Deletion of personal data processed with the consent of the data subject, subject to the exceptions provided by law;
(g) Information on the public and private entities with which the controller has shared data;
(h) Information about the possibility of not giving consent and the consequences of refusal; and
(i) Withdrawal of consent.

**9.5. International Data Transfer**

Under Brazilian legislation, the international transfer of personal data shall only be permitted:

- To countries or international organizations that provide a level of personal data protection adequate to that provided for in the LGPD;
- When the controller offers and proves compliance guarantees of the principles, rights of the data subject, and the data protection regime provided for in the LGPD, in the form of (i) specific contractual clauses for a particular transfer; (ii) standard contractual clauses; (iii) global corporate rules; (iv) seals, certificates, and codes of conduct regularly issued;
- When the transfer is necessary for the protection of the life or physical integrity of the data subject or a third party;
- When the National Data Protection Authority authorizes the transfer;
- When the data subject has provided specific and highlighted consent for the transfer, with prior information about the international nature of the operation, clearly distinguishing it from other purposes; or
- When necessary for (i) the execution of a contract or preliminary procedures to a contract of which the data subject is a party; (ii) the regular exercise of rights in a judicial, administrative, or arbitral process; and (iii) compliance with a legal or regulatory obligation by the controller.

**9.6. Responsibilities**

Data processors must:

(a) Maintain records of the data processing operations they perform;
(b) Appoint a Data Protection Officer;
(c) Prepare, in applicable cases, a Data Protection Impact Assessment (DPIA), which must contain, at minimum, a description of the types of data collected, the methodology used for collection and ensuring information security, and the controller's analysis regarding the measures, safeguards, and risk mitigation mechanisms adopted;
(d) Adopt security measures, both technical and administrative, capable of protecting personal data from unauthorized access and from accidental or unlawful situations of destruction, loss, alteration, communication, or any form of inadequate or illicit processing;
(e) Notify the National Data Protection Authority of any data breach that may pose a relevant risk or harm to the data subjects.

**9.7. Best Practices**

In the application of the principles of security and prevention, processing agents may implement a Privacy Governance Program that, at minimum:

(a) Demonstrates a commitment to adopting internal processes and policies ensuring comprehensive compliance with standards and best practices regarding the protection of personal data;
(b) Applies to the entire set of personal data under its control, regardless of how it was collected;
(c) Is tailored to the structure, scale, and volume of its operations, as well as the sensitivity of the data processed;
(d) Establishes appropriate policies and safeguards based on a systematic evaluation process of privacy impacts and risks;
(e) Aims to establish a relationship of trust with the data subject, through transparent actions and mechanisms ensuring the data subject's participation;

(f) Is integrated into its overall governance structure and establishes and applies internal and external supervision mechanisms;
(g) Includes incident response and remediation plans; and
(h) Is constantly updated based on information obtained from continuous monitoring and periodic evaluations.

**9.8. Penalties**

Processing agents who violate the LGPD are subject to the following administrative sanctions applicable by the National Data Protection Authority, without prejudice to any judicial action for damages:

- Warning, with indication of a deadline for corrective measures to be adopted;
- Simple fine, of up to 2% (two percent) of the revenue of the private legal entity, group, or conglomerate in Brazil in its last fiscal year, excluding taxes, limited, in total, to R$ 50,000,000.00 (fifty million Brazilian reais) per infringement;
- Daily fine, within the total limit indicated in the item above;
- Publicization of the infringement after its occurrence has been duly investigated and confirmed;
- Blocking of the personal data to which the infringement refers until its regularization;
- Deletion of the personal data to which the infringement refers;
- Partial suspension of the operation of the database to which the infringement refers for a maximum period of 6 (six) months, extendable by an equal period, until the regularization of the processing activity by the controller;
- Suspension of the processing activity of the personal data to which the infringement refers for a maximum period of 6 (six) months, extendable by an equal period;
- Partial or total prohibition of the exercise of activities related to data processing.

###

# CAYMAN ISLANDS

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ATTORNEYS-AT-LAW

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This narrative provides an overview of doing business in the Cayman Islands. It is intended to provide a summary of the legal framework, types of entity commonly used, formation processes, and general benefits of the jurisdiction.

**Country Overview**
The Cayman Islands are an offshore financial centre located in the Western part of the Caribbean that are a British Overseas Territory. Cayman has a developed and thriving modern economy with some of the highest standard of living in the World. It has the largest GDP in the Caribbean which has been formed from its dominant financial services industry. It is estimated that 80% of the world's hedge funds are domiciled in the Cayman Islands, with substantial assets being managed by entities and individuals based there.

**Legal System**
The Cayman Islands has its own government, but is administered as a British overseas territory. The national government runs the Country and the British King is represented through the Islands' Governor. The principal financial regulator is the Cayman Islands Monetary Authority, which has oversight over the entire financial sector.

The Cayman Islands have a combined common law and statute-based legal system with a robust and voluminous set of jurisprudence of its own. The Grand Court consists of Civil and Criminal divisions, and has a specialist and dedicated Financial Services Division. Decisions of the Cayman Islands Courts can be appealed to the Cayman Islands Court of Appeal, which in turn can then be appealed to the Judicial Committee of the Privy Council based in London. Decisions of the UK courts and those in other Commonwealth jurisdictions are of persuasive authority.

**Business Vehicles**
The most common form of corporate entity used is an Exempted Limited Company, however Cayman has a number of other entities which are available depending on the nature of their purpose. Foreign companies can also register in the Cayman Islands themselves.

In addition to companies, foreign investors will often use the following:

- Exempted companies (with limited liability)
- Limited liability companies
- Exempted limited partnerships (most common for funds)
- Trusts
- Foundation Companies
- Special purpose special trusts (alternative regime) (STAR) trusts

Companies carrying out local business on the island will require appropriate licenses and this may determine the nature of the ownership of the entity (all local business require 60% Caymanian ownership and control).

**Registration and Formation**
Forming a company can be done quickly and efficiently as long as the relevant due diligence and KYC documentation is completed.

A company must file its memorandum and articles of association with the Registrar, and is then issued with a certificate of incorporation certifying that the company was incorporated on the date the incorporation documents were lodged with the Registrar. Companies can be registered within 48 hours of filing the documents for an express fee, otherwise the normal processing time is up to 2 weeks.

**Reporting Requirements**
Whilst there is no obligation for Cayman entities to file accounts with the Registrar, there are obligations on entities maintaining their own books and records. Shareholder information is not public and does not need to be filed with the Registrar, however the registered office must maintain an up to date Register of Members, which is available for inspection.

Exempted companies must file the following information (including any changes) with the Registrar:

- The memorandum and articles of association.
- Details of the authorised share capital.
- The location of the registered office.
- Details of directors and officers.
- an affidavit and annual return stating that the company intends to and has conducted its operations mainly outside the Cayman Islands and has complied with the Companies Act

Further, with the implementation of economic substance and beneficial ownership regimes, there are substantial reporting obligations imposed on Cayman entities.

*Economic Substance*
The International Tax Co-operation (Economic Substance) Act requires that each legal entity domiciled or registered in the Cayman Islands must make an annual notification (referred to as an Economic Substance Notification or ESN) as to whether or not it was carrying on one or more of a defined list of activities (Relevant Activities) in the prior year and if so, within 12 months of its financial year end, produce an annual report (subject to it falling within the applicable exemptions, eg. it is tax resident in a jurisdiction outside of the Cayman Islands). Entities which are in scope (Relevant Entities) and which were conducting any Relevant Activity are required to meet an economic substance test (ES Test) in respect of such Relevant Activity. The requirements of the ES Test vary depending on the Relevant Activities conducted, and each Annual Report (referred to as an Economic Substance Return) demonstrates the entity's compliance with the requirements of the ES Test to be assessed.

Failure to comply wit the ES regime can result in substantial fines which can rise rapidly for continued breach, and ultimately lead to the entity being struck off by the Registrar.

*Beneficial Ownership*
The Cayman Islands has implemented beneficial ownership legislation that governs how most Cayman Islands entities are required to establish and maintain details of their beneficial owners. Registers are not publicly available but can be accessed by certain international tax authorities and law enforcement agencies. In essence, any individual person directly or indirectly holding 25% or more of the shares, voting rights, partnership interests or ability to control the board of a relevant entity is determined to be a beneficial owner, and their details and appropriate KYC documentation must be maintained on the Register. Non-compliance constitutes an offence which can result in fines and imprisonment.

**Share Capital**
There is no minimum or maximum share capital requirement. However, the size of the authorised share capital determines the initial registration and annual government fee. Fees range from USD 366 (for an ordinary company with authorised capital of USD 50,000 or less), to USD 3000, for an exempted company with capital of more than USD 2 million. Shares can be issued for non-cash consideration, and the rights attaching to shares are governed by the company's constitutional documents and any shareholders agreement.

**Management Structure**
The board of directors has conduct of the day to day management of a company and all Cayman companies must have at least one director, except mutual funds which must have two. Corporate directors are permitted, and where an entity is regulated its directors must also be registered with CIMA.

**Directors' and Officers' Liability**
The Companies Act provides that a director's liability can be unlimited provided that this is specified in the memorandum of association. A director can be personally liable for failure to act honestly, in good faith and in the best interests of the company. They must also exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. Liability can also arise under statute, for fraud. In most cases, however, the articles of association will contain indemnities in a director's favour. A parent company is not generally liable for the debts of its subsidiaries unless it gave a guarantee.

**Tax**
There is no personal or corporate taxation in the Cayman Islands. Businesses pay annual registration fees may also have licensing fees depending on the nature of their business. A business or entity will not pay any tax when making a dividend or distribution, however the recipient may have tax liability in their own jurisdiction of tax residence.

**Foreign Investment**
The Cayman Islands distinguish between doing business within the Islands and doing business outside the Islands. The Local Companies Control Act governs the foreign ownership and control of businesses doing business within the Islands, and ordinarily requires 60% Caymanian ownership and control. However, licences can be granted to overseas investors who are unsuccessful in attracting local participation. There are no restrictions on foreign ownership of land. Transfers of land including land holding companies attracts stamp duty at 7.5% of the value.

Exempted companies, limited partnerships and trusts formed to do business outside the Islands are, with limited exceptions, not subject to statutory or regulatory constraints on investment policies and strategies or other commercial matters.

In addition to heightened due diligence requirements when doing business with high-risk jurisdictions, Orders in Council implemented in the UK that relate to international sanctions are typically extended to the Cayman Islands. The Cayman Islands Financial Reporting Authority administers and co-ordinates the implementation of financial sanctions in the Cayman Islands.

There are no exchange control or currency regulations.

**Data Protection**
The Data Protection Act (DPA) is intended to protect individuals' rights in relation to their personal data, and is based upon the EU General Data Protection Regulation (GDPR).

The DPA establishes 8 principles for the protection of personal data by data controllers, meaning that a data controller must ensure that personal data must be:

1. Fairly processed and lawfully obtained.
2. Obtained for and processed in accordance with a specified lawful purpose.
3. Adequate, relevant and not excessive to the purpose for which it is collected or processed.
4. Accurate and up to date.
5. Kept for no longer than is necessary.
6. Processed in compliance with individuals' rights under the DPA.
7. Kept safe and secure.
8. Only transferred to another jurisdiction where adequate protection is provided.

The Cayman Islands Ombudsman is the independent office of Parliament that investigates complaints in relation not the DPA. Failure to properly comply with the DPA can result in substantial fines and/or imprisonment for a term of up to 5 years.

###

# CHILE


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Despite the social crisis and the pandemic generated by Covid 19 in 2019, Chile is still one of the strongest economies in Latin America. As the global economic landscape evolves, Chile emerges as a beacon of opportunity for savvy investors seeking stable returns and strategic ventures. Renowned for its resilient economy, political stability, and forward-thinking policies, Chile stands poised to capitalize on emerging trends and industries, propelling it into a new era of prosperity.

Chile's economic trajectory exemplifies a narrative of consistent expansion and resilience. According to the Central Bank, Chile's for year 2024, GDP growth is expected between 2 and 3%, a range that is between 1.5% and 2.5% for 2025 and 2026.

A cornerstone of Chile's appeal to investors lies in its unwavering commitment to political stability and democratic governance. Amidst the tumultuous currents of global politics, Chile stands as a bastion of democratic principles and institutional respect. With a long-standing tradition of transparent governance and respect for the rule of law, Chile offers investors a predictable and conducive environment for long-term investments. Moreover, its proactive engagement in international trade agreements bolsters its reputation as a reliable partner in the global economy, fostering a conducive climate for foreign investment.

At the heart of Chile's economic prowess, lies its dominance in the global copper market. As the world's leading copper producer, Chile commands a strategic position in meeting the burgeoning demand for this vital commodity. The anticipated surge in demand for copper, driven by trends such as urbanization, renewable energy infrastructure, and electric vehicles production, positions Chile at the forefront of this lucrative market, which by 2025 expects a price of 3.9 dollars per pound. With abundant reserves and efficient production capabilities, Chile offers investors unparalleled opportunities to capitalize on the projected growth in copper demand, thus cementing its status as a global leader in the industry.

In tandem with the global transition towards sustainable energy sources, Chile emerges as a key player in the burgeoning lithium market. Endowed with vast lithium reserves, particularly in the Atacama salt flats, Chile stands poised to capitalize on the exponential growth in demand for this essential component of rechargeable batteries. Ambitious plans for expanding lithium production and refining capabilities further enhance Chile's appeal to investors seeking exposure to the burgeoning electric vehicle and renewable energy sectors. As the world looks towards cleaner and more sustainable energy solutions, Chile stands ready to meet this demand, presenting lucrative opportunities for forward-thinking investors. In that sense, the International Energy Agency (AIE) expected that by 2040, global demand for lithium will increase 40 times.

On the other hand, Chile's natural advantages in renewable energy resources position it as a frontrunner in the emerging green hydrogen sector. With abundant solar and wind resources coupled with favorable geographical conditions, Chile offers an ideal environment for green hydrogen production. The government's commitment to fostering innovation and sustainable development further catalyzes investment in this promising sector. As global efforts to decarbonize intensify, Chile emerges as a strategic hub for green hydrogen production, attracting investments from around the globe and propelling the country towards a greener and more sustainable future. In that order ,the Hydrogen Council projects that hydrogen demand will grow by 40% by 2030, and that the global market for this fuel and related technologies will generate revenues of US$2.5 trillion per year by 2050, along with employment for over 30 million people. Chile's renewable energy potential is over 2 terawatts. Utilizing the capacity factors of different technologies, this capacity is sufficient to generate approximately 200 million tons of green hydrogen annually, triple the current global hydrogen production.

If exports are calculated at a price of $1.5 USD/kgH2, it means that potentially Chile could export clean energy in the form of hydrogen equivalent to its GDP.

The National Green Hydrogen Strategy - presented at the end of 2020 by Chilean government - plans to utilize 10% of this potential, gradually scaling up from now until 2050. According to estimates from the Ministry of Energy, this will require an accumulated investment of around US$330 billion by 2050, creating from scratch a new sustainable industry[1].

Despite the political ups and downs Chile's open economy, combined with an active policy of bilateral, regional, and multilateral trade agreements, has underpinned a sustained increase in foreign trade in goods and services and in the country's international competitiveness, consolidating its position as an active international partner. An example of this is the recent approval of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), also known as TPP11 or TPP-11, which opened more than three thousand opportunities for Chilean products in the agricultural, forestry, fishing, dairy and meat sectors, which will enter markets as important as Japan, Vietnam or Canada with zero tariffs, benefiting, especially, the agricultural, fishing and forestry regions of our country.

In conclusion, the allure of investing in Chile in the coming years is undeniable, characterized by robust economic growth, political stability, and strategic advantages in key industries such as copper, lithium, and green hydrogen. As Chile continues to chart its course towards a prosperous and sustainable future, investors stand poised to reap the rewards of their foresight and confidence in this dynamic and resilient economy.

## 1. Corporate and Tax Relevant Matters

Foreign investors can invest in a recipient company or in a direct way. It is also possible to establish a foreign corporation agency fulfilling the requirement stated in Corporations Law, number 18.046, articles 121 and following.

To incorporate a company in Chile, it is necessary to carry out the following proceedings:

1. The foreign Company must request a taxpayer number in the Chilean Internal Revenue Service and appoint a company attorney in Chile. To obtain the taxpayer number and to sign the deed of incorporation, it is necessary that the foreign company grant a special power of attorney to one or two people domiciled in Chile.

2. Deciding the kind of company that will be constituted. The main possibilities are a limited liability company, corporation, and stock company (SpA).

The first one is a person partnership, in which the partners and the administration form are established in the bylaws of the organization. According to this, every change of partner or manager has to be made through a modification of the articles of organization, and those proceedings are fairly simple. The second one is a capital company, which is administrated by a board of directors and stockholders meetings. Stock transfers are conducted in a simple way. Power and manager changes are carried out by the board of directors. Other differences are as follows:

- In limited liability companies, income distribution and loss contribution schemes are pro rata according to their corporative contribution, unless partners agree on a different distribution. The distribution form could be agreed upon year to year. However, corporations' dividends are proportional to the amount of stock owned (without preferred stocks existence in conformity with the 20th article of Corporations Law).

- The deadline to enter social capital in corporations is three years; afterward, it will be understood that capital was reduced to the effectively paid amount. In limited liability companies, there is no legal expiration date to enter social capital.

- In corporations, if it is reasonable, board of directors' remunerations can be deducted as expenses.

[1] H2V "HIDROGENO VERDE UN PROYECTO PÁIS", MINISTERIO DE ENERGÍA, GOBIERNO DE CHILE. (https://energia.gob.cl/sites/default/files/guia_hidrogeno_abril.pdf)

- In the case of social rights or stocks sales, the procedure to determine income or loss for tax purposes is different. In the case of sale of limited liability company social rights, as a general rule, the difference between transfer price of the right and their book value (net worth inflation adjusted plus retained earnings) will represent an excess value, except in sale to related company or related natural person. In corporations, as a general rule, the excess value will be the difference between the transfer pricing and the first cost duly inflation adjusted.

Finally, a new kind of company could be used: the stock company (SpA). These companies are formed by one or more persons whose participation in the capital is represented by shares. By extension, they are governed by the norms applying to close corporations and, in a requirement that is practically the same as for a corporation, must keep a shareholder register.

Stock companies are founded through a public deed or a private document signed by the participants (in which case their signatures must be verified by a public notary who legalizes the document). This must be registered with the Companies Registry Office corresponding to their domicile and be published once in the Diario Oficial (Official Newspaper) within a month of the date of signing.

A stock company has plenty of benefits for the foreign investor:

- Its bylaws can be easily changed. This includes the administration of the company, which also can be freely chosen between a board of directors or a general manager.

- Only one person is required for the foundation. This is a great opportunity to have a 100% controlled branch.

- No minimum capital is required.

- There is no legal deadline to pay the social capital. If the articles do not settle it, the deadline will be five years since the incorporation deed.

3. Having made the previous decision, the deed of incorporation must be signed in the presence of a Chilean Notary; then the deed's summary must be published in the Official Newspaper and registered in the government registry of commercial affairs. In the event of corporation constitution, the first board of directors meeting must take place for the board to designate a President and a General Manager and grant the social powers. If a limited liability company, the powers are included in the articles of organization.

   With these documents, the company must obtain a taxpayer number and initiate activities at the Internal Revenue Service—then the company will be operational. Afterward, invoices and ledgers must be stamped.

## 2. Labor Relevant Matters

The Labor Code regulates the different types of employment contracts and the obligations and rights between workers and employers.
Chilean labor law limits the number of foreigners that a company may employ. Article 19 of the Labor Code establishes that, in companies with more than 25 employees, at least 85% must be of Chilean nationality.
Companies with up to 25 employees are exempt from this norm. This percentage is calculated over the total number of workers that an employer has in Chile, not in each branch separately.

**Exceptions to This Norm:**

- Specialized technical personnel not available locally are excluded; the employer must be able to prove this specialization in the case of an inspection.
- A foreigner will count as Chilean if married to a Chilean, the parent of Chilean children, or the widow or widower of a Chilean.

The minimum working age is 18. However, 16 and 17 year-olds can sign contracts for light work that does not negatively affect their health and development, providing they do so with the express authorization of the persons responsible for their care.

They must, in addition, show that they have finished their secondary schooling or are currently in either secondary or primary schooling. In this case, their work must be compatible with regular school attendance and their participation in educational programs.

The employment contract must stipulate the nature of the services to be provided and the place where this work will take place; the amount, form, and date of payment of the agreed remuneration; the length and distribution of the working day; and the duration of the contract. The contract must, in addition, indicate the additional benefits that the employer may provide such as housing, light, fuel, and food.

It is forbidden to require an absence of economic, financial, banking, or commercial liabilities as a condition of hiring. Treatment in accordance with human dignity and respect for freedom of work are required at all times, and any type of discrimination, distinction, exclusion, or preference on the grounds of race, color, gender, age, marital status, union membership, religion, political opinion, nationality, descent, or social origin is forbidden. Equality of opportunity and treatment must be maintained, and employees are not allowed to renounce the rights established by law.

**Types of Work Contract**:

- **Indefinite Contract**: These contracts do not have an end date previously established by the parties and are the most usual type of contract. They are signed for the useful life of the worker and may be terminated on the grounds established in the Labor Code.

- **Fixed-Term Contract**: The duration of these contracts is set at the time of signing. They have a maximum duration of one year or, exceptionally, two years in the case of managers or persons with a professional or technical qualification from a higher education institution. Fixed-term contracts may be renewed only once, and if renewed a second time, they become indefinite. This rule also applies when, with the knowledge of the employer, a worker continues to render services once a contract has expired.

In Chile, compensation must be mutually agreed upon by the employee and employer. Compensation cannot, however, be less than the minimum monthly wage set annually by law for workers. From July 2024, this wage will reach $500.000 Chilean pesos.

Employees with more than one year of service are entitled to fifteen working days of holiday a year on full pay. However, employees in the Magallanes Region and Chilean Antarctica, the Aysén Region, and the Palena Province are entitled to twenty working days of holiday a year.

Holidays are given preferably in spring or summer and, taking into account the needs of the company, must be taken in one block. However, periods of more than ten working days can be split up by mutual agreement. Holidays cannot be exchanged for money.
Composition of salaries in Chile and social security discounts:

The minimum components of a worker's remuneration in Chile are:

**a)** **Base salary**, which is the mandatory and fixed stipend, in money, paid for equal periods, determined in the contract, that the worker receives for the provision of his services in an ordinary workday.

**b)** **Legal Bonus (Gratification**), which corresponds to the part of profits of the company with which the employer benefits the worker's salary. There are various ways to agree on this legal bonus, but the most common and used corresponds to the Guaranteed Minimum Bonus, which is capped at 4.75 Minimum Monthly Income, equivalent to approximately CH$182,083 per month.

In consideration of what is indicated, at least one employer must disburse monthly for each worker the sum of CH$682,083 for remuneration. For other part, the employer must make the following legal discounts in the salary:

**i)** 10%, which is sent to the worker's future pension (plus the commission in the case of the AFPs).

**ii)** 7%, destined for your health insurance.

**iii)** 3% for Unemployment Insurance. The discount is always 3%, however, depending on the type of contract, the person responsible for the contribution or discount varies. Indefinite contract: the worker's contribution is 0.6% of their taxable remuneration. Fixed contract: it is the employer who must contribute 3% of the worker's remuneration.

As for the currency in which the salary can be paid, generally it must be paid in Chilean Pesos but it is not prohibited to pay in US Dollars, if this is previously agreed in the employment contract and as long as it is used the official exchange rate of the date of the salary disbursement.

## 3. TAX RELEVANT MATTERS

**First Category Tax (Corporate Tax**): First Category Tax is a business profits tax calculated on the income derived from commercial, industrial, mining, and other activities involving the use of capital. Depending on the tax regime used by the company the rate of this tax varied from 25% - 27%, being able to use the 100% or 65% of this tax paid against final taxes.

The amount of this tax is determined based on the liquid earnings (revenue accrued and/or received minus expenses) obtained by the company. It is declared annually, in April, accounting for all the income received in the preceding calendar year.

When the owner of a company receives dividends or withdraws capital from the enterprise, the owner is liable to pay a Complementary Global Tax (residents) or Additional Tax (nonresidents). Asi it was indicated, the First Category Tax paid by an enterprise can be used as a credit against Complementary Global Tax or Additional Tax.

In Chile there are five different tax regimes being one of the most important the General Pro-PYME Regime will be described below, whose characteristics are the following:

Tax Regime focused on micro, small and medium taxpayers (SMEs), which determines their tax result, generally, based on income received and expenses paid, being obliged to keep complete accounting with the possibility of opting for a simplified one. They are taxed with the First Category Tax with a rate of 25% and their owners will be taxed based on withdrawals, remittances or effective distributions, with full imputation (100%) of the First Category Tax credit to the final taxes that affect them, except for those owners who are First Category Tax taxpayers and are not covered by the Pro Pyme regime.

To access this regime, the average gross income of the taxpayer in the last three years cannot exceed 75.000 Unidades de Fomento, which can be exceeded once, and, in no case, in one year can the income exceed 85.000 UF. This average includes income from relates.

**Additional Tax (Withholding Tax**): Individuals and legal entities that are not resident or domiciled in Chile are taxed on any income derived from Chilean sources. Depending on the type of income, a tax return must be filed annually or monthly.

The general rate of Additional Tax is 35%, with lower rates applying for some types of income.

Dividends, withdrawals, and/or remittance of profits from Chile to Individuals and legal entities that are not resident or domiciled in Chile are taxed at the general Additional Tax rate of 35%. To calculate the Additional Tax, an amount equivalent to the First Category Tax paid corresponding to the profits distributed or remitted should be included in the tax base, and the income is thus grossed-up. The rate of Additional Tax may be deducted from the tax due as a credit.

V**alue Added Tax (VAT)**: VAT, Chile's main consumption tax, is applied at a rate of 19% on the price of sales of goods and services, with a few exemptions to some services, in which the tour operator business is not included.

The same general rate applies to imports, habitual or otherwise, made by any individual or legal entity. VAT must be declared and paid on a monthly basis, and the amount to be paid is determined by the difference between the tax debit and tax credit. If the tax credit is greater than the debit, the excess can be carried over to the following month and used as a VAT credit. Exporters are exempt from VAT and are entitled to reimbursement of VAT on purchases of goods and services that they use as part of their export activity.

###

# COLOMBIA

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## 1. Foreign Investment

Colombia has made considerable progress regarding its foreign investment legislation. Due to this progress, foreign investment procedures are now more expedited, flexible, and certain. Foreign exchange transactions are regulated and must be registered before the Colombian Central Bank, and their compliance is supervised by the Colombian Tax Authority, the Superintendence of Companies, and the Superintendence of Finance.

**What Is Foreign Investment?**

Any capital investment from abroad made by a non-Colombian resident that is conducted in Colombian territory (including free trade zones) is considered a foreign investment. For foreign exchange purposes, a non-Colombian resident is any corporation that is domiciled abroad and/or any individual who has not resided in a Colombian territory for more than six months, (continuously or not, during a twelve-month period).

**Key Principles of Foreign Investment in Colombia**

- **Equal Treatment:** Foreign investments receive the same treatment as national investments. Therefore, foreign investors will not be discriminated against, nor will they receive less or more favorable conditions than national investors, excepting the provisions of special regimes.
- **Universality and Automatic Nature:** As a general rule, foreign investments don't need approval from government entities to invest in Colombia, and they may be performed in all sectors of the Colombian economy, except for the following:
  - National defense and security
  - Management, processing, and disposal of toxic, hazardous, or radioactive waste.

Likewise, investments in the financial sectors must comply with the requirements established in their specific regulations, and investments in the hydrocarbon and mining sector is subject to a special regime and may require prior authorization from the Ministry of Mines and Energy.

- **Stability of exchange rights:** Conditions for the reimbursement of investments and remittance of profits in force on the date in which investments are registered may not be changed in any way that could be detrimental to the investor, except on a temporary basis, based on a substantial decrease of the country's international reserves (to less than three months of imports).
- **Veracity of the information:** The information contained in the registration statement of the investment is provided under oath. In that sense, foreign investors must guarantee the veracity and integrity of the information provided.
- **Information preservation:** Foreign investors must preserve all information and documents associated with their investments in Colombia, at least for a period equal to the statute of limitation for sanctions related to violations of foreign exchange and investment regulations.

**Foreign Exchange Market**

The foreign exchange market comprises all foreign exchange transactions, which must mandatorily be performed through: (i) authorized exchange intermediaries (i.e., banks and certain financial institutions) or (ii) compensation accounts (accounts opened by Colombian residents in foreign banks that are subject to registration and periodic reporting to the Colombian Central Bank). Additionally, foreign exchange transactions that are not required to be channeled through the foreign exchange market, but are voluntarily performed through a Colombian financial institution, are considered part of the foreign exchange market.

The following foreign exchange transactions must mandatorily be completed through the foreign exchange market: (i) import and export of products; (ii) foreign debt transactions; (iii) foreign investment in Colombian companies or investment of Colombian capital in foreign companies; (iv) financial investments and assets abroad; (v) the granting of guarantees and security interests in foreign currency; and (vi) international derivative transactions.

All other transactions that are not required to be channeled through the foreign exchange market, such as money transfers and payment of services in foreign currency, are considered "free market" transactions and are not required to go through Colombian financial institutions or be reported to the Central Bank *(Banco de la República)*.

**Types of Foreign Investment and Registration Proceedings**

- **Direct Foreign Investment:** The different types of direct investment are as follows:
  - Capital contributions, through the purchase of shares, participation interests, or convertible bonds, if the company is not registered in the National Registry of Securities and Issuers (RNVE) or in a foreign securities trading system.
  - Capital contributions, mentioned in the previous point, in companies that are registered in the National Registry of Securities and Issuers (RNVE), when the investor declares that they have been acquired with intention of permanence.
  - Right or participation in fiduciary business, whose purpose does not constitute foreign portfolio investment.
  - Purchase of real estate located within Colombian territory (acquired directly, through trusts or real estate securitization), if the tittle is not registered in the National Registry of Securities and Issuers (RNVE).
  - Participation or economic rights derived from contributions in acts or contracts (joint ventures, strategic alliances, concessions, and others) when these do not entail a participation in the company's capital, and the profits generated by the investment depend on the company's profits.
  - Assigned capital and supplementary investments to the assigned capital of branches of foreign companies.
  - Participations in local private investment funds.
  - Intangible assets acquired with the purpose of being used to obtain economic benefit in Colombia.

Registration of foreign investments with the Central Bank grants the right to remit abroad or reinvest dividends and/or income arising from the sale or liquidation of the investment or the reduction of the recipient company's capital. To register the investment with the Colombian Central Bank, the investor must complete a Foreign Exchange Declaration at the time funds are received by the foreign exchange intermediary.

- **Indirect Investments and Others**
  - Foreign investors may also perform investments through contributions in kind or capitalization of profits, liabilities, and equity accounts (which constitute investment amounts with remittance rights). To register these investments, the investor shall file a written request before the Central Bank.
  - **Substitutions and Cancellations:** When a foreign investor transfers its investment to another foreign individual or company, it must report the substitution of the foreign investor with the Central Bank by filing a written request within the following six months of the corresponding transfer. Similarly, if the investment is sold to a Colombian resident, diminished, liquidated, or otherwise cancelled, the investor must report said cancellation of the foreign investment within a six-month period.
- **Portfolio Investments:** Portfolio investments may be made in any of the following assets:
  - Securities registered in National Registry of Securities and Issuers (RNVE) or listed in foreign securities trading systems.
  - Participations in collective investment funds.
  - Participations in negotiable deposit certificate programs representative of securities.

Investments made by foreign individuals and companies in securities registered with the National Securities Registry (RNVE) and collective portfolios must be performed through local administrators (i.e., stock brokerage firms, investment management entities) that shall be appointed as representatives for the investors and that shall comply with the applicable registration requirements. The foreign exchange regime also establishes certain special registration procedures for investments carried out under integration agreements between various stock exchanges, programs concerning certificates representing depositary receipts (ADRs GDRs), and exchange traded funds (ETFs). In general, to register foreign portfolio investments made through the transfer of foreign currency, the administrators will need to file a Foreign Exchange Declaration with a foreign exchange intermediary.

- **Investment of Colombian Capital Abroad:** The outward-bound investment by Colombian residents or companies in foreign companies, assets, and securities issued abroad and the re-investment or capitalization of funds abroad that may otherwise be repatriated (interests, profits, royalties, etc.) must also be registered with the Central Bank. Registration will grant the Colombian investor the right to repatriate the investment, or any income (dividends, interest, or sale price of the investment) derived from it.

**Special Foreign Exchange Regimes**
Colombian foreign exchange regulations provide for a special regime applicable to (a) branches of foreign companies that engage in activities related to the exploration and exploitation of oil, natural gas, coal, ferronickel, and uranium, or (b) that provide exclusive services to the oil and gas industry (hydrocarbons sector).

Branches that access the special regime have certain special rights, including (i) the right to make and receive payments in foreign currency to and from other foreign company branches that benefit from the special regime; (ii) the right to receive payments from the sale of their products or services abroad in foreign currency; and (iii) the right to reflect negative balances in the supplementary investment account and to record the availability of goods or services in the supplementary investment account.

**Foreign Debt**
Colombian residents may obtain credits in foreign currency from Colombian foreign exchange intermediaries, foreign companies, and foreign financial entities. Additionally, they may obtain credits in foreign currency by placing bonds abroad. Likewise, Colombian residents are allowed to grant loans to foreign residents. The entry and exit of foreign currency arising from foreign debt transactions must be channeled through the foreign exchange market. Both the foreign loan and the payments arising from the loan (disbursements, payment of capital and interest) must be reported to the Central Bank by filing an exchange form, along with the document that instrumentalizes the credit, such as the contract or promissory note.

**International Investment Treaties**
During the past decades, the Colombian government has sought to strengthen and diversify economic and trade relationships through instruments such as international investment treaties. The main objective of this international legal framework is to maintain adequate standards for the protection of foreign investment, considered a determining factor in the country's growth and development. This growth will in turn contribute to strengthening Colombia as a reliable and attractive country in which to develop business.

For this reason, the Colombian government has endeavored to attract foreign investment and maintain favorable investing conditions by negotiating, executing, and approving Free Trade Agreements (FTAs) and agreements for the promotion and reciprocal protection of investments (APPRI's), international treaties that govern foreign investment. These treaties seek to provide a stable legal environment for domestic and foreign investment, and to create adequate markets for Colombian production.

Currently, the Colombian government has executed and approved IITs with:

- Bilateral Investment Protection Treaties (BITs): BIT Peru; BIT Spain; BIT Switzerland; BIT China; BIT India; BIT United Kingdom; BIT Japan; BIT France; Chapter 8, FTA Canada; Chapter 10, FTA USA; Chapter 10, FTA Israel; APPRI Japan; Chapter 17, FTA Mexico; Chapter 12, Guatemala, El Salvador, Honduras FTA.
- International Conventions for Investment Protection: Multilateral Investment Guarantee Agency (MIGA); International Centre for Settlement of Investment Disputes (ICSID).

## 2. Foreign Trade

**Free Trade Agreements**
In recent years, in order to meet the demands of globalization, Colombia established an open integration policy, subscribing to a number of FTAs. These FTAs have introduced tools that simplify procedures for trading goods and services.

Currently, Colombia has in force seventeen (17) FTAs with the CAN (Andean Community); EFTA (Switzerland, Liechtenstein, Norway, and Iceland); Canada; Chile; United States; Mexico; Northern Triangle (Guatemala, El Salvador, Honduras); European Union; Pacific Alliance (Chile, Colombia, Mexico, Peru); South Korea; Costa Rica; CARICOM - Caribbean Community; Cuba; Mercosur; Venezuela; Israel; and Panama.

Under these FTAs, Colombia obtains preferential tariff treatment and access to the different industrial markets and a guaranteed access to necessary capital goods through the elimination or reduction of customs duties.

Colombia is expected to become a platform for capital investment to and from different countries and a very attractive country for the development of foreign trade operations.

**Mechanisms to Promote Foreign Trade Operations**
To promote foreign trade operations and investments, the Colombian Customs Regime includes different mechanisms under which it is possible to develop efficient trade operations. The most relevant mechanisms are free trade zones.

Free trade zones are geographical areas defined within the national territory for the production of industrial goods, the rendering of services, or the development of commercial activities under special tax, customs, and foreign trade regimes.

The free trade zones are conceived not only as a mechanism to attract new investments and create jobs, but also as an incentive for the development of highly productive and competitive industrial processes with substantial technological innovation components.

As a general rule, in a free trade zone it is possible to develop any industrial or commercial activity, except for:

- Financial services
- State concessions
- Residential public utilities (except those devoted to electric power generation and new companies that provide international long-distance telephone services).

To satisfy the particular needs of investors, the Colombian customs regime establishes the following kinds of free trade zones:

- **Permanent Free Trade Zone (PFTZ):** Qualified and adequate area for the development of industrial and commercial activities by several companies.
- **Permanent Offshore Free Trade Zone:** dedicated to the development of technical evaluation, exploration and production of offshore hydrocarbons, and related activities.
- **Special Permanent Free Trade Zone or Single Enterprise Free Trade Zone:** Areas where a single company develops a special project with significant economic and social impact for Colombia. The activities developed by the company must be performed exclusively within the determined zone. This user must fulfill requirements of invest and job creation within a three (3) year period.
- **Transitory Free Trade Zone:** Locations where trade fairs, exhibits, conferences, and seminars that are considered important for Colombia's economy and the international economy take place.

According to the customs regime, there are different types of free trade zone users:

- **User Operators:** Legal entities authorized to manage, supervise, promote, and develop free trade zones, as well as to qualify other types of users.
- **Industrial Users of Goods:** Legal entities installed within the perimeter of a free trade zone authorized to produce, transform, or assemble goods through the processing of raw materials or semi-finished goods. However, for the products to exit the free trade zone it's necessary to fill out the Import Declaration and request the licenses or registrations required.

- **Industrial Users of Services:** Legal entities authorized to perform the following activities within the perimeter of a free trade zone: logistics, transportation, handling, distribution, packaging, labeling, and other production and merchandising related services; also, any service inherent to telecommunications, data capturing systems, tourism, information technology, scientific and technological research, medical assistance, dental and health services in general, tourism, technical support, naval and air equipment, consulting, or similar, among others.
- **Commercial Users:** Legal entities authorized to perform marketing, merchandising, and warehousing activities, among others, within the perimeter of any free trade zone.

**Tax Benefits Derived from the Free Trade Zones Regime**
Every permanent free trade zone or special permanent free trade zone must have a user operator. Permanent free trade zones allow commercial or industrial users of goods and/or services to be located within its perimeter. Special permanent free trade zones only allow industrial users of goods and/or services.

Free Trade Zones offer tax and customs benefits for a period up to thirty (30) years with possibility of renewal for the same period:

- Taxes
  - Free trade zone industrial users are subject to a reduced corporate income tax rate of 20% on its income from the export of goods or services; income not related to such activity (export of goods or services) is subject to a rate of 35%. Commercial users are taxed at the general rate (currently 35%).
  - The delivery of goods from abroad into free trade zones is not considered as an import; therefore, it is exempt from custom taxes (value added tax (VAT) and customs duties) while the goods remain in the free trade zone. Taxes are triggered when the goods are further introduced into Colombian territory.
  - Purchases of raw materials, inputs, and finished goods from the national customs territory are VAT exempt, provided that these transactions are among those specified as part of the user's corporate purpose.
  - Sales to foreign markets are VAT exempt.
- Customs
  - Exports made from free trade zones to foreign countries benefit from international trade agreements signed by Colombia.
  - It is possible to perform partial processing outside of the free trade zone for up to nine months.
  - Goods produced, manufactured, transformed, or resulting from any production process developed in a free trade zone are recognized as being of "national origin".
  - Goods can stay indefinitely in the free trade zone.
  - In Colombia it is possible to sell 100% of the goods or services produced in a free trade zone with customs tariffs and VAT payable only in the percentage of inputs imported from third countries.

**Special Import–Export Systems (Plan Vallejo)**
This import system allows for the temporary entrance into Colombian territory, with total or partial exemption of customs duties of raw materials, machinery, and equipment to be used in the production of exportable goods and agricultural goods or services. The purpose behind this initiative is to stimulate the export of goods produced in Colombia.

It is important to keep in mind that the fulfillment of the export commitment can occur (i) in a direct manner where the party importing the raw materials or inputs is directly in charge of completing the production and export without any intervention from a third party, or (ii) in an indirect manner where the party importing the raw materials or inputs is not the same one that is completing the production and export.

**International Trading Companies**
International trading companies (*Sociedades de Comercializacion Internacional* or CIs) are legal entities whose main line of business is the marketing and sale of Colombian products abroad—products that they acquire in the domestic market or are manufactured by producers who are shareholders or members of the CI.

Although the CIs were created to benefit local exporters, foreign investors may benefit from these entities when exporting Colombian products.

For a CI to operate in Colombia, a commercial company must be formed, or an existing company must be transformed into a CI. The company must request qualification as a CI before the Colombian Tax and Customs Authorities (DIAN).

CI's benefit from the following benefits:

- Purchases made by a CI in Colombia are VAT exempt, provided that the goods are exported by the CI within the six months following the issuance of a supplier certificate.
- Payments or deposits made by CIs for purchases intended for export are not subject to income tax withholding.

## 3. Corporate Matters

**Common Vehicles for Channeling Foreign Investment**

Based on the current Colombian corporate regime, a foreign investor has two main vehicles for channeling investments in the country: a commercial company or a branch of a foreign company, incorporated in compliance with all legal requirements.

An individual foreign investor who is not a resident of Colombia may act through a legal representative and does not need to use any of these vehicles.

**Commercial Companies**

Commercial companies are those incorporated for the purpose of executing commercial acts and/or operations.

- **Stock Company or Corporation (S.A.)**
  - Incorporation: Bylaws must be registered through a public deed executed before a public notary, unless the incorporation meets the legal requirements established in Law 1014 of 2006 (Micro-enterprises). In both cases, the document must be registered with the Chamber of Commerce of the company's domicile.
  - Required Number of Shareholders: The law requires at least five (5) shareholders and does not set a maximum number. None of the shareholders can hold more than 95% of the capital. Micro-enterprises may be incorporated with a single shareholder.
  - Capital: Capital is divided in stocks of equal value. At the time of incorporation, at least 50% of the authorized capital must be subscribed, and at least one-third of the subscribed capital must be paid.
  - Liability: Shareholders are liable up to the amount of their participation in the company's capital.
  - Corporate Bodies: A corporation has two main corporate bodies, the general shareholders meeting and the board of directors. A statutory auditor is also required.
- **Limited Liability Company (Ltda.)**
  - Incorporation: Bylaws must be registered through a public deed, unless the incorporation meets the legal requirements established in Law 1014 of 2006 (Micro-enterprises).
  - Required Number of Partners: It requires at least two (2) partners and a maximum number of twenty-five (25) partners.
  - Capital: Capital is divided in interests of equal value and must be fully paid at the time of incorporation.
  - Liability: Partners are liable for the amount of their capital contribution, unless the company bylaws establish a higher liability for some of them.
  - Corporate Bodies: The main corporate body is the board of partners, but it may also have a board of directors if provided in the bylaws. A statutory auditor may be required if the company meets any of the conditions set forth in Law 43 of 1990 (Public Accountability Regulations).
- **Simplified Stock Company (S.A.S.):** This type of company may be incorporated with a broad corporate purpose, in such a way that its legal capacity extends to any type of business, as long as it is not prohibited by law. Due to its flexible structure, it has become the investment vehicle of choice.
  - Incorporation: It must be incorporated through a private document, unless the shareholders at the time of incorporation contribute real property.

- Required Number of Shareholders: It can be incorporated with only one (1) shareholder, and the law does not set a maximum number of shareholders.
- Capital: Capital is divided in stocks of equal value. The law offers a two-year limit from the date of incorporation to pay all authorized capital.
- Liability: Shareholders are liable up to the amount of their participation in the capital of the company.
- Corporate Bodies: The main corporate body is the general shareholders meeting, but it may also have a board of directors if provided in the bylaws. A statutory auditor may be required if the company meets any of the conditions set forth in Law 43 of 1990 (Public Accountability Regulations).

Colombian legislation contains other types of companies, such as general partnerships (*Sociedades colectivas*) and limited partnerships (*Sociedades en comandita*). However, these are not generally used.

**Branch of a Foreign Company**

A branch of a foreign company allows foreign companies to initiate and pursue their permanent business in Colombia. The branch of a foreign company has the nature of an ongoing concern; therefore, it does not have independent legal capacity, being the same legal entity as the parent company domiciled abroad.

- Incorporation: It must be incorporated through a decision made by the appropriate corporate body of the foreign parent company, which must be legalized through a public deed executed before a public notary. Said deed must be registered with the Chamber of Commerce of the domicile elected for the branch by the parent company.
- Capital: The amount of capital is determined by the parent company, and it must be fully paid at the time of incorporation. Besides, it has a "floating capital" or Supplementary Investment to the Assigned Capital, that can be changed without the need to amend the bylaws.
- Appointment: The branch must have a general representative and one or more alternates who will represent it in all business acts developed in the country. It should also have an auditor.
- Corporate Bodies: These are the same as those of the parent company. These corporate bodies make the decisions regarding the execution of the branch's business.

**Common Characteristics of Commercial Companies and Branches of a Foreign Company**

- The public deed and the private incorporation document must be registered with the Chamber of Commerce in the domicile of the company or branch.
- They must apply for and obtain a Tax Identification Number before the national tax authority (DIAN).
- The appointment of the general representative and auditor must be registered with the Chamber of Commerce in the domicile of the company or branch.

**Main Differences between Commercial Companies and Branches of a Foreign Company**

- Commercial companies have their own legal entity, whereas branches do not.
- Commercial companies have their own corporate bodies, whereas branches do not.
- The shareholders/partners liability is limited to the amount of their capital contributions, whereas the parent company is liable for all activities and operations carried out by a branch in Colombia.

## 4. Labor Framework

**Laws Applicable to Foreigners**

Colombian employment, labor, and social security laws apply to all foreigners and nationals who are Colombian residents and render services in Colombia.

**Nationality Restrictions**

There are no restrictions related to nationality when employing individuals in Colombia. However, foreigners must comply with the relevant documentation required by the immigration authorities (working visa, temporary permit, etc.).

**Written Employment Contract**
A written agreement or statement is only required in the following cases:

- If the employment contract is for a definite term or for the duration of the work or project concerned.
- If the employment contract is subject to a limited trial term.
- If the employee will receive an integral salary. An integral salary includes annual severance payment (*cesantías),* an annual payment equivalent to one monthly salary for each year of service or proportion of it), interest on the annual severance payment (*intereses de cesantías)* (12% per annum), service bonus (one monthly salary for each year of service or proportion of it), overtime work, and surcharges for night or Sunday work. Only employees that receive more than thirteen (13) minimum wages a month may agree to receive the all- inclusive salary.
- If the employee will receive extralegal benefits excluded from the salary on a regular basis.
- If the employee will have a specific working schedule.
- If the employer will make salary discounts, subject to the specific authorization of the employee.
- If the employee will render services by means of telework or remote work schemes.
- If the employee's labor conditions will be diminished.

**Implied Terms**
Colombian employment and labor laws, as well as social security laws, are mandatory, and the parties may not agree to any terms that contradict or oppose them. Consequently, any agreement between an employer and an employee that affects, constrains, or denies such rights is void.

**Collective Agreements**
Collective agreements are common, especially in industries such as oil, mining, banking, and air transport.

**Minimum Wage**
A minimum monthly wage is applicable to all employees, regardless of age and experience, as long as they are rendering services in a full-time job. The minimum monthly wage is updated every year. For 2024, it is COP$1,300,000 (approximately US$325).

**Working Schedule**
There is a maximum of eight (8) working hours per day from Monday to Saturday and forty-seven (47) hours per week until July 14th, 2024. Law 2120 of 2021 reduced the maximum of working hours to forty-two (42) hours per week. Nevertheless, this reduction has been implemented gradually, diminishing by one hour per year the applicable maximum working hours per week. The reduction plan is as follows:

- Since July 15th, 2023: maximum 47 hours per week
- Since July 15th, 2024: maximum 46 hours per week
- Since July 15th, 2025: maximum 44 hours per week
- Since July 15th, 2026: maximum 42 hours per week

Overtime has a limit of two (2) hours per day and twelve hours per week. Overtime requires that the employer obtains prior approval from the Ministry of Labor.

It is possible to distribute the forty-seven (47) (Until July 14th, 2024) hours from Monday to Friday, without exceeding ten hours (10) per day, to allow the employee to rest on Saturdays. In this case, the additional hours over the first eight (8) hours are not considered as overtime, and the employer does not have to pay surcharges.

In addition to Sundays, eighteen (18) public holidays are included in the minimum holiday entitlement. This is in addition to the fifteen (15) working days of vacation per year that are granted to all employees.

**Benefits**

All employees in Colombia with an ordinary salary are entitled to the following statutory benefits, regardless of the length of employment:

- Annual Severance Payment (*auxilio de cesantías*): Equivalent to a monthly salary for each year of services or the corresponding portion for a shorter period, the employer must deposit the corresponding amount in the employee's annual severance payment account before February 15 of the year following the year that gave rise to it.
- Interest on the Annual Severance Payment (*intereses a las cesantías*): 12% (yearly) over severance. The calculation runs from January 1st to December 31st of each year. It must be paid directly to the employee in the month of January following the relevant year.
- Service Bonus (*prima de servicios*): Half of the monthly salary (equivalent to 15 days) in June and the other half (equivalent to 15 days) in December. The employer must pay the service bonus for the first semester in June and for the second semester during the first 20 days of December.
- Vacations. Employees who have rendered their services for a year have the right to fifteen (15) working days of paid rest. Vacation days accrue as of the first day of work. If the employment agreement is terminated before the employee has taken the accrued days, the employer must pay them on termination
- Endowment (Working Clothing and Footwear): Employers must provide appropriate clothing and shoes for the employee's labor every four (4) months. It applies exclusively to employees earning less than two (2) minimum legal monthly wages.
- Transportation Allowance: The transportation allowance is updated every year. For 2024, it is COP$162.000 (approximately US$40.50). It applies exclusively to employees earning less than two (2) minimum legal monthly wages.

**Social Security Payments**

The employer must register all of its employees in the Social Security System entities, as listed later, and pay certain monthly contributions to each. An employer that fails to register its employees or fails to comply with the contribution duties and procedures set out below will have to cover all the corresponding costs and services, such as health expenses or the disability pension. In addition, in certain cases, the employer will have to pay interest on the amount of the contributions; and could be sanctioned by the competent authorities.

Contribution to the pension system is equivalent to 16% of the employee's monthly salary. The employer must pay 12% and deduct the remaining 4% from the employee's salary.

If the employee earns more than four (4) monthly minimum wages, he or she must pay an additional percentage according to the law, ranging from 1% to 2% of their earning, as follows:

| Employee Salary | Additional Percentage |
|---|---|
| From 4 to 16 MMLS | 1.0% |
| From 16 to 17 MMLS | 1.2% |
| From 17 to 18 MMLS | 1.4% |
| From 18 to 19 MMLS | 1.6% |
| From 19 to 20 MMLS | 1.8% |
| More than 20 MMLS | 2.0% |

Contribution to the health system is equivalent to 12.5% of the employee's salary. The employer must pay 8.5% and deduct the remaining 4% from the employee's salary. However, if the employer is subject to income tax, it is relieved from paying 8.5% in the case of an employee who earns less than 10 times the minimum monthly legal wage.

The employer must pay the entire contribution to the occupational hazards system. The percentage of this contribution varies from 0.348% to 8.7% of the employee's monthly salary, depending on the type of activity to be performed and its risks, as follows:

| Risk Type | Contribution Range |
|---|---|
| I | 0.348% – 0.696% |
| II | 0.435% – 1.653% |
| III | 0.783% – 4.089% |
| IV | 1.740% – 6.690% |
| V | 3.219% – 8.700% |

**Monthly Costs of an Employee in Colombia**

The following table indicates the monthly costs of an employee in Colombia. The costs will vary depending on whether the employee has agreed to an integral salary.

Only social security and payroll fees are paid monthly. The other obligations are paid on specific dates but are included in the following table to illustrate the monthly costs of an employee in Colombia in addition to the specific salary agreed.

| Payment | Ordinary Salary lower than or equal to 10 minimum monthly legal wages. | Ordinary Salary higher than 10 minimum monthly legal wages. | Integral Salary |
|---|---|---|---|
| Service Bonus (*Prima de servicios*) | 8.333% | 8.333% | N/A |
| Annual Severance Payment (*Cesantías*) | 8.333% | 8.333% | N/A |
| Interest on the Annual Severance Payment (*Intereses a las Cesantías*) | 1% | 1% | N/A |
| Vacations | 4.166% | 4.166% | 4.166% |
| Pensions | 12% | 12% | 8.4% |
| Health | N/A | 8.5% | 5.95% |
| Occupational Hazards (this percentage varies depending on the risks of the company) | 0.522% | 0.522% | 0.365% |
| Payroll Taxes | 4% | 9% | 6.3% |
| **Total Monthly Cost** | **38.355%** | **51.855%** | **25.184%** |

**Termination of the Employment Agreements**

- With cause: Situations that constitute cause for termination are established by law (article 62 of the Colombian Labor Code). The events that constitute cause for dismissal are related to an employee's performance and behavior in the workplace or with one's boss, subordinates, and co-workers.
- Without cause: If the employer unilaterally terminates the employment agreement, without cause, it must pay a severance, which varies depending on the type of contract, as follows:

- For indefinite contracts, compensation varies according to the employee's salary:
  - If the employee earns one (1) to ten (10) times the minimum legal wage per month, an equivalent of thirty (30) days of salary for the first year of service, plus twenty (20) additional days' salary for each subsequent year (or the corresponding fraction).
  - If the employee earns more than ten (10) times the minimum legal wage per month, an equivalent of twenty (20) days of salary for the first year of service, plus fifteen (15) additional days' salary for each subsequent year (or the corresponding fraction).
- For a fixed-term contract or for the duration of the job or project, compensation is equivalent to the salary for remaining term. However, when the agreed term expires or project ends, contracts could terminate without the payment of any severance. In this case the employer must notice the employee of the termination thirty (30) days prior to the expiration date.

- Upon certain conditions, employers must not unilaterally terminate employment agreements with employees who are in any of the following situations, as they retain special protections under the law: (i) disabled or handicapped employees, (ii) pre-pensioners employees, (iii) pregnant or breastfeeding employees (couples of women in this situation when they do not have a formal job), (iv) employees who have filed a labor harassment complaint, (v) unionized employees.

## 5. Tax Matters

The following is a summary of the main taxes and the tax-related issues to be taken into consideration by both Colombian entities and foreign entities operating in Colombia.

**Income Tax**

The national income tax in Colombia has three main elements:

- The basic income tax applicable to legal entities (domestic entities, permanent establishments of a foreign company and foreign legal entities with or without residence in Colombia) is levied at a rate of 35%. For resident individuals, estates of deceased residents and assets designated for special purposes due to donations or modal assignments the rates are progressive (0%, 19%, 28%, 33%, 35%, 37% or 39%), whereas non-resident individuals and estates of deceased non-residents are subject to a fixed rate of 35%. These rates apply insofar as the respective entity is required to file an income tax return.
- A capital gains tax is levied on income arising from concepts such as the sale of fixed assets owned for more than two years, donations, and inheritances, at a rate of 15% for both residents, non- residents. In the case of capital gains arising from bets, raffles, lotteries, and similar activities, the differential rate will be 20%.
- Dividend taxation:
  - Dividends distributed to non-residents out of fully taxed profits are taxed at a rate of 20%.
  - Dividends distributed to non-residents out of untaxed profits are subject to equalization tax at the rate in force upon distribution (currently 35%), plus a 20% dividend tax on top of it.
  - Certain relieves may be available for investors that are tax residents of countries that have entered into a double taxation agreement with Colombia.

**Equity Tax**

The equity tax is imposed on individuals based on the possession of a net wealth (gross assets minus certain debts) with a minimum value of 72,000 Tax Value Unit (TUVs) as of January 1st each year. Additionally, certain foreign entities are taxed based on their assets in Colombia, other than shares, accounts receivable, and portfolio investments.

For 2024, the Tax Value Unit has been fixed at COP$47,065 (approximately US$11.77). The rate depends on the TUV ranges, as follows:

| Tax Value Unit (TUVs) Ranges | | Marginal rate |
|---|---|---|
| From (minimum) | To (maximum) | |
| >0 (US$0) | 72,000 (approx. US$847,170) | 0.0% |
| >72,000 (approx. US$847,170) | 122,000 (approx. US$1,435,482.5) | 0.5% |
| >122,000 (approx. US$1,435,482.5) | 239,000 (approx. US$2,812,133.75) | 1.0% |
| >239,000 (approx. US$2,812,133.75) | Henceforth | 1.5% |

*Note: The exchange rate is estimated at USD $1 =COP $4,000.*

The rate of 1.5% will apply temporarily, until 2026.

**Value Added Tax**

VAT is mainly levied on the following:

- The sale of tangible movable and immovable goods, not expressly excluded from the scope of the tax, which are located in the country at the time of the sale. VAT is not triggered by sales of fixed assets, except in certain cases such as residential real estate, motor vehicles and other fixed assets habitually sold on behalf of third parties.
- The sale or assignment of rights over intangible assets solely related to industrial property.
- The rendering of services in Colombia or from abroad, not expressly excluded from the scope of the tax. As a general rule, services are deemed to be rendered in the place of residence of the direct user or recipient, except in cases such as the following:
  - Services related to immovable property are deemed to be rendered in the place where the asset is located.
  - Services of cultural and artistic nature, as well as those related to their organization are deemed to be rendered in the place where they are materially carried out.
  - Services of loading, unloading, transshipment and storage are deemed to be rendered in the place where they are materially carried out.
- The import of tangible movable goods not expressly excluded.

Merchants and importers are responsible for the collection of the VAT generated by transactions undertaken by them. However, retail merchants selling goods or rendering services subject to VAT, whose gross receipts for the previous year do not exceed the legal threshold and who exclusively engage activities established in numeral 1 of Article 908 of the Tax Code will be non-responsible of VAT.

Unless a transaction is exempt, VAT is imposed at each stage of production based on the value added at each stage. Generally, VAT paid on purchases and imports is creditable against the tax collected on sales, provided that the purchases and imports may be treated as costs or expenses for income tax purposes.

VAT is levied at a general rate of 19% on both goods and services. Special rates of 0% and of 5% apply in certain cases, outlined in Articles 468-1, 468-3 and 477 of the Colombian Tax Code.

**Payroll Taxes**

All employers with more than one (1) permanent employee must pay contributions to family welfare, apprenticeship service, and family compensation funds. The overall contributions amount to 9% of an employer's payroll (3% is paid as ICBF contributions; 2% is paid as SENA contributions; and 4% is paid as family subsidy contributions).

Entities subject to these contributions are exempt from payroll taxes in relation to employees that earn no more than ten (10) monthly minimum wages per month.

**National Consumption Tax**

National consumption tax is levied on the following goods and services:

- Mobile communication services, which are taxed at a rate of 4% of the value of the service, excluding VAT.
- Vehicles, vessels, aircrafts, and other vehicles listed in Articles 512-3 and 512-4 of the Colombian Tax Code that, depending on their characteristics and value, are taxed at either 8% or 16% of the total paid value. Article 512-5 excludes from the tax the acquisition of certain types of vehicles, such as those used for public transportation.
- Services provided by restaurants, cafeterias, bars, and similar establishments are exempt from VAT and taxed with the national consumption tax at the rate of 8%.

**Local Taxes**

- Industry and Commerce Tax (Turnover Tax) (ICA): This tax is levied by municipalities on most commercial, industrial, and service activities performed within their jurisdiction, whether directly or indirectly, by individuals, corporations, or other legal entities. The tax base for the purposes of ICA is equal to the gross sales and receipts arising from the taxed activity, minus certain exemptions and deductions expressly allowed by law and local regulations (e.g., income arising from exports and the sale of fixed assets). Each municipality is allowed to determine the tax rate, within the thresholds established by law. These thresholds range from two to seven per thousand (0.2% to 0.7%) in the case industrial activities and from two to ten per thousand (0.2% to 1%) in the case of commercial activities and services. This tax is completely deductible from the Income Tax return, provided that it is related to the income producing activity.
- Municipal Property Tax: All municipalities are allowed to tax immovable property located within their jurisdiction at a rate ranging from 0.5% to 1.6% of the current cadastral valuation, depending on the quality of the property. This tax is completely deductible from the Income Tax return, provided that it is related to the income producing activity.

**Registration Tax**

The registration tax levies registration of legal acts, contracts, and other legal documents before the Chamber of Commerce or the Registry of Public Deeds, when according to the law, such documents must be registered before those authorities.

The base for calculating the registration tax is the amount incorporated in the document, act, or contract. In the case of incorporation or changes affecting a corporation, the tax base is the total value of the capital contribution, including the paid-in capital and the premium in the allocation of shares.

The applicable rate is determined by the local authorities, within a range of 0.1% to 1%.

**Financial Transaction Tax**

The Financial Transaction Tax is imposed on the transfer of money deposited in Colombian bank accounts. Certain exceptions may apply.

The responsible for its collection is the financial institution in charge of the corresponding transfer.

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# DOMINICAN REPUBLIC

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## 1. FOREIGN INVESTMENT

Transformed by globalization, the Dominican Republic has been one of the fastest-growing economies in the region for the last two decades and it has been systematically modernizing its legal and economic framework to adapt to new competitive standards and encourage the influx of foreign capital. With the highest Gross Domestic Product (GDP) growth rate in the Caribbean and as current recipient of 53% of all foreign direct investment made in the Caribbean, the Dominican government supports internationally accepted financing arrangements and observes international design, construction, and operational standards.

Tourism, telecommunications, real estate developments, mining, renewable energy and free trade zones have exhibited the greatest investment growth, but additional opportunities exist in infrastructure projects, nearshoring, waste management, film industry, agriculture, construction, aviation, ports and dams. For this reason, the country has become the main recipient of foreign direct investment (FDI) in the region.

In its 28 January 2024 update, the Central Bank highlighted that the Dominican economy grew 2.4%, compared to 2.2%, the average growth in Latin America. The forecast is for much better numbers in 2024. The monthly indicator of economic activity (IMAE) registered an interannual expansion of 4.7% in December 2023, this being the highest monthly rate in 2023. The Central Bank reports that inflation for January-December 2023 was the lowest annual rate in the last five years, standing at 3.57%, continuing downward to settle below the target range of 4.0%±1.0% established in the monetary program.

Foreign currency earnings from tourism were US$9.83 billion, for an interannual growth of 16.9% compared to 2022. During 2023, US$10.16 billion in remittances were received, a growth of 3.1% compared to the same period of the previous year. Foreign Direct Investment (FDI) amounted to US$4.38 billion in 2023, a year-on-year increase of around 9.2%. For 2024, the country's Ministry of Economy expects 5% growth. The economic outlook is positive for the country, especially for the second half of the year after the elections in May 2024.

**The Export and Investment Center of the Dominican Republic (CEI-RD)**

The Export and Investment Center of the Dominican Republic (CEI-RD) is responsible for the promotion of foreign investment in the country. The government, through Executive Decree 626-12, created a single investment office (*Ventanilla Unica de Inversion* or VUI) at the CEI-RD, to allow potential investors to have the application processes for all permits and licenses related to their investment projects streamlined and supervised by one single government office. The following sections present the most relevant laws and treaties in this area.

The Center also sponsors events to promote the Dominican Republic as an investment destination and to provide information to potential investors on how to plan and implement successful business projects in the country.

### 1.1 The Constitution of the Dominican Republic (Amended January 26, 2010)

The Dominican Republic's Constitution, in Articles 25 and 221, expressly entitles foreigners in the Dominican Republic to the same rights as Dominican nationals, except for participating in local political activities, and grants equal treatment to both public and private business activities, guaranteeing equal conditions to both local and foreign investments.

### 1.2 Law No. 16-95 on Foreign Investments

This law ratifies the important equality provision of Article 25 in the new Constitution, providing equal treatment and nondiscrimination to both national and foreign investments. The statute and its enabling regulation (Decree #380-96 as amended by Decree #163-97), grants foreign investors who are contributing capital to companies operating in the Dominican Republic unlimited access to the Dominican economy, except for activities that negatively impact the environment or compromise national defense or security.

Capital contributions can be made through several channels and in a variety of forms. Accepted channels of contributions are (i) direct investment in the Dominican operating company from sources outside the country, (ii) direct reinvestment of profits derived from the registered Dominican foreign investment back into that same operating company, and (iii) reinvestment of profits derived from one registered Dominican foreign investment into a different Dominican operating company. Acceptable forms of contributions as foreign investment can be liquid currency, contributions in kind, financial instruments, or intangible technological property and knowledge.

### 1.3 Regulation 214-04 on Registration and Capital Repatriation

This regulation governs investment registration and grants important benefits to investments that are formally registered with the CEI-RD within 180 calendar days from the date the investments are made. The benefits of registration are as follows:

- **Free Fund and Currency Conversion:** Investors are granted free access to international currency and fund conversion through local banks and the Central Bank of the Dominican Republic.
- **Free Repatriation of Dividends and Capital:** The foreign investor has the right to remit abroad in foreign currency all capital invested, as well as capital gains and dividends, after complying with the existing tax legislation. (The corporate tax rate is 29% for all corporations on net taxable income; 10% withholding on foreign headquarter payments applies—see section 4.) The investor also has the right to repatriate fee and royalty obligations resulting from a technology service agreement.
- **Expedited Residency Acquisition:** Investors who register their investment benefit from a fast- track procedure if they decide to become residents of the Dominican Republic.

In addition, the Dominican Republic has enacted sector-specific laws that extend generous tax incentives to investments in said sectors:

- Free Trade Zones Law No. 8-90
- Promotion of Tourism Development Law No. 158-01
- Renewable Energy Incentives and Special Regimes Law No. 57-07
- Special Border Development Zone Law No. 158-01
- Film Industry Development Law No. 108-10
- International Financial Zones Law No. 480-08
- Industrial Innovation and Competitiveness Law No. 392-07
- Immigrant Investors Law No. 171-07
- Logistic Operators Executive order No. 262-15

Finally, the government has supported investors seeking investment guarantees from external agencies by backing economically significant infrastructure projects with its full faith and credit. Foreign investors in large projects in the Dominican Republic commonly use capital and political/exchange insurance risk facilities provided by the Multilateral Investment Guarantee Agency (MIGA) and the Overseas Private Investment Corporation (OPIC).

## 2. Foreign Trade

The Dominican Republic is a proactive partner in international trade, embracing a policy of openness and nondiscrimination to advance internal development, as well as the development of other developing and less- developed countries. Located between Cuba and Puerto Rico, it boasts the largest economy in the Caribbean with convenient access to markets in the United States, Canada, Latin America, and Europe. It represents the seventh largest market in the Western Hemisphere for U.S. exports. Bilateral trade between the two countries is expected to grow, particularly with the U.S. initiative to double U.S. exports in the last fifteen years.

Dominican exports and imports amounted to $25.07 billion and $13.2 billion dollars, respectively.

In 2022, the Dominican Republic's exports were $25.07 billion, a 22.3% increase from 2021. The country's top exports included: Medical instruments ($1.72 billion), Gold ($1.46 billion), Rolled tobacco ($1.11 billion), Low-voltage protection equipment ($949 million), and Ferroalloys ($575 million).

The Dominican Republic's top trading partners in 2022 were:
United States: 42% ($11.3 billion)
China: 17.7% ($4.76 billion)
Brazil: 4.8% ($1.28 billion)
Other countries that the Dominican Republic exported to in 2022 include: Switzerland (10.4%) ($1.03 billion), Haiti (10.3%) ($1.01 billion), and India (3.35%) ($329 million).
The Dominican Republic is the sixth largest trading partner of the United States in the Americas, after Canada, Mexico, Brazil, Colombia and Chile; and the largest importer in the Caribbean region, with 28% of all imports in the region.
As a member of the World Trade Organization (WTO) since its founding in 1995, the Dominican Republic is party to several free trade agreements, and regularly explores trade opportunities with other countries that represent new markets for its goods. Currently, it enjoys advantageous trade with the United States, Europe, Caribbean countries, and certain Central American countries. Two significant agreements are the free trade agreement with the United States and Central America (DR-CAFTA) and the Economic Association Agreement with the European Union (AAE). Both encourage the free flow of trade among the member states by significantly reducing tariffs, opening new markets, and promoting regional integration. Furthermore, the country has initiated discussions for free trade agreements with Canada, Mexico, Mercosur and Taiwan. These current and potential trade agreements constitute a portfolio of opportunities for any international investor or business looking to start or expand its operations in the country and export to any of the member markets.

### 2.1 Dominican Republic and Central American Free Trade Agreement (DR-CAFTA)

The DR-CAFTA was signed on August 5, 2004, and came into effect in the Dominican Republic in March 1, 2007, facilitating trade and investment among member states and promoting regional integration by eliminating tariffs, opening markets, reducing barriers to services, and advancing transparency. Parties to the agreement are, in addition to the United States and the Dominican Republic, Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua. These states represent the third largest export market for U.S. goods in Latin America after Brazil and Mexico.

The agreement permanently guarantees the Dominican Republic duty-free access to thousands of goods and services from the member states, and grants it the ability to export most Dominican products and services to these states without customs duties. In particular, almost 80% of the consumer and industrial goods from the United States are duty free immediately, with remaining tariffs to be phased out over a ten-year period.
Apparel made in the Dominican Republic with U.S. fabric and yarn that meets the rule of origin provisions is duty free and quota free, retroactive to January 1, 2004. In addition, the agreement provides duty-free benefits to apparel made by a DR-CAFTA state using certain fabrics from Mexico or Canada. Importantly, laws that once overprotected domestic dealers by locking companies into forced distributorship arrangements have been loosened.

DR-CAFTA also requires member states to effectively enforce local labor and environmental regulations, and eliminate corruption, in order to ensure fair competition and a level playing field for all.

Certain obstacles to free trade remain under the treaty. Member states have kept tariffs on specific agricultural products up to a certain limit, and have prohibited the importation of certain goods. For instance, the Dominican Republic does not allow the entry of used clothes, used electric household appliances, or cars older than five years.

### 2.2 Economic Association Agreement (AAE)

Signed in 2007 and adopted by the Dominican Republic on October 15, 2008, this agreement evolved from an earlier 1975 trade agreement (the Lomé Convention) and the subsequent 2000 Cotonou Accord between the 27 countries of the European Union (EU) and less-developed countries of Africa, the Caribbean, and the Pacific. The Dominican Republic coordinates and supervises its projects under the AAE within the framework of CARIFORUM, which is governed by the Caribbean Community and Common Market (CARICOM) and its 1998 free trade agreement with the Dominican Republic. Where there is a conflict in trade treatment between the AAE and CARICOM, the agreement with the least restrictive trade provisions for the product or sector will prevail.

The AAE makes the unilateral trade programs formerly granted under the Cotonou Accord compatible with the policies of the WTO of integrating developing countries into the world economy through trade, financial development, and political dialogue. The AAE offers the Dominican Republic, and by extension its investors, favorable provisions for cooperative foreign investment by liberalizing trade with the EU countries. This encourages the Dominican Republic to export nontraditional products and diversify its economy.

Access to markets under the AAE is asymmetrical. Provisions for exports from less-developed countries to the countries of the EU are liberal for eligible products. In contrast, provisions for similar imports from the EU are subject to restrictions for up to 25 years, while some highly sensitive products are completely excluded from the scope of the AAE. This asymmetry safeguards certain products and sectors in the less- developed countries from the potential unequal effect of trade with the EU while affording the less- developed member states access to EU products.

**Free Trade Agreement with CARICOM**
Signed in 1998 and ratified by the Dominican Republic in February 2001, this agreement involves the Dominican Republic and 14 Caribbean nations (CARICOM), and establishes free trade zones in the region along WTO guidelines. Trade between the Dominican Republic takes place on an equal or reciprocal basis with other more developed Caribbean states, but may be differentiated with those less-developed, such as Antigua y Barbuda, Belize, Dominica, Granada, Montserrat, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, and Haiti.

The free trade agreement between the Dominican Republic and CARICOM coexists with free trade agreement between the Caribbean nations and the European Union (EPA). A provision in the EPA stipulates that in case of a conflict in the handling of a product or sector between the two agreements, the agreement with the less restrictive treatment will prevail.

**Free Trade Agreement with Central America**
A free trade agreement between the Dominican Republic and the Central American countries of Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua was signed in 1998 and came into effect in 2001. Although a regional treaty, it is, in fact, a bilateral agreement between each Central American country and the Dominican Republic. The agreement provides for free trade in all products originating in the region except those registered in a “negative list.”

This agreement coexists with DR-CAFTA, which incorporates several of the provisions of the former, including the negative lists. In case of a conflict in the handling of a product or sector between the two agreements, the agreement with the less restrictive treatment will prevail.

**Partial Free Trade Agreement with Panama**
This agreement was signed in 1985, but discrepancies over its application delayed implementation until 2003. Four lists of products benefit from liberalized trade, subject to rules of origin: (a) “two-way products,” which consists of those that enjoy free access to the markets of both countries; (b) Dominican products than can be freely exported to Panama; (c) Panamanian products that can be freely exported to the Dominican Republic; and (d) products manufactured in free trade zones.

A Permanent Mixed Commission consisting of representatives from both countries may add new products to the lists.

### 2.3 Free Trade Zones

Free trade zones represent a pillar of the Dominican economy and are an attractive investment opportunity for any investor interested in producing goods or services for overseas markets in government-designated areas within the country. The Dominican Republic boasts more than 50 zones, comprising more than 500 companies. It has one of the most advanced free trade systems in the world and ranks fourth in terms of quantity.

The National Council for Export Free Zones regulates the industry dominated by apparel and textiles (69.1%), tobacco (6.4%), electronics (5.3%), and pharmaceuticals (5.3%). Almost half the free zone businesses are owned by U.S. investors, more than a third by Dominicans, and the remainder predominantly by Asians.

Law No. 8-90 provides the following generous array of customs and tax incentives to free trade zone investments for a period of fifteen years.

- Exemption from income tax.
- Exemption from all corporate taxes on tangible and intangible assets and net worth.
- Exemption from all taxes on construction, conveyance, and registration of real property.
- Exemption from incorporation and capitalization taxes.
- Exemption from the ITBIS tax (value-added tax).
- Exemption from municipal taxes.
- Exemption from existing export or re-export taxes, except those expressly stated in Law No. 8-90.
- Exemption from import taxes, customs duties, and related charges on raw materials, equipment, construction materials, vehicles, office equipment, and any other goods necessary for the construction, preparation, and operation of a free trade zone business.
- Exemption from consular duties for goods or services destined to other free trade zones.
- Exemption from import taxes and customs duties on raw materials imported by a Dominican company for use in finished or semi-finished products destined for export to a free trade zone. This exemption requires prior authorization from the national regulatory agency.

Also, goods and services from one free trade zone can be sold or transferred to another free trade zone with prior authorization from the national regulatory agency. However, goods and services sold in the Dominican market are subject to all import taxes, customs duties, and quota requirements, except those that qualify as a priority sector under Law No. 56-07 (textile and accessory manufacturing, leather and shoe manufacturing, and furs), which enjoy more liberal import tax and duty treatment.

### 3. CORPORATE MATTERS

Foreign companies and individual investors can conduct business or channel their investments in the Dominican Republic either through a local branch or through a wholly or partially owned subsidiary. Foreign corporations are not required to register a local branch in the Dominican Republic if their activities will be limited to acquiring shares in local corporate entities.

To register a local branch of a foreign company in the Dominican Republic, all incorporation documents must be translated and authenticated either by an apostille or by the nearest Dominican Consulate. Afterward, the company has to apply for registration at the Mercantile Registry and finally request a tax number at the Internal Revenue office. Local branches of foreign companies and Dominican companies receive the same tax treatment.

Members, shareholders, corporate managers, officers, or directors of a local branch or Dominican company need not be Dominican citizens or residents to form, manage, or serve as directors in the company or acquire its shares, except in very special circumstances. Foreign investors are, therefore, not required to be residents or citizens of the Dominican Republic or act through a local legal representative for these purposes.

Company Law *(Ley de Sociedades)* No. 479-08, effective December 11, 2008, as amended by Law No. 31-11 of February 11, 2011, governs corporate entities in the Dominican Republic. The law is generally flexible and imposes few capitalization requirements; however, unlike in some countries, Dominican companies are subjected to the same tax treatment regardless of their structure. Selecting the proper structure will depend on the foreign investor's needs related to the amount of the capital investment, company management, transferability of shares, and reporting formalities, among other factors.

### 3.1 Company Structures and Characteristics

Four structures are used most often in the Dominican Republic. In these four structures, an individual member's liability is limited to no more than the amount of that member's contribution to the company. In other words, if a company fails, a member stands to be liable only for the amount invested. None of the members, individually or collectively, is liable for the debt obligations of the company. Furthermore, the limited liability protection afforded to members of these structures is strictly observed under the law, except in the case of fraud or misrepresentation.

#### 3.1.1 Corporation (*Sociedad Anónima* or S.A.)

The corporation is ideal for large businesses and is the only structure that can raise capital through a public stock offering. The business name is subject to local availability.

**Structure**:; Corporations must have a minimum of two shareholders. There is no limit on the maximum. The minimum capital required to form a corporation (minimum authorized capital) is 30 million DOP (about $500,000), of which at least 10% must be paid-in upon incorporation. Shares in a corporation are negotiable, although certain restrictions may be established in the bylaws. Management is by a board of directors comprising at least three members (*Consejo de Administración*), which can in turn be both individuals or other corporate entities. A management supervisor is required (*Comisario de Cuentas*).

**Stock**: Nominal, endorsable, or "to the bearer." Transfer of stock is essentially free except for restrictions in the bylaws (*Estatutos*). In the case of a stockholder's death or divorce, the heirs and/or spouse of the stockholder will become the stockholders of the company despite restrictions in the bylaws.

#### 3.1.2 Simplified Corporation (Sociedad Anónima Simplificada or S.A.S.)

The simplified corporation is best for medium to large-sized businesses. Capital may not be raised through a public offering except through debt instruments. The business name is subject to local availability.

- **Structure:** Simplified corporations must have a minimum of two shareholders but, unlike in the LLCs, there is no maximum. The minimum capital required to form a Simplified Corporation, called the company's authorized capital, is three million DOP (about $50,000), of which at least 10% must be paid-in upon incorporation. Shares in a Simplified Corporation are negotiable, although restrictions may be established in the bylaws. Management is by an individual, another corporate entity, or a board as established in the bylaws. A management supervisor is not required. Unlike other corporate entities that have rigid functioning regulations set by the law, shareholders have leeway to regulate its functioning in a large part through its bylaws.
- **Stock**: Nominal only; transfer of stock is essentially free except for restrictions in the bylaws. Restricting transfer of stock to heirs or spouse of a stockholder is possible.

#### 3.1.3 Limited Liability Company (Sociedad de Responsabilidad Limitada or S.R.L.)

The limited liability company is best for small to medium-sized businesses and large, family-owned businesses. Capital may not be raised through a public offering. The business name is subject to local availability.

- **Structure**: Minimum of two shareholders, maximum of 50; spouses may be sole shareholders; minimum capital investment of RD$100,000 (approximately US$1,700) paid in full. Management is by one or more individuals or a board of individuals as established in the bylaws. Management cannot be by another company. No management supervisor is required, except in special circumstances.
- **Shares:** No stock is issued. Transfer of shares is essentially restricted, and requires 75% of the votes of the shareholders for approval. Restricting transfer of shares to heirs or spouse of a shareholder is possible.

#### 3.1.4 Individually Owned Company with Limited Liability *(Empresa Individual de Responsabilidad Limitada* or E.I.R.L.)

This structure is good for individually owned businesses. Capital may not be raised through a public offering. The business name is subject to local availability.

- **Structure**: Maximum of one stockholder who must be the owner and an individual, not a company; no minimum capital investment is required; management is by the owner, or an owner-appointed "manager." No management supervisor is required.
- **Stock**: No stock is issued. Transfer of the business signifies the sale of the business.

### 3.1.5 Less Frequently Used Business Structures

Other business structures are recognized under the law, but are seldom used because they offer no shield to their members for the liability of a company's debt and are subject to the same tax treatment as other companies. These are:

- Business Partnership (*Sociedad en Nombre Colectivo*)
- Limited Partnership (*Sociedad en Comandita Simple*)
- Special Limited Partnership (*Sociedad en Comandita por Acciones*)
- Joint Ventures (*Sociedades en Participación*), between both foreign and local investors, usually structured through one of the first three corporate entities described above.

## 3.2 Company Formation Process

Regardless of the type of entity, the company formation process involves five basic steps.

- **Register the Company Name:** Clearing a company name before the National Office of Industrial Property (ONAPI) can be time consuming, as most commonly selected names are already in use by others. Therefore, if time is of the essence and the company name is not immediately critical, the investor can opt to acquire a shelf company that is ready for operation or a shelf numbered commercial name, and opt to change the name later. In either case, the two-step process will incur extra costs, but will expedite the registration process with the advantage that the investor will establish a legally recognized company more quickly.
- **Prepare and Sign Company Documents:** The documents required will depend on the particular structure selected, but will include at a minimum the articles of incorporation and bylaws.
- **Pay the Organization Tax:** Be forewarned that Dominican company organization taxes are higher than those imposed on American companies. This particular tax amounts to 1% of the *authorized* capital for S.A. and S.A.S. structures, and *paid-in* capital for S.R.L. and E.I.R.L. structures.
- **Record the Company Documents with the Business Registry (*Registro Mercantil*):** The moment the company documents are recorded at the Business Registry, the company is deemed to legally exist, affording the company access to all benefits granted under the law. Recordation fees are calculated on the basis of the company's *authorized* capital for S.A. and S.A.S. structures, and *paid-in* capital for S.R.L. and E.I.R.L. structures. A company is deemed to legally exist from the time its documents are recorded at the Business Registry. After incorporation, any documentation related to important corporate activities must be also registered at the Business Registry.
- **Register the Company with the Bureau of Internal Taxes (*Dirección General de Impuestos Internos* or DGII):** The newly formed company and each individual member, whether foreign or domestic, must obtain a tax number by registering with the DGII. The company tax number (*número de registro nacional de contribuyentes*) permits the company to open a bank account, acquire real estate, and operate generally within the country.

## 3.3 Reporting Formalities

Every Dominican company must comply with the following reporting formalities:

- Annually, hold a general members' meeting to review the company's operation for the previous year. Minutes of the meeting must be recorded with the Business Registry.
- Every two years, renew the company registration with the Business Register.
- For a minimum of ten years, retain company books and correspondence.
- Company taxes are discussed in the following section.

# 4 TAX MATTERS

Taxation in the Dominican Republic is governed by Law No. 11-92 of May 31, 1992, commonly known as the Tax Code (*Código Tributario*), its amendments and regulations (*Reglamentos*).

Taxes are collected by the Bureau of Internal Revenue (DGII), an autonomous government entity that may also issue its own regulations (*Normas*).

Dominican income tax law is primarily territorial. All income derived from work or business activities in the Dominican Republic is taxable, no matter if the person is Dominican, a resident foreigner or a nonresident foreigner, or if the entity is Dominican, or is foreign with or without a permanent establishment in the country (Articles 269 and 270).

Income derived from work performed outside of the Dominican Republic, by Dominican nationals or entities or foreign resident individuals and entities, is not taxable in the Dominican Republic. The exception to the principle of territoriality is income from financial sources abroad (Arts. 269 and 271). A Dominican or a resident foreigner receiving income from financial investments (stocks and bonds, certificates of deposits, etc.) must pay taxes in the Dominican Republic on their income from those investments (Art. 269). Pensions and social security benefits are exempt (Art. 2 of *Reglamento* #139-98). For the resident foreigner, this obligation only starts three years after obtaining residency (Art. 271); however, those who have obtained their residence as retirees are exempt from paying taxes on the income they have declared for resident purposes (Art. 10 of Law No. 171-07).

For tax purposes, any person residing in the Dominican Republic for more than 182 days in a year is considered a resident (Art. 12).

The Tax Code includes a general anti-avoidance provision whereby the tax authorities may ignore the existence of legal entities or certain transactions when used to secure a tax advantage (Art. 2).

Law No. 53 of 1970 makes it mandatory for all taxpayers to register with the tax authorities and obtain a tax or RNC (*Registro Nacional de Contribuyentes*) number.

The most important taxes in the Dominican Republic are presented in the following sections.

### 4.1 Income Tax

#### 4.1.1 For Corporations and Other Entities

The rate for all business entities is a flat 27%. Unlike in the United States and other countries, in the Dominican Republic the tax treatment for corporations, partnerships, and limited liability companies is exactly the same.

Net taxable income is determined after deducting from gross income those advance payment, credits, and deductions admitted by law (Arts. 284 to 287). Deductions allowed include:

- Interest payments on debts
- Expenses related to the creation, renewal, or cancellation of debts
- Other taxes paid over goods linked to the generation of the taxable income that are not considered as credits or advance payments
- Insurance premium payments
- Extraordinary losses “force majeure”
- Depreciation
- Amortization expense of intangible assets (copyrights, intellectual property rights, contracts, franchises)
- Bad debts according to the authorized provisions
- Charity donations (up to 5% of the period’s net taxable income)
- Research and development expenses not related to mineral extraction
- Net operating losses (carried forward up to five years)
- Contributions to approved employee pension funds (up to 5% of the period’s next taxable income).

Only those expenses and net profit losses incurred to obtain the local taxable income can be deducted; taxes paid abroad derived from income of a foreign source cannot be credited against Dominican taxable income.

Net operating losses of any given fiscal year may be carried forward up to five years, but not carried back. These deductions can only be made for up to 20% of the total value of the losses for each of the first three years. For the fourth and fifth years, the 20% deduction can only be made up to 80% and 70%, respectively, of the net taxable income for those years. Losses derived from other entities with which the company has been involved in a corporate restructuring process cannot be deducted.

Corporate income tax is paid monthly in advanced installments of 1/12th of the total amount paid for the previous fiscal year. These advance payments are later compensated against the taxes due for the current fiscal year.
Income tax is annual and filed with the DGII even if the company had no income or business activity. For companies operating on a calendar year, returns must be filed on or before April 30. For companies operating on a fiscal year, tax returns must be filed within 120 days from legally prescribed year-end dates. Returns must be accompanied by financial statements audited by a certified public accountant.

**4.1.2 For Individuals**

Individuals obtaining income from a Dominican source or from financial investments abroad shall pay taxes according to the following scale (Art. 296), in Dominican pesos (RD$)[1]:

- Income up to RD$ 416,220.00 annually: Exempt
- RD$416,220.01 to RD$624,329.00: 15% of taxable income over 416,220.01 RD$624,329.01 to RD$867,123.00: RD$31,216.00 plus 20% of taxable income over RD$624,329.01.

More than RD$867,123.00: RD$79,776.00 plus 25% of taxable income over RD$852,667.00.This scale is adjusted for inflation every January based on the rate of inflation calculated by the Central Bank of the Dominican Republic. Only educational expenses can be deducted for income tax purposes. Unlike in the United States, no deductions are allowed for dependents, mortgage interest or medical expenses. Married couples must file separate returns.

Individuals who receive an annual income of more than 416,220.00 DOP from non-wage sources must file a tax declaration every year, on or before March 31.

**4.2 Capital Gains Tax**

Capital gains are defined as the difference between the sale price of an asset and the acquisition or production price adjusted for inflation (Art. 289). Capital gains are taxed as regular income.
Tax rates for capital gains are exactly the same as for regular income: 27% for companies and zero to 25% for natural persons.
Taxes are levied based on the capital gains calculated in Dominican pesos.

**4.3 Tax on the Transfer of Industrialized Goods and Services (ITBIS)**

The ITBIS is a value-added tax applicable to the transfer and importation of most goods and to most services (Art. 335). The rate of the ITBIS is 18% (Art. 341). For imports, the ITBIS is charged on the CIF value of the goods plus applicable duty (Art. 339). There are many exemptions to the ITBIS tax (Arts. 342 and 343), including exported goods, some basic foodstuffs, medicines, fuels, fertilizers, books and magazines, educational materials, financial services, transportation services, home rentals, utilities, and educational and cultural services. For imports, the GST is calculated on the CIF (cost, insurance and freight) value of the goods plus applicable duty. A reduced rate of 16% applies to certain food products.

The 18% IBIS must be added to every bill for goods and services that are not exempt. The individual or entity receiving the ITBIS must disburse it to the DGII within the first 20 days of the following month (Art. 353). Noncompliance is subject to a 10% surcharge for the first month and 4% for each month thereafter, in addition to 1.1% interest for each month or fraction of a month (Art. 252). From the total ITBIS received, the individual or entity is allowed to deduct any ITBIS paid to suppliers, customs, etc. (Art. 346).

[1] Exchange is currently RD$58:US$1

### 4.4 Selective Consumption Tax (ISC)

The ISC is applied to the acquisition or import of certain goods and services, such as the following (Arts. 361, 381 to 383): motor vehicles, guns, tobacco products, alcohol products, jewelry, electronic products, long- distance phone calls, and insurance. Excise tax rates vary according to the good or service taxed; for example, the rate for telecommunication services is 10%; for insurance, 16%; for payments by check, 0.15%.

The ISC rate varies according to the good or service taxed.

### 4.5 Tax on Assets

Businesses and corporations must pay a 1% annual tax on assets (Arts. 401 and 404) in two installments due on April 30 and October 30 (Art. 405). For the purposes of this tax, all assets are taken into account, minus depreciation and amortization, except (i) stock holdings in other corporations, (ii) real estate in rural areas, (ii) real estate used for agriculture or animal husbandry, (iv) tax advances, and (v) provisions for bad debts (Art. 402).

The tax on assets operates as a kind of minimum income tax. If the income tax paid by the business or corporation is equal to or higher than the amount of the tax on assets, then the business will have no obligation to pay the tax on assets (Art. 407). If the income tax paid is less than the amount of tax on assets due, the business must pay the difference.

New capital-intensive businesses may obtain a temporary exemption from this tax if certain conditions are met.

### 4.6 Transfer Pricing

Dominican transfer pricing rules will apply when a resident company or individual enters into a commercial or financial operation with (i) a related company abroad or (ii) companies or individuals domiciled in states or territories with preferential tax systems (low or zero taxation) or blacklisted jurisdictions, regardless of them being or not related parties, and the prices agreed in said operations do not reflect the amounts that would have been charged between independent parties in similar operations (Art. 281).

### 4.7 Withholding or Retentions at the Source

The Tax Code establishes the following withholdings:

- Payments abroad to persons or entities not domiciled or resident in the Dominican Republic are subject to a 27% withholding on the amount paid (Art. 305). This withholding is considered as final and definitive payment of the taxes owed for the operation. No deductions are allowed. The only exceptions to this provision are interest payments to financial institutions abroad, which are subject to a 10% withholding instead (Art. 306).
- Also, payments abroad by a branch office domiciled in the Dominican Republic to its headquarters abroad are subject to a 10% withholding (Art. 308).
- Payments to Workers: Employers must retain income taxes per the table published by the DGII (Art. 307).
- Dividends: Corporations must retain 10% of the dividends paid to shareholders (Art. 308).
- Rentals: Payments to individuals (not corporations) are subject to a 10% withholding (Art. 309).
- Fees for Services and Commissions: Payments to individuals (not corporations) are subject to a 10% withholding (Art. 309).

### 4.8 Real Estate Tax

A 1% annual tax is assessed on any real property owned by individuals, based on the cumulative value of the properties owned by the same individual, as appraised by government authorities (Arts. 1 to 3 of Law No. 18-88). Properties are valued without taking into account any furniture or equipment to be found in them.

For built lots, the 1% is calculated only for values exceeding 7,019,383.00 DOP (about $150,000). For unbuilt lots, the 1% tax is calculated on the actual appraised value without the exemption.

The real estate tax is payable every year on or before March 11, or in two equal instalments: 50% on or before March 11, and the remaining 50%, on or before September 11.

The amount of the exemption is adjusted annually for inflation.

The following properties are exempt from this tax:

- Built properties valued at RD$7,019,383.00 or below
- Farm properties
- Property whose owners are 65 years old or older, have owned it for more than 15 years, and have no other property in their name
- Properties subject to the tax on assets.

### 4.9 Real Property Transfer Tax

A 3% tax is assessed on any transfer of ownership of real estate (Art. 20 of Law No. 288-04). The transfer tax is paid based on the market value of the property as determined by the appraisal conducted by the DGII, not on the price of purchase stated in the deed of sale. The deed of sale cannot be filed at the Title Registry Office without paying this tax. The transfer tax must be paid within six months of the date of the deed of sale (Art. 7 of Law No. 173-07). Noncompliance is subject to fines.

Properties worth less than RD$1 million acquired through a bank loan are exempt from the transfer tax (Art. 20 of Law No. 288-04). The RD$1 million exemption is adjusted annually for inflation.

### 4.10Tax on Mortgages

A 2% tax is levied on all mortgages recorded in the Dominican Republic (Art. 8 of Law No. 173-07).

### 4.11Tax on Transfers of Motor Vehicles

A 2% tax is levied on any change of ownership of motor vehicles (Art. 9 of Law No. 173-07). The transfer tax must be paid within three months of the date of the acquisition. Noncompliance is subject to fines.

### 4.12Inheritance and Gift Taxes

The estate of any person, Dominican or foreign, whose last domicile was in the Dominican Republic is subject to Dominican inheritance taxes. The inheritance of property located in the Dominican Republic is subject to Dominican inheritance taxes, irrespective of the nationality or domicile of the deceased (Art. 1 of Law No. 2569 of 1950).

Law No. 288-04 lowered inheritance taxes to 3% of the value of the estate, after deductions, as determined by the tax authorities. Medical and funeral expenses, as well as outstanding debts and mortgages, are some of the allowed deductions. Beneficiaries must file a declaration with the tax authorities within 90 days of the death of the decedent. An extension for an additional three and a half months is possible in complex cases (Art. 26 of Law No. 2569). Delays in filing are subject to a 2% per month penalty, up to a maximum of 50% of the tax owed (Art. 9 of Law No. 2569).

Gifts are taxed at a 25% rate (Art. 6 of Law No. 2569) except the following, which are exempt:

- Gifts of less than RD$500
- Gifts to government institutions or recognized nonprofit organizations
- Gifts to the family homestead *(bien de familia).*

## 5 LABOR MATTERS

Labor relationships in the Dominican Republic are governed by Law No. 16-92 of May 29, 1992, commonly known as the Labor Code, which is characterized by its strong and sometimes inflexible protection of the rights of the individual employee.

### 5.1 Hiring a Workforce

There are several details to pay attention to and obligations to comply with when hiring a workforce.

#### 5.1.1 The Employment Contract

As a general rule, any and all relationships in which one person obliges himself or herself to provide any form of service to another, in exchange for remuneration and under the direction and/or supervision of the latter, are considered to be employment contracts and subject to the provisions of the Labor Code (Arts. 1 and 2).

Such contracts, which may be verbal or written, are presumed to exist in every such case, unless proven otherwise by the employer. Given this presumption, it is quite possible for a person considered a private contractor in other jurisdictions to qualify as an employee in the Dominican Republic.

Any party to an employment contract may require the other to prepare and/or sign a written version of a previously verbal agreement (Art. 19). If in writing, any modifications made to it must also be in writing (Art. 20). Written agreements are recommended since they foster a clear and sound work relationship.

Any work carried out by a foreigner on Dominican soil is subject to the provisions of the Labor Code since Dominican labor laws are territorial in nature (Principle V of the Labor Code).

#### 5.1.2 Restrictions and Obligations

Certain limitations apply to the terms of the employment contract and the persons being employed. There is also a series of employer-exclusive obligations that arise from hiring a workforce.

#### 5.1.3 Working Hours and Shifts

Normal working hours may not exceed eight hours a day or forty-four hours a week (Art. 147). Employees in executive or managerial positions are considered an exception to this rule and may work up to ten hours a day (Art. 150).

Daytime work hours range from 7:00 a.m. to 9:00 p.m. (Art. 149). A work shift is considered a daytime shift as long as no more than three hours exceed the 9:00 p.m. limit. Otherwise, it is considered a night shift, which entails a 15% increase in remuneration.. The weekly work shifts normally end on Saturdays at noon, giving the employee thirty-six hours of uninterrupted rest. Any other arrangement must provide the same minimum uninterrupted rest period of thirty-six hours.

#### 5.1.4 Employee Nationality

At least 80% of an entity's workforce must be Dominican (Art. 135). Likewise, no less than 80% of the payroll, with the exception of salaries for technical or executive positions, must correspond to wages earned by Dominicans (Art. 136). Distributions of Dominican and foreign workers for workforces of less than ten persons are provided for expressly under the Labor Code (Art. 137). Employees carrying out exclusively executive or managerial duties and those in technical positions for which there is no available Dominican substitute are exceptions to these rules (Art. 138).

#### 5.1.5 Employee Age

A person is considered of legal age for labor purposes at 16. However, an employment contract may be entered into by a minor for nonhazardous work provided that the minor has reached the age of 14 and has obtained authorization of his or her parents (Art. 17). Work hours for minors may not exceed six hours a day (Art. 247). Employment of minors is prohibited in establishments selling alcoholic beverages (Art. 253).

#### 5.1.6 Bookkeeping and Filings

Employers are required to keep the following records on a permanent basis: (i) employee, wage, and schedule listings; (ii) vacations listings; (iii) overtime listings; and (iv) inspection visit records (Art. 16). Keeping these records and duly registering with authorities are crucial for employers, given that the records are the only valid evidence that may be presented by them against employees in many cases.

### 5.2 Wages

Wages must be paid in cash and cannot be below the established minimum wage (Arts. 192 and 193). The interval between salary payments cannot exceed one month (Art. 198). Nonpayment of wages by the employer is considered a criminal offense punishable by a fine and up to five years in prison (Arts. 198 and 211).

- **Minimum Wage:** Minimum wages are established by the National Salary Committee, a dependency of the Ministry of Labor, and vary according to the different types of businesses and their installations and/or holdings.
- **Overtime:** Every hour above the 44-hour weekly limit is to be paid at 135% of the normal hourly wage (Art. 203). Every hour in excess of 68 hours a week is to be paid at 200% of the normal hourly wage. Night hours are paid at an additional 15% (Art. 204).
- **Christmas Salary:** In addition to regular salary, every employee in the Dominican Republic receives, on or before December 20, a so-called "Christmas salary" equal to one-twelfth of the total regular salary earned during the year (Art. 220). To calculate the Christmas salary, only the regular salary received is taken into account, excluding tips, overtime, and benefits received from profit sharing. The Labor Code establishes a maximum Christmas salary of five times the minimum wage. However, many employers waive this limitation and pay employees who have worked the whole year a full extra monthly salary. The Christmas salary is exempt from income tax (Art. 222).
- **Profit Sharing:** Employers must share 10% of their net profits with their employees. The Labor Code, however, allows employers to cap the amount distributed as follows: an employee with less than three years on the job will receive a maximum of forty-five days of salary; an employee with three years or more will receive a maximum of sixty days of salary (Art. 223).

### 5.3 Time Off

The Labor Code contemplates several forms of time off for employees, such as leaves of absence, vacations, and holidays.

- **Leaves of Absence:** An employee has the right to paid leaves of absence in the following cases (Art. 54): (i) marriage, five days; (ii) death of grandparent, parent, offspring, or spouse, three days; (iii) wife or companion giving birth, two days, and (iv) maternity leave, six weeks before the birth of the child and six weeks after.
- **Vacations:** Employers must grant their employees a yearly minimum of fourteen working days of paid vacation (Art. 177). After five years on the job, vacation time increases to eighteen working days per year. An employee acquires the right to vacation after a year on the job. Vacations cannot be fractioned for periods shorter than a week and may not be replaced with additional payment or any other form of compensation (Art. 182). The salary for the vacation period must be paid by the employer on the day prior to the beginning of vacation (Art. 181).
- **Holidays:** Public holidays in the Dominican Republic are listed on the following table:

| **Holidays in the Dominican Republic** | |
|---|---|
| New Year's Day | January 1 |
| Three Kings' Day | January 6 |
| Day of the Virgin of Altagracia | January 21 |
| Birthdate of Juan Pablo Duarte | January 26 |
| Independence Day | February 27 |
| Good Friday | Variable (March or April) |
| Corpus Christi | Variable (May or June) |
| Labor Day | May 1 |
| Restoration Day | August 16 |
| Day of the Virgin of Mercedes | September 24 |
| Constitution Day | November 6 |
| Christmas | December 25 |

### 5.4 Termination

Termination implies a permanent break in the effects of the employment contract. Several types of termination are contemplated under the Labor Code.

#### 5.4.1 At-Will Termination *(Desahucio)*

Any party to an employment contract has the right to terminate it unilaterally without the need to specify a cause (Art. 75). The terminating party must give 7, 14, or 28 days of advance notice of this decision to the other party depending on whether the agreement has been in force for more than 3, 6, or 12 months respectively (Art. 76). A late notice or no notice at all will entail a penalty of one day's salary for every day of noncompliance (Art. 79). Employers that exercise their right to terminate their employees without cause must make severance payments to the terminated employee, as detailed in section 5.4.4 (Art. 80).

#### 5.4.2 For-Cause Termination (*Despido* and *Dimisión*)

Employers may dismiss their employees alleging one or several of the specific causes listed under Article 88 of the Labor Code. For-cause termination by an employer (*despido)* requires evidence of the commission by his or her employee of one or several of the listed grounds for termination (Art. 87). It also requires that the employer give notice of the termination and the grounds on which it is based to the Department of Labor within forty-eight hours of the dismissal (Art. 91). Failure to prove cause or to render the notice within the stated forty-eight hours will make the employer liable for payment of severance to the employee (Arts. 93 and 94). The right of the employer to base the dismissal on a specific cause for termination expires fifteen days after the employee has committed the act alleged as grounds for termination (Art. 90).

The advice of legal counsel is strongly recommended before proceeding to terminate an employee for cause.

An employee may resign from his or her job for cause (*dimisión).* For-cause termination by employees also requires evidence of the commission of one or several of the listed grounds for termination (Arts. 96 and 97). If proven, the employee has the right to receive severance from the employer (Art. 101).

#### 5.4.3 Termination Due to Incapacity or Death of the Employee

In the event of incapacity or death of the employee, the employer shall pay the employee, or his/her heirs, economic assistance in the amounts shown in the table to the right (Art. 82).

#### 5.4.4 Severance Pay

Severance pay, due in the circumstances described here, varies depending on the duration of the employment contract as shown (Art. 80). When applicable, any sums owed by the employer must be paid within ten days of the termination (Art. 86). Noncompliance entails a penalty of one day of salary for every day of delay (Art. 86).

| Economic Assistance | |
|---|---|
| **Time Employed** | **Assistance** |
| 3 to 6 months | 5 days' salary |
| 6 to 12 months | 10 days' salary |
| Over 1 year | 15 days' salary per year |
| **Severance Pay** | |
| **Time Employed** | **Severance** |
| 3 to 6 months | 6 days' salary |
| 6 to 12 months | 13 days' salary |
| 1 to 5 years | 21 days per year |
| Over 5 years | 23 days per year |

#### 5.4.5 Maternity Protection

The Labor Code provides special protection for employees who are pregnant or have recently given birth (Arts. 231 to 243). At-will termination by the employer is strictly forbidden during the pregnancy of the employee and up to three months after birth (Art. 232). The pregnant employee has the right to paid maternity leave during the six weeks that precede the probable birth date and the six weeks that follow it (Art. 236). The employee has also the right to three rest periods of twenty minutes each workday to breast-feed her child (Art. 240).

An employer who terminates a pregnant employee at will or without justifying cause for dismissal will be liable to pay the employee, in addition to the standard severance, the equivalent of five months' salary (Art. 233).

#### 5.4.6 Suspension

An employment contract may be suspended either by the mutual consent of the parties or due to one of the other causes expressly provided by the Labor Code (Art. 51). Under a suspended employment contract, neither employer nor employee has to comply with their respective obligations for the duration of the suspension.

### 5.5 Unions

Dominican law acknowledges the right of employees to associate into unions in order to defend their interests. Unions must have a minimum of twenty members (Art. 324). Union officials receive special protection from termination by their employer (Art. 391).

**Strikes:** The Labor Code recognizes the right to strike by unions. Strikes can only involve the peaceful interruption of the work carried out by the employees (Art. 402). Strikes in essential services, such as utilities, communications, and hospitals, are illegal (Arts. 403 and 404).

Before striking, unions must give a ten-day notice to the Ministry of Labor stating the following: (i) the economic conflict or infringement of rights that the strike aims to solve; (ii) how previous attempts to solve the conflict without striking have not been successful; (iii) that the strike has the approval of at least 51% of the union members; and (iv) that the services affected by the strike are not essential to the public (Art. 407).

### 5.6 Withholding and Taxes

- **Income Tax:** All employers must withhold income taxes from their employees' salaries and pay them monthly to the tax authorities (Art. 307 of the Dominican Tax Code).
- **Social Security:** The Dominican social security system established by Law No. 87-01 contemplates insurance for health and labor risks and an incapacity/retirement fund, to be funded by salary-based contributions to be made by both employee and employer in the following proportions:

| Concept | Employee Contribution | Employer Contribution | Total Contribution |
|---|---|---|---|
| Health Insurance | 7.09% | 3.04% | 10.13% |
| Labor Risk Insurance | 1 % + 0.6% (variable) | 0 | 1 % + 0.6% (variable) |
| Incapacity/Retirement Fund | 7.10% | 2.87% | 9.97% |

Employers are responsible for payment of social security contributions, withholding their employees' share from the payroll. Contributions are capped at twenty times the minimum salary. Any amount above this cap is not taken into account to calculate the monthly contribution.

- ***Instituto de Formación Técnico Profesional*** **(INFOTEP):** INFOTEP is a public institution created by Law No. 116 of 1980 to provide training and continual education to Dominican workers. INFOTEP is financed by a 1% tax on the payroll of all private businesses payable monthly.

## 6 Relocation of Foreign Workforce

Employee relocation matters are subject to Immigration Law No. 285-04 and Immigration Regulation No. 631-11.

Foreign companies wishing to relocate their employees to the Dominican Republic are required first to have them apply for Dominican residency. Foreign nationals seeking residency in the Dominican Republic fall into two categories: those who may apply immediately for permanent residency and those who first must apply for temporary residency.

The following applicants may apply immediately for permanent residency status without having to previously obtain temporary residency status:

- Investors of at least US$200,000 in local businesses (including free zones and government contracts) or in local financial instruments
- Retirees with a monthly pension of at least US$1,500 (plus US$250 per dependent)
- Applicants with monthly income of at least US$2,000 for five years or more (*rentistas)*
- Applicants related to Dominicans or to foreigners with permanent residency status in the Dominican Republic (spouses and children).

Foreign nationals are prohibited by statute from entering the Dominican Republic for residency purposes in the following cases:

- Contagious illness threatening to public health, except, under certain requirements, when sponsored by relatives living in the Dominican Republic
- Mental illness or physical disabilities, with certain exceptions
- Conviction for a crime (drugs, human trafficking, prostitution, terrorism, and other serious offences)
- Previous deportation without reentry permit or prohibition from entering the country.

The application process is essentially the same for both temporary and permanent residency, except for some additional documents required in permanent residency applications. The first step is to apply for a residency visa at the Dominican Consulate nearest to the applicant's domicile.

Requirements for the visa application may vary depending on the particular Consulate where the visa application is filed. Residency applications may include dependents such as a spouse and children, provided that the proper documentation is attached (birth certificates, marriage certificate, passports, pictures, etc.). Criminal record certificates are only required of dependents of legal age.

The Consulate, upon granting the residency visa, will deliver the file to the applicant with the original documents, which should be brought down by the applicant to the Dominican Republic to begin the residency application process. Upon arrival, the applicant will need to have medical tests performed (X-ray and blood and urine samples), sign the necessary forms, and register his or her fingerprints at the Department of Immigration. This must be done within thirty days of entry into the Dominican Republic. When the results are obtained, the formal residency application is filed at the Department of Immigration.

Temporary residency is granted for one year. Temporary residents may apply for permanent residency after five years, within forty-five days before the expiration date of their temporary residency card.

Permanent residents must renew their residency card after one year; subsequent cards will be renewable every four years, except for retirees and *rentistas* who must renew every two years. After ten years, permanent residents will be issued a definitive residency card, not subject to renewal. An annual residency fee, however, will still have to be paid.

Permanent residents may apply for citizenship after two years as permanent residents. Investors and spouses of Dominican nationals may apply after six months.

It is illegal for nonresidents to work in the Dominican Republic. Employers of nonresident workers will be subject to fines. Illegal workers are subject to deportation.

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# GRENADA


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**Introduction**

A. Brief Introduction to Grenada as an Investment Destination

Grenada, often referred to as the "Spice Island" because of its substantial nutmeg, mace, and spice production, is an island nation located in the southeastern Caribbean Sea. In addition to providing a beautiful and peaceful tropical setting, Grenada, along with its smaller sister islands of Carriacou and Petite Martinique, also offers a prime location for business activities in the Caribbean. Its rich natural scenery, lively culture, and friendly people make Grenada an emerging centre for international investors looking to explore opportunities in sectors such as tourism, agriculture, and finance.

B. Overview of the Country's Economic and Political Stability

Grenada's political system is characterised by stability and democracy, with regular, free, and fair elections. The last elections were held in June 2022 and are constitutionally due in 2027. The country follows a parliamentary democracy model within the Commonwealth, offering a dependable and consistent political landscape for potential investors. Grenada has demonstrated economic resilience and growth, particularly in sectors such as tourism, agriculture, and education, thanks to its strong governance and strategic economic policies. The local currency, the Eastern Caribbean dollar (XCD), is pegged to the US dollar, ensuring additional economic stability and predictability for international investors. Additionally, Grenada is a member state of both the Caribbean Community (CARICOM) and the sub-regional Organization of Eastern Caribbean States (OECS), which promote trade and investment opportunities throughout the region.

C. Purpose of the Paper

This paper aims to emphasise the simplicity of doing business in Grenada for international investors. It will present a summary of the main elements that contribute to making Grenada a desirable location for business endeavours. Through an examination of the country's corporate, labour, tax, real estate landscapes and ease of access, prospective investors will acquire insight into the advantages and prospects offered in Grenada. The objective of this analysis is to motivate and assist foreign investors in contemplating Grenada as a top choice for their business activities, capitalising on favourable economic conditions, accommodating regulatory structure, and government benefits of the nation.

## 1. Corporate Matters

### 1.1. Process of Setting Up New Companies in Grenada

#### 1.1.1. Business Registration and Incorporation

Setting up a new company in Grenada involves a straightforward process outlined in the *Companies Act No. 35 of 1994 CAP. 58A (as amended)*. The procedure is designed to be simple and efficient, promoting ease of doing business for both local and foreign investors. All new Companies are registered and incorporated through the Corporate Affairs and Intellectual Property Office (CAIPO).

#### 1.1.2. Simple and Streamlined Process for Company Registration

The process begins with the submission of the required forms and documentation to CAIPO. This includes the *Articles of Incorporation* (Form 1), *Notice of the Address of the Registered Office* (Form 4), and *Notice of the Directors* (Form 9). When completed and filed, these documents constitute the formal establishment of a company. CAIPO ensures that all documents are correctly completed and submissions are processed promptly, often providing confirmation of registration within a few days.

1.2. Types of Business Structures Available

Grenada offers a variety of business structures to accommodate different types of ventures. Investors can choose from private companies limited by shares, public companies, non-profit companies, and partnerships. Each structure has its specific requirements and advantages:

1.2.1. Private Company Limited by Shares: Ideal for small to medium-sized businesses, with limited liability for its shareholders.

1.2.2. Public Company: Suitable for larger enterprises looking to raise capital through public share offerings.

1.2.3. Non-Profit Company: Designed for organisations operating in the public interest, requiring prior approval from the Attorney General.

1.2.4. Partnership: Allows for shared ownership and responsibilities among partners, with flexible operational arrangements.

1.3. Foreign Ownership

1.3.1. No Restrictions on Foreign Ownership in Most Sectors

Grenada imposes no significant restrictions on foreign ownership across most sectors, making it an attractive destination for international investors. Foreign entities can wholly own companies, subject to certain conditions, thereby retaining full control over their investments and operations.

1.3.2. Incentives and Benefits for Foreign Investors

Grenada offers a range of incentive programmes to further encourage foreign investment. These include tax credits, duty-free concessions, concessions on the importation of machinery and equipment, and other financial benefits aimed at reducing the initial costs and ongoing expenses associated with establishing and running a business in the country. The Grenada Investment Development Corporation (GIDC) plays a pivotal role in facilitating these incentives and providing support and guidance to investors throughout the establishment process.[1]

1.4. Regulatory Environment

1.4.1. Transparent and Investor-Friendly Regulatory Framework

Grenada's regulatory environment is designed to be transparent and conducive to business operations. The laws and regulations governing business activities are clear and accessible, ensuring that investors can easily comply with local requirements.

1.4.2. Key Regulatory Bodies and Their Roles

1.4.2.1. Key regulatory bodies, such as the Registrar of Companies within CAIPO, the Grenada Authority for the Regulation of Financial Institutions (GARFIN), the Inland Revenue Department (IRD), and the National Insurance Scheme (NIS), play essential roles in overseeing and supporting businesses. Each body has specific responsibilities, from company registration, regulating and supervising the non-bank financial sector in Grenada and tax administration to social security and employee benefits.

1.4.2.2. Investment in specific sectors such as legal services, agro- processing, and pharmaceuticals is regulated by their respective regulatory councils established by specific pieces of legislation, such as the Legal Profession Act, the Agriculture Act, and the Pharmacy Act.

1.4.3. Compliance Requirements and Ongoing Obligations for Businesses in Grenada must adhere to several compliance requirements, including the filing of annual returns, financial reporting, and adherence to corporate governance standards. Regular filings and updates ensure that companies remain in good standing and continue to operate within the legal framework. Companies must also ensure that they comply with the tax regimes applicable to corporate entities.

1.5. Government Support and Incentives

1.5.1. Support from the Grenada Investment Development Corporation (GIDC)

As set out above, the GIDC is instrumental in promoting investment opportunities and assisting investors. It provides valuable resources, including market information, investment guides, and personalised support services to help businesses navigate the regulatory landscape and capitalise on available incentives.

[1] Grenada's Investment Incentives Guide

1.5.2. Access to Special Economic Areas
Investors in Grenada can also benefit from access to special economic areas. These areas offer additional incentives, such as common external tariffs and streamlined customs procedures, enhancing the overall attractiveness of investing in the country. Grenada's membership in the regional and sub- regional blocs of the Caribbean Community (CARICOM) and the Organisation of Eastern Caribbean States (OECS) also facilitates broader market access and economic cooperation.

**2. Tax-Related Matters**

2.1. Income Tax: Per the Income Tax Act, Cap 149 (as amended) of the Laws of Grenada, Income Tax is levied on the chargeable income of individuals, corporations, and other legal entities. Corporations, trustees, sole traders, partners within partnerships, and employees earning over EC$3,000 monthly or EC$36,000 annually must pay this tax. The Inland Revenue Division provides detailed guidelines on how to file a Personal Income Tax Form.

2.1.1. Key Terms:

2.1.1.1. Chargeable Income: This is the total assessable income from specified sources outlined in section 29 of the Income Tax Act Cap 149 (as amended).

2.1.1.2. Assessable Income: This includes gains or profits from various sources such as business, employment, rentals and royalties, interest (excluding exempted interest), discounts, premiums, commissions, fees, license charges, annuities, and other periodic receipts. Other gains or profits, as deemed by the Act, are also included.

2.1.2. Employment Income: According to the Income Tax Act, Cap 149 (as amended), employment income encompasses wages, salaries, leave pay, fees, commissions, bonuses, or gratuities from employment in Grenada. It also includes allowances for travel and entertainment (unless they are reimbursements for expenses incurred in performing duties), the rental value of quarters or residences provided by employment, the value of benefits or advantages received by employees, pensions payable to former employees or their dependents, and loans or advances by controlled companies to shareholders.

2.1.3. Withholding Tax: Withholding Tax falls in Division II, section 50 of the Income Tax Act, Cap 149 (as amended), of the Laws of Grenada and applies to payments or credits made by residents or non-residents with a permanent establishment in Grenada. Taxable payments include salaries, interest (excluding bank deposits), discounts, rent, lease premiums, license charges, royalties, management charges, commissions, and fees. The tax rate is 15% of the actual amount paid. Payments must be made within seven days after payment or credit to the payee at the Inland Revenue Division's Cash Office or District Revenue Offices. Records of payments, gross amounts, and deducted taxes must be maintained yearly.

2.2. Excise Tax: Excise Tax, as set out in the Excise Act Cap 94 of the Laws of Grenada, is levied on the importation or manufacturing of specific goods in Grenada. Returns must be submitted by the 20th day of the month following the tax period. Rates vary based on the type of goods, primarily targeting alcoholic beverages as detailed in the Excise Tax schedule.

2.3. Value-Added Tax (VAT): ] is a broad-based tax on the consumption of goods and services in Grenada. Businesses with annual taxable supplies over EC$300,000, promoters of public entertainment, and certain government entities must register for VAT. Consumers pay VAT, which is included in the price of goods and services.

2.3.1. Rates:

2.3.1.1. Standard rate: 15%

2.3.1.2. Hotel accommodation and dive operations: 10%

2.3.1.3. Certain goods and services: 0%

2.3.1.4. Cell phones: 20%

2.3.2. Filing and Payment: VAT returns must be lodged by the 20th of the month following the tax period. Late payments incur 1.5% interest per month, and non-compliance can lead to civil and criminal penalties.

2.4. Annual Stamp Tax: Annual Stamp Tax is based on a business's gross receipts from the previous year. The rates are 0.5% for businesses with gross receipts under $300,000 and 0.7% for businesses with gross receipts of EC$300,000 or more. Returns are due by March 31st of the assessment year, with late filing and payment penalties applied. The tax is payable in nine monthly instalments from April to December, with a minimum Stamp Tax of $100.00.
By understanding and adhering to these tax requirements, investors can ensure compliance and fully capitalise on business opportunities in Grenada. Consulting the Inland Revenue Division or a local tax professional is highly recommended for detailed information or assistance.

**3. Labour Matters**

3.1. Labour Force

3.1.1. Overview of the Labour Market in Grenada

Grenada has a diverse labour market consisting of both skilled and unskilled workers, with a strong focus on education and vocational training. The government has made substantial investments in education to ensure a well- prepared workforce that can cater to the needs of various industries, including tourism, agriculture, and emerging sectors like information technology and the creative arts.
Currently, the Government of Grenada is in the process of preparing a document that will outline the availability of both skilled and unskilled labor in the country.

3.2. Employment Laws and Regulations

3.2.1. Key Labour Laws Governing Employment Relationships

Grenada's Labour Relations Act, CAP 157A and Employment Act, CAP 89 outline the primary legal framework governing employment relationships. It covers aspects such as employee rights, employer obligations, working conditions, and dispute resolution mechanisms, ensuring a fair and balanced work environment.

3.2.2. Employment Contracts and Terms of Employment

Employment contracts in Grenada must comply with legislated requirements, clearly outlining terms and conditions such as job responsibilities, compensation, working hours, and termination procedures. This legal clarity helps protect the interests of both employers and employees, fostering a stable and predictable employment landscape.

3.2.3. Workers' Rights and Protections Unionization

Grenadian workers have the right to unionise, although unions cannot compel employers to enter into collective bargaining agreements. This ensures that workers can organise to advocate for their rights and benefits while maintaining a balance that respects the autonomy of businesses.

3.3. Hiring and Recruitment

3.3.1. Procedures for Hiring Local and Non-national Employees

The procedures for hiring local and non-national employees in Grenada are straightforward. Employers must advertise job vacancies, conduct fair recruitment processes, and comply with local employment laws. For non- national workers, additional steps include securing work permits and visas are required.

At a Town Hall Meeting on 24th June 2024, it was announced by the Line Minister that the Government is actively seeking to establish recruitment agencies in Grenada to streamline and enhance the recruitment process of workers.

3.3.2. Work Permits and Visa Requirements for Non-national Workers

Non-national workers must obtain work permits and visas to be employed in Grenada. The process involves submitting the necessary documentation to immigration authorities and the Ministry of Labour and demonstrating the need for foreign expertise. This system ensures that non-nation labour complements rather than competes with the local workforce.

3.4. Labour Costs

3.4.1. Competitive Wage Rates and Salary Structures

Grenada provides competitive wage rates and salary structures. This makes it an appealing option for businesses aiming to manage their labour costs efficiently while upholding high productivity and service levels. Grenada's labour costs strike a favourable balance between affordability and quality, allowing businesses to access skilled labour without facing excessively high expenses. With its competitive wages and favourable cost comparisons within the region, Grenada stands out as an ideal location for businesses seeking a cost-efficient presence in the Caribbean.

3.4.2. Social Security Contributions and Other Employment-Related Costs Employers in Grenada have an obligation to contribute to the National Insurance Scheme (NIS), which grants social security benefits to their employees. These contributions, combined with other employment costs such as health insurance (which is not mandatory) and pensions, remain relatively low, thereby increasing the cost-effectiveness of conducting business in Grenada.

## 4. Real Estate

4.1. Property Ownership by Non-nationals

4.1.1. Legal Framework Governing Property Ownership by Non-Nationals

Non-nationals can own property in Grenada under the Aliens (Land-Holding) Act CAP 13, which requires them to obtain an Alien Landholding License from the Prime Minister’s Office. This license ensures that non-nationals can purchase and own property, whether residential, commercial, or industrial, with the same rights and protections as local citizens.

4.1.2. Procedures for Acquiring Property

Acquiring property in Grenada for non-nationals involves identifying the desired property and obtaining an Alien Land-Holding License from the Prime Minister’s Office. Necessary documents include financial and character references, proof of identity, and completed application forms. Upon approval, the property purchase is finalised through legal conveyance and recorded with the Deeds and Land Registry. Additional costs may include property surveys and evaluations. The entire process ensures legal compliance and protection for the buyer.

4.2. Land Use and Zoning Regulations

4.2.1. Overview of Land Use Policies and Zoning Laws

Land use in Grenada is regulated by the Planning and Development Control Act No. 23 of 2016, along with subsidiary laws and regulations. The Planning and Development Authority oversees and enforces these regulations to ensure that land is used efficiently and sustainably. Specific zones are designated for residential, commercial, industrial, agricultural, tourism-related and governmental purposes.

4.2.2. Restrictions and Permissions for Different Types of Development

Statutory Rules and Order (SRO) 13 of 1988 (Land Development Regulations) outlines specific restrictions and permissions for different types of development in Grenada. These regulations ensure that developments are in line with national planning goals and environmental standards, maintaining a balance between growth and sustainability.

4.3. Real Estate Market

4.3.1. Current Trends and Opportunities in the Real Estate Market

Grenada's real estate market is dynamic, with numerous opportunities for investment. Current trends indicate strong demand for residential properties, commercial spaces, and tourism-related real estate, driven by the country's growing economy and increasing tourism sector.

4.3.2. Key Areas of Interest for Foreign Investors

Key areas of interest for foreign investors include commercial properties in urban centres, residential developments in desirable locations, tourism- related properties such as hotels and resorts, and opportunities in agro- processing. These sectors offer substantial potential for growth and profitability.

4.4. Investment in Tourism and Hospitality

4.4.1. Opportunities for Investment in the Tourism Sector
Grenada's tourism sector provides numerous investment opportunities, such as the development of hotels, resorts, and eco-tourism projects. Recognising tourism as a key economic driver, the government actively promotes and supports these investments through various programmes and incentives. Investors can benefit from financial grants, tax breaks, and assistance with regulatory compliance, ensuring the successful development and operation of tourism-related real estate projects.

4.4.2. Success Stories of Foreign Investments in Grenada's Tourism Industry Numerous success stories highlight the potential of Grenada's tourism industry for foreign investors. High-profile projects, including luxury resorts and boutique hotels, have not only been successful but have also contributed significantly to the local economy, creating jobs and promoting Grenada as a premier travel destination.

4.5. Property Tax:
Property Tax in Grenada is an *ad valorem* tax charged on the market value of real property, considering factors like location, land prices, development potential, type and size of land, and the condition of buildings. Property owners, occupiers of buildings on extended family land, and tenants (if stipulated in the lease agreement) are responsible for paying this tax per the Property Tax Act, CAP 257B (as amended).

4.5.1. Tax Due Dates and Penalties:

4.5.1.1. Demand notices are sent from January 1st each year.

4.5.1.2. A 5% discount is available if 50% is paid by March 31st of the tax year and the remaining 50% by June 30th of the tax year.

4.5.1.3. A 20% fine is imposed if the tax is not paid by August 29th of the tax year, with 1.5% interest per month accruing thereafter.

4.5.2. Current Tax Rates:

4.5.2.1. Agricultural Land: 0.0%

4.5.2.2. Agricultural Idle Land: 0.2%

4.5.2.3. Amenity: 0.1% (both land and building)

4.5.2.4. Commercial: 0.5% (land), 0.3% (building)

4.5.2.5. Hotel: 0.3% (land), 0.02% (building)

4.5.2.6. Industrial: 0.3% (land), 0.2% (building)

4.5.2.7. Institutional: 0.1% (both land and building)

4.5.2.8. Residential: 0.2% (land), 0.3% (building)

4.5.2.9. Reserve: 0.1% (land), 0.0% (building)

4.5.2.10. Waste: 0.1% (land), 0.0% (building)

4.5.3. Payment Locations: Payments can be made at the Inland Revenue Division on the Carenage or at District Revenue Offices in each parish.

4.5.4. Objections and Appeals: Taxpayers have the right to object within 14 days of receiving a valuation notice.

4.6. Property Transfer Tax: Property Transfer Tax in Grenada, governed by the Property Transfer Tax Act CAP 257C (as amended), applies to the transfer of property through sales, exchanges, gifts, or other dispositions.

4.6.1. Tax Rates:

4.6.1.1. Nationals: Vendors pay 5% of the market value.

4.6.1.2. Non-Nationals: Vendors pay 15% of the consideration or market value, and purchasers pay 10% of the consideration or market value.

4.6.2. Special Conditions: Tax is payable on property valued at more than $150,000 for deeds of gift and on value at more than $20,000 for non-gift transfers.

4.6.3. Exemptions: Transfers by the Crown or statutory boards, charitable organisations, non-profit companies, mortgage transfers and releases, transfers due to bankruptcy or liquidation, and transfers between trustees are exempt.

## 5. Access to Grenada

5.1. Physical access to Grenada is Very Easy

Physical access to Grenada is very convenient for international investors and tourists alike, thanks to its well-connected external transportation infrastructure. Grenada is accessible by air and sea, making it a practical destination for business and leisure travel.

5.2. Frequent Flights from the US and the UK

Grenada's Maurice Bishop International Airport (MBIA) in the south of the island serves as the primary point of entry for international air travel. The airport provides regular non-stop flights from major cities in the United States and the United Kingdom. Airlines such as American Airlines and JetBlue offer daily flights from US cities, including New York, Miami and Boston. Delta provides service from Atlanta. From the UK, British Airways and Virgin Atlantic each offer direct services, primarily from London, twice a week. Other carriers operate on a seasonal basis including Condor Airlines from Germany and Air Canada from Toronto. These frequent connections ensure that investors and visitors can easily travel to and from Grenada, facilitating business operations and tourism. Access from the United Kingdom also allows for convenient travel from Continental Europe.

Air travel throughout the Caribbean region from Grenada is supported by airlines such as LIAT, Inter-Caribbean Airways and Caribbean Airlines.

Furthermore, Grenada's cargo ports are well-equipped to handle international cargo ships and the Cruise Ship Terminal is designed to handle passenger cruise ships, further enhancing the island's accessibility. The availability of reliable and frequent transportation options makes Grenada a highly accessible and appealing destination for foreign investors seeking to establish and maintain business operations.

## 6. Quick Facts on Grenada

- Official name: Grenada
- Dependencies: Carriacou and Petite Martinique
- Capital: St. George's
- Location: 12.07° North 61.40° West
- Nationality: Grenadian
- Major religion: Christianity
- Official Language: English
- Recognised Local Languages: Grenadian Creole English & Grenadian Creole French
- Government: Constitutional Monarchy (Parliamentary Representative Democracy)
- Head of State: King Charles III, represented by the Governor-General of Grenada (the incumbent Governor-General being Her Excellency Dame Cécile La Grenade)
- Head of Government: Prime Minister (the incumbent Prime Minister being Hon. Dickon Mitchell)
- Area, including all three islands: 344 km2 (133 sq. miles)
- Population: 124,610[2]
- Currency: Eastern Caribbean Dollar (XCD)
- GDP per capita: USD 20,195[3]
- Current labour force: 40% of population
- International dialling code: +1 473
- Internet domain: .gd
- Airports: Maurice Bishop International Airport (MBIA) and Lauriston Airport (Carriacou)
- Climate: Tropical, with an average temperature of 24ºC (75ºF)
- Time zone: EST+ 1 (GMT – 4:00)
- Suffrage: Universal at 18
- Independence Day: 7 February, 1974
- Constitution: 19 December, 1973
- Famous Beach: Grand Anse Beach (South West Coast - 2 miles)
- Famous Local Celebration: Carnival (held every August)

[2] per United Nations Estimate, 2021
[3] per International Monetary Fund, 2023

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# GUATEMALA

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**Why Invest in Guatemala?**
Guatemala boasts several competitive advantages that attract foreign investment. The country accounts for 40% of the region's economic performance, making it the most important market in Central America. Its strategic location offers logistical access to both the Pacific and Atlantic Oceans and benefits from free trade agreements. Guatemala is known for its macroeconomic stability, high international monetary reserves, and robust financial system. The country's GDP has shown consistent growth over the years.

**General Aspects About Guatemala**

- Location: Central America, bordered by the Pacific Ocean, Caribbean Sea, El Salvador, Mexico, Honduras, and Belize.
- Capital City: Guatemala City
- Population: 17.9 million people
- Moody's Investor Service: Ba1 stable
- Fitch Rating: Stable to positive
- World Bank: Rates Guatemala as the largest economy in Central America and an upper middle-income country

**Foreign Investment Law**
Guatemala has applicable legislation for Foreign Investment and Tax Incentives that allows the same investor to enjoy security and legal certainty over their capital. Among the main provisions currently in force in the country it is important to mention the following:

**Foreign Investment Law and its Regulations** (Congressional Decree 9-98 and Governmental Agreement 893-2018): promotes the participation of foreign investment in various economic activities. Some aspects it establishes are: the free transfer of capital; the principle of national treatment, which means that foreign investors have the same rights and obligations as domestic investors; and can access the same tax incentives and benefits available to domestic investments; guarantees for investment such as protection against expropriation and nationalization without adequate compensation, as well as the possibility of resolving disputes through international arbitration mechanisms and establishes clear and transparent procedures for foreign investment, including the form of registration and the requirements to obtain the benefits established in the legislation.

The following activities are the only ones that are limited:

- Forestry: Its exploitation is destined to Guatemalan companies or national citizens.
- Insurance: Foreign companies are prohibited from owning domestic branches for this purpose.
- Professional Services: Foreign companies are not allowed to provide services for which a university degree is required.

**The Law of Free Negotiation of Foreign Exchange (**Decree 94-2000) recognizes that the State of Guatemala must participate in the new international exchange order and therefore regulates the freedom of foreign exchange in contracting, remittances, transfers, purchase or sale and payments. Therefore, the operations of disposition, holding, contracting, remittance, transfer, purchase, sale, collection and payment of and with foreign currency by national, foreign, individual or juridical persons will be on their own account. It regulates the free holding and management of deposits and accounts in foreign currency, the institutional foreign exchange market, exchange houses and the reference exchange rate.

## 1. Corporate Framework

### a. How to Set Up a Company

Setting up a company in Guatemala can be done either by establishing a new company or by opening a branch of a foreign company. The process of incorporation affects the required capital investment and the company's governance structure. Guatemalan companies are governed by their articles of association and the Commercial Code of Guatemala. Companies incorporated under Guatemalan law or registered at the General Mercantile Registry of Guatemala acquire a legal personality distinct from their members.

### b. Types of Companies

#### i. Limited Liability Company (LLC)

The Limited Liability Company (LLC) also called Sociedad de Responsabilidad Limitada, can be made up of two parties and may not exceed twenty, who are only required to pay their own capital contributions, and whose personal assets are not liable for company debt. Only the company equity is responsible. Capital is divided into contributions that may not be incorporated into securities of any nature nor be called shares. By the time of incorporation of the company, the capital must be fully and effectively paid. If not, then the deed of incorporation will be null and void, and the partners will be unlimitedly, jointly, and severally liable for damages caused to third parties. The company will do business under a trade name, freely formed, but it must always refer to the company's principal activity or by the complete name of one of the partners or the surname of two or more of them. In both cases, it is required that the word "Limitada" (Limited) or the words "Compañía Limitada" (Limited Liability) be added, which may be also abbreviated to Ltda. or Cía. Ltda., respectively.

#### ii. Corporation (Sociedad Anónima)

The corporation or Sociedad Anónima is a structured company organized around capital stock, represented, and divided by shares. The minimum number of shareholders for a corporation is two. The shareholders are liable up to the amount of the subscribed shares. The corporation must have an authorized capital, which is the maximum amount that the company can issue in shares, without needing to formalize a capital increase; a subscribed capital, which is the capital that shareholders undertake to pay and shall be specified on the corporation's articles of association; and a minimum paid-in capital, that shall be of at least two hundred quetzales (GTQ.200.00). This minimum capital may either be paid in cash or deposited in a bank account under the corporation's name. However, the bank deposit is obligated if the total cash contributions exceed the amount of GTQ.2,000.00. The trade name is formed freely with the obligatory addition of the words: "Sociedad Anónima", abbreviated S.A.

All shares issued by a corporation will be of the same value and will grant equal rights, unless otherwise stated by the deed of incorporation, as to the disposition that the company's capital will be divided among several types of shares each one granting special rights, with the only limitation that shareholders' right of profits cannot be restricted. Each share will grant its shareholder the right to one vote. The value of the share certificates can be from GTQ.1.00 up to the wished value. Share certificates can only be nominative.

The Shareholder's Meeting is the highest corporate governance body. Through it, the will of the corporate majority is expressed regarding matters within its competence. Shareholders Meetings may be ordinary or extraordinary meetings. The administrative body of the Company is responsible for the management of the company's business, it can be constituted as Board of Directors or as Sole Director. According to the dispositions of the articles of association, either the General Meeting or the Board of Directors will appoint one or more Managers, who can be shareholders or not. Additionally, the company has a board of surveillance that can be formed by shareholders, public accountants, auditors, or commissioners.

#### iii. Limited Partnership

A limited partnership is a company composed of one or several active partners and one or several silent partners. Active partners are unlimitedly, jointly, and severally liable for the company's obligations. Silent partners have responsibility limited to the amount of their contributions. The capital must be fully and effectively paid. Otherwise, according to the Law the incorporation deed will be null and void. The trade name is formed with the name of one of the active partners or with the surnames of two or more of them if there are several, with the obligatory of the words "Compañía, Sociedad en Comandita" (Limited Partnership), which may be abbreviated y Cia. S. en C.

**iv. Limited Partnership with Share Capital**

A Limited Partnership with Share Capital is an entity formed by one or several active partners and one or more silent partners. Active partners will be unlimitedly, jointly, and severally liable the company's obligations.

Silent partners responsibility is limited to amount of the shares which they may have subscribed in the same manner as shareholders of a Corporation (Sociedad Anónima). Contributions are to be represented by shares. The active partners oversee administration of the company and its legal representation. The articles of incorporation must contemplate a board of surveillance composed by one or several accountants, auditors, or commissioners, which must be exclusively appointed by silent partners. The trade name is formed with the name of one or more of the active partners or with the surnames of two or more of them, if there are several, and with the obligatory addition of the words “Compañia Sociedad en Comandita por Acciones” (and Share Commandite), which may be abbreviated y Cia. SCA.

**v. General Partnership**

A General Partnership Company is the one in which all the partners will be unlimitedly, jointly, and severally liable of the company’s obligations.

The trade name is formed with the name and surname of one of the partners or with the surnames of two or more of them, and with the obligatory addition of the words: “Compañía Sociedad Colectiva”, which may be abbreviated “Cía. S. C.”.

Guatemala has signed bilateral or regional free trade agreements with Chile, Mexico, Colombia, Taiwan, Panama, the European Union, Peru, and the European Free Trade Association (EFTA) countries and is a member of the CAFTA-DR.

**vi. Entrepreneurship Company**

Entrepreneurship companies were created by the Entrepreneurship Strengthening Law, with the purpose of providing technical and financial support to entrepreneurs, through the creation of this new figure that streamlines the process to formalize businesses, reducing registration times and costs. The minimum number of partners for an Entrepreneurship Company is of one individual persons. The total annual income may not exceed GTQ.5,000,000.00, if this amount is exceeded, the company must be transformed into a corporation. The trade name is formed freely, followed by the words “Sociedad de Emprendimiento” or its abbreviation S.E.

**vii. Foreign Company Branch**

A Foreign Company Branch is another type of incorporating a company in Guatemala and applying for companies legally constituted abroad who wish to operate in the country by establishing one or more branches or agencies. The company must permanently have a legal representative in the country who will have broad powers to carry out all the legal acts and businesses and comply with the following requirements: prove that it is duly constituted according to the laws of the country of origin, present the articles of incorporation and bylaws, constitute an assigned capital for its operations in Guatemala, contract a bond in favor of third parties for US$50,000.00, submit a certified copy of its last annual balance sheet, among others.

**viii. Merger and Acquisition**

In Guatemala, there is no legal figure that regulates how to acquire a company. Therefore, each acquisition should be structured to respond to the specific case. However, when engaging in a **Company Acquisition**, you must take into consideration the following dispositions contained in Guatemalan law:

- Total Acquisitions are not permitted. When all shares fall under the ownership of one shareholder, the Company is obligated to begin a winding-up process.
- To transfer nominative shares, these need to be endorsed and registered in the Company’s Share Registry Book.
- Articles of Association can set preemptive rights to the other shareholders and specific transfer procedures.

A **Companies’ Merger** can be executed in one of the following forms:

- Through the constitution of a new Company, and therefore the dissolution of all the merged companies.
- By the takeover of one or more companies by the prevailing company.

In both scenarios, either the new Company or the prevailing Company will assume all the dissolved companies' rights and obligations.

**ix. Registration Requirements**

A Company's incorporation, as well as all its future amendments, including term extension, capital increase or reduction, change of trade name, merger, dissolution, and any other article's extensions or modifications, must be stated through a public deed. All Guatemalan entities must be registered in the General Mercantile Registry of the Republic of Guatemala.

## 2. Tax Framework

### a. Income Tax

Book I of the "Ley de Actualización Tributaria" Tax Update Law (LAT), Decree No. 10-2012, regulates the Income Tax in Guatemala, which is based on the territoriality or source principle, taxing only income from a Guatemalan source.

The income is taxed according to its origin, and in accordance with the following categories:

**i. Income from lucrative activities**

Under this category, these activities are taxed, among others: The production, sale and commercialization of assets in Guatemala; the exportation of assets; the provision of services in Guatemala and their exportation; subsistence allowances, commissions, per diems, entertainment expenses and the fees that are received for the practice of professions.
The taxpayers pay taxes in this income category, in accordance with one of the two following optional regimes:

**A) Regime on the Profits from Lucrative Activities:**

As its name states, in this regime the taxpayers pay Income Tax on their profits (net income), from which they can subtract from their gross income the exempted income and the deductible costs and expenses.

The applicable tax rate is 25%.

The law lists the costs and expenses that may be deducted from the gross income for the purposes of determining the taxable income. They are, among others: the cost to produce and sell assets; the expenses incurred in the provision of services; the transportation and fuel expenses; the wages and the fees paid to the Social Security Institute; the pensions; the leases of personal and real property; the maintenance and repair expenses; the depreciations and amortizations; the donations to the Government, universities, cultural or scientific entities; the publicity expenses, as well as other general selling expenses.

Interests derived from loans are also deductible, but there is a limit to that deduction. In the case of loans granted abroad, interests may be deducted only if the contracts are with banking or financial institutions, registered and monitored by the State banking supervision and inspection body and authorized for financial intermediation activities in the granting country.

Generally, for the expenses to be deducted, it is necessary for them to be useful, pertinent or indispensable to produce or maintain the source that produces the taxable income.

The payment method in this regime is through the presentation of tax advances consisting in quarterly payments through an affidavit that must be presented in the month following the end of each calendar trimester, and an annual affidavit as final liquidation of the tax.

**B) Optional Simplified Regime on Income from Lucrative Activities:**

In this regime, the taxpayer pays income tax on the gross income, in accordance with the following scale:

| Range of the taxable income, per month | Fixed amount | Tax rate of |
|---|---|---|
| From Q.0.01 to Q.30,000.00 | Q.0.00 | 5% on the taxable income |
| From Q.30,000.01 onward | Q.1,500.00 | 7% on the amount surpassing Q.30,000.00 |

The payment form in this regime is through final withholdings that the persons who make the payment or credit to an account must make, due to the acquisition of assets or services, if they are withholding agents; otherwise, through direct payment. Additionally, the monthly affidavit and the annual informative affidavit must be presented always.

**ii. Income from Work**

This income is originated from any kind of compensation, remuneration or income derived from personal work provided by a resident who is in a subordinate relationship, carried out in or outside Guatemala, such as: wages, bonuses, commissions, Christmas Bonuses and other remunerations.

Among the exempted income there are certain severances for time served, representation expenses and per diems, as well as the Christmas Bonus and the annual bonus (up to 100% of the monthly base salary), which by law are bonuses that are given to the employees.

Among others, these may be deducted from the income:

- Q.48,000.00, without the need of any verification, and Q.12,000.00 which the taxpayer may accredit due to the Value Added Tax paid in personal expenses during the annual final liquidation period.
- Donations to the Government, universities, cultural or scientific entities.
- The contributions to the Guatemalan Social Security Institute and life insurance premiums.

The tax rates applicable to the taxable income are 5% and 7%, in accordance with the following scale:

| Range of taxable income | Fixed amount | Tax rate of |
|---|---|---|
| Q.0.01 to Q.300,000.00 | Q.0.00 | 5% on the taxable income |
| Q.300,000.01 onward | Q.15,000.00 | 7% on the amount surpassing Q.300,000.00 |

The employer must withhold the employee's income tax and pay it to the Tax Administration. Each year, the employer will make a projection of the income and of the deductions that may be applicable. At the end of the annual liquidation period, the employer will determine if he withheld in excess, in which case he will return what may be pertinent and will discount such returns from the total of the withheld amounts during the new period, until paying it all.

**iii. Income from Capital and Capital Gains**

In this category, capital income is taxed in concept of dividends, interests, royalties paid by copyright, or trademarks and income derived from lease of movable and immovable property located in Guatemala.

Capital gains are income derived from the transfer, sale or barter of goods or rights made by persons whose normal course of business is not to trade with such goods or rights.

Capital income and capital gains is taxed with a 10% tax rate, except for the dividends, which pay 5%.

The payment method of the tax due to capital income is through withholdings made by the person who pays such income. Capital gains must be liquidated and paid directly by the taxpayer who generates them.

The Law includes a chapter destined to regulate the payment of income tax by non-residents who obtain taxable income, whether they have a permanent establishment, and it obligates to make the following withholdings:

| Withholding | Taxable event |
|---|---|
| 5% | Activities of international transportation of cargo and passengers, insurance premiums, bond premiums, reinsurance, retrocessions and supporting guarantees that non-residents may obtain; telephony and data transmission and dividends |
| 10% | Interests paid or credited to non-residents. |
| 15% | Wages and salaries, subsistence allowances, commissions, bonuses, royalties, fees; scientific, economical, technical or financial consulting. |
| 25% | Other taxable income that has not been previously listed. |

**A) Transfer Pricing**

Among the substantial amendments made by the LAT, the inclusion of special valuation provisions between related parties is among them; these provisions intend to protect the principle of arm's length.

These provisions are applicable to the operations made between a person resident in Guatemala and a person resident abroad, which may have effects in the determination of the taxable income. If there are operations between related parties, then it will be necessary to enclose to the income tax affidavit the corresponding supporting report of the transfer pricing. For such purpose, the Law also has established the methods to apply the principle of arm's length, in terms like the ones that the Organization for Economic Co-operation and Development (OECD) provides.

**b. Value Added Tax**

The Value Added Tax Law (VAT) includes as taxable events, among others:

i. The sale or barter of personal property or real rights created on them.
ii. The provision of services in the national territory.
iii. The importations.
iv. The lease of personal and real property.
v. The awarding of personal and real property as payment, except for the ones made due to the division of the estate or to the end of the pro indiviso tenancy.
vi. The first sale or barter of real property.
vii. The donation inter vivos of personal and real property.
viii. The contribution of real property to companies in certain cases.

The tax rate is 12%, which is calculated on the price of the assets or services. The invoices that are extended must include the tax in the price.

The tax is liquidated each month through a compensation of tax credits and debits. The net sum that the taxpayer must pay to the Tax Administration is the difference between the tax debit total and the tax credit total that was generated.

Some of the operations that are exempted from VAT are:

i. The importations of personal property in the terms of the law.
ii. The exportations of assets and the exportations of services.
iii. The assignment of personal and real property in the following cases:
    a. The contributions to civil and commercial companies.
    b. The mergers of companies.
    c. The inheritances, bequests and donations mortis causa.
iv. The creation, issuance, circulation and assignment of credit instruments and shares.

Since July 1, 2022, all invoices are issued in "FEL", the electronic software of the Tax Administration. This allows the Tax Administration to have real-time information and to be able to more effectively audit taxpayer transactions.

**c. Solidarity Tax**

It is a supplementary tax to the income tax, which has suffered amendments in its name and rates throughout the years, as it is detailed in the following table, and which is paid by the taxpayers who carry out commercial, agriculture or livestock activities in Guatemalan territory, and who obtain a gross margin that surpasses 4% of their gross income.

The applicable tax rate is 1% and is calculated over one quarter of the amount of the net assets or one quarter of the gross income, whichever is the greater. This tax is creditable with the Income Tax.

Taxpayers affiliated to the Optional Simplified Regime of Income on Lucrative Activities of the Income Tax, as well as non-profit entities, among others, are exempted from the Solidarity Tax.

| **Tax Name** | **Period in force** |
|---|---|
| Tax on Commercial, Agricultural and Livestock Businesses **(IEMA, due to its acronym in Spanish)** | 1995 – 2004 |
| Extraordinary and Temporary Tax to Support the Peace Accords **(IETAAP, due to its acronym n Spanish)** | 2004-2008 |
| Solidarity Tax **(ISO, due to its acronym in Spanish)** | 2009-present |

**d. Stamp duty**

It is a documentary tax that is paid in the creation, granting or execution of documents that contain taxable acts or contracts, which are, among others:

i. Civil and commercial contracts.
ii. Documents granted abroad that will have effects in Guatemala.
iii. Public or private documents whose purpose is the payment attestation with assets or sums of money.
iv. The second and subsequent sale or barter of real property.

These are some of the operations that are exempted:

i. All contracts and documents that contain acts taxable with the Value Added Tax.
ii. The receipts or attestations of payments of wages, per diems, entertainment expenses, Christmas Bonuses, labor benefits or any other remuneration due to personal services provided in a subordinate relationship.
iii. Checks and certificates of deposit.
iv. The credit instruments and other documentary credits that have been issued abroad to be paid in the Republic or issued in the Republic to be paid abroad.
v. The contributions to the capital of companies; the granting, issuance, circulation, redemption, assignment, payment and cancellation of shares of all type of companies and of associations which have issued shares, as well as their coupons.
vi. The contracts or documents that contain loans coming from abroad.
vii. The creation, issuance, circulation, negotiation and cancellation of bonds, pledge bonds, debentures, mortgage notes and credit instruments, in which banks and financial institutions subjected to the inspection of the Bank Superintendency, participate.
viii. The creation, issuance, circulation, negotiation and cancellation of all types of credit instruments, debentures and mortgage notes, their coupons and interests.
ix. The commercial invoices of providers abroad and the importation and exportation policies.

The tax rate is 3% on the value of the taxable acts and contracts. The Law that regulates this tax also establishes specific rates for certain notarial and registry acts. The tax is paid attaching tax stamps to the documents or through payments in cash.

Notwithstanding the above, when the income that must be paid surpasses Q.3,001.00, the tax must be mandatorily paid in cash, in the banks of the system or in the institutions authorized for such purpose.

**e. Property Tax**

It taxes the property or possession of real property (land, constructions and installations) in Guatemala. It is calculated on the value of the tax registration of the real property, in accordance with the information of the Land Registry Office of the Republic of Guatemala. The tax is annual, but the payments may be made each trimester.

The tax rates are as follows:

| Value of the real property | | Tax |
|---|---|---|
| Up to Q. 2 ,000.00 | | Exempted |
| From Q. 2,000.01 | To Q. 20,000.00 | 2 per each thousand |
| From Q. 20,000.01 | To Q. 70,000.00 | 6 per each thousand |
| From Q. 70,000.01 | Onward | 9 per each thousand |

**f. Specific Taxes on Consumption**

| No. | Tax | Description |
|---|---|---|
| **1.** | **On tobacco and its products** | The manufacturing and distribution of machine-made cigarettes are subjected to this tax, in the following manner:<br><br>1. It is paid 100% of the selling price at the factory for each package of ten packs of twenty cigarettes each, without taxes.<br>2. In the importation: 100%, taking as basis the affidavit that specifies the CIF value, the dues and the rest of customs charges and importation taxes, freight expenses, insurance and other expenses in which the importer may incur in. |
| **2.** | **On the distribution of crude oil and fuels derived from oil** | The dispatch of taxable products (crude oil and fuels derived from oil) for their distribution in the national territory and their exit from the primary customs zone, constitute taxable events of this tax.<br><br>The tax is paid based on the American gallon of 3.785 liters, at room temperature.<br><br>The tax rate applicable per American gallon is:<br>1. Premium gasoline Q. 4.70<br>2. Regular gasoline Q. 4.60<br>3. Aviation gasoline Q. 4.70<br>4. Diesel and fuel oil Q. 1.30<br>5. (DPK) Kerosene Q. 0.50<br>6. Kerosene for reaction motors (Avjet turbo fuel) Q. 0.50<br>7. Naphtha Q. 0.50.<br>8. Liquefied petroleum gas (propane, butane, methane and similar gases) in bulk and in carburation Q. 0.50.<br><br>The exempted products are:<br>1. Diesel, fuel oil (Bunker C) and crude oil used in the generation of electricity in thermoelectric power plants integrated to the National Electric System.<br>2. Liquefied petroleum gas used for home consumption. |

| | | |
|---|---|---|
| **3.** | **On the distribution of cement** | The taxable event of this tax is the exit of cement from the storage depots of the manufacturers, for its distribution and sale in the national territory. In case of importation, the tax is generated and temporarily paid upon its entrance or admission to the country through customs; and the importer recovers the tax in its distribution and sale in the national territory.<br><br>The tax that must be paid is Q.1.50 per each bag of 42.5 kilograms of weight or its equivalent, if it is in bulk or "clinker", or in bags of different weight.<br><br>The exportations or re-exportations of any type of cement are exempted from the tax. |
| **4.** | **On the distribution of distilled alcoholic beverages, beers and other fermented beverages** | The tax is generated upon the exit of the distilled alcoholic beverages, beers and other fermented beverages, from the depots, storage or collection centers that the registered manufacturers or importers use, for their distribution in the national territory.<br><br>The basis on which the tax is calculated in accordance with the rates (which range between 6% - 8.5% according to the type of beverage), is the selling price to the final consumer suggested by the manufacturer or importer, without including VAT or the distribution tax of these beverages. |
| **5.** | **On the distribution of carbonated, isotonic or sport beverages, juices and nectars, yogurts, concentrated or powder preparations to make bottled beverages and natural water** | It is taxed the exit of beverages from the depots or storage sites of the registered manufacturers or importers (or the persons who make eventual importations) for their distribution in the national territory.<br><br>The liter is the basis on which the tax is calculated in accordance with the rates stated for each beverage (it must be applied the equivalence of the liter for the cases in which the beverages are bottled in heavier or lighter volumes).<br><br>Tax rates:<br>1. Q.0.18 for simple or sweetened carbonated beverages containing or not carbon dioxide, as well as syrups and/or concentrates from the mixture of which gaseous drinks are generated.<br>2. Q.0.12 for isotonic or sports drinks.<br>3. Q.0.10 for natural juices and nectars or natural fruit and artificial juices.<br>4. Q.0.10 for yogurt beverages of any kind.<br>5. Q.0.08 for natural water packaged in presentations of up to four liters. Excluded from the tax is natural water bottled in presentations of more than four liters, which is used for domestic use. |
| **6.** | **On the circulation of land, sea and air vehicles** | It is subjected to tax the circulation of land, sea and air vehicles that travel in the national territory, waters and airspace comprised in the sovereignty of the Guatemalan State.<br><br>The owners must pay the tax based on the values of the vehicles. The law states a specific tax according to the type of vehicle.<br><br>The law also includes exemptions to this tax for official license plates, diplomatic, consular missions, international organizations, etc. |

**g. Other Formal Tax Obligations**

Business owners obliged to keep accounting must record in their books all bank accounts that they use to carry out their business transactions and investments that originate from the capital or financial resources of the entity, regardless of whether they are opened in or outside Guatemala.

Bank accounts should be detailed in the inventory book, specifying the account number, the banking institution in which it is located, the type of account and the amount at the end of the accounting period.

In the case of investments, the business owner must specify the amount of the investment, the type of investment and the institution in which it is located, indicating whether it is national or foreign. If it is a foreign institution, the country in which it is located must be specified.

In all the above cases, the accounting entries in the journal must be supported by the documents that originated the transaction.

Also, bank reconciliations must be elaborated to determine the reasonableness of the accounting balance.

These obligations were introduced with the approval of the Law for the Strengthening of Fiscal Transparency and Governance of the Superintendence of Tax Administration, Decree No. 37-2016.

**h. Inheritance, Legacy and Donations Tax**

This tax is regulated by the Law on Inheritance, Legacy and Donations Tax. Is caused by the following:

i. Donations between living persons or gratuitous disposals of movable or immovable property, cash, nominal shares or quoted securities, regardless of their location, provided that the act or contract was entered into in the Republic.
ii. Donations between living persons or disposals free of charge of personal property, cash, nominal shares or quotable securities, that are in Guatemala, even when the donor and the person that received the donation, or both at the same time, reside or are domiciled abroad, regardless of the place where the contract is celebrated.
iii. Inheritances, legacies and donations by cause of death, of personal property, cash, nominal shares and quoted securities, wherever they may be, provided that the succession trial is opened or located in the Republic.
iv. Inheritances, legacies and donations, due to death, of personal property, cash, nominal shares or quoted securities, that are in Guatemala, regardless of the domicile of the deceased, when his death occurs, the place where the succession trial is opened or where the testamentary disposition or the donation deed was granted.
v. Inheritances, legacies and donations, for any reason, of real property located in the Republic and of rights in rem thereon, regardless of the place of death of the deceased, the place where the testamentary disposition or the deed of donation is granted, the country where the probate proceeding is or will be located, and the domicile of the interested parties.
vi. Inheritances, legacies and donations, by cause of death, of real estate located outside the Republic or real rights over the same, if the donation deed is granted in Guatemala or in it the succession trial is opened or established.
vii. The remission or remission of debts, regardless of their nature or origin, if the act or contract was executed in Guatemala or if the assets that served as guarantee for the fulfillment of that obligation are located in the Republic.
viii. Inheritances, legacies and donations, for any cause, of real or personal rights, goods of a movable character, cash, nominal shares and quotable securities, whatever the place of domicile of the donor or cause of the inheritance, of the establishment of the succession trial or of the granting of the contract or will, provided that such securities come from a source of wealth existing in the territory of the Republic.
ix. The waiver or cancellation of usufruct or pension rights, whether temporary or for life, over assets located in the country, even if the deed was granted abroad.

The tax rates applicable to inheritances, legacies and donations are:

| Portion of each heir, legatee or recipient of the donation | Sons, spouse and concubines | Ascendants and descendants, except adopted children | By Kinship | | | Relatives | Third parties |
|---|---|---|---|---|---|---|---|
| | | | 2nd Degree | 3rd Degree | 4th Degree | | |
| | % | % | % | % | % | % | % |
| Up to Q50,000.00 | 1 | 2 | 3 | 5 | 7 | 9 | 12 |
| Up to 100,00.00 | 2 | 3 | 4 | 6 | 9 | 10 | 14 |
| Up to Q200,000.00 | 3 | 4 | 5 | 7 | 10 | 11 | 16 |
| Up to Q300,000.00 | 4 | 5 | 6 | 8 | 11 | 12 | 18 |
| Up to Q500,000.00 | 5 | 6 | 7 | 9 | 12 | 13 | 20 |
| Larger amounts | 6 | 7 | 8 | 10 | 13 | 14 | 25 |

**i. Other Relevant Legislation**

**Free Trade Zones Law**, (Decree 65-89): Incentivizes and regulates the establishment of Free Trade Zones in Guatemala through a special Customs Regime which benefits companies that produce goods for export or re-export without transforming or modifying the original product, as well as companies related to international trade services, with the following incentives:

- Exemption from taxes, customs duties and charges on the importation into the free zone of machinery, equipment, tools, raw materials, inputs, containers, packaging, among others used to produce goods and services.
- Income Tax Exemption (ISR) for a term of up to 10 years.
- Transactions of goods in free trade zones are exempt from Value Added Tax (VAT).
- Total exoneration of the Tax on Stamp Tax and Special Stamped Paper for Protocols, when the exchange or transfer of real estate used in the user's activity is applicable.

**Law for the Promotion and Development of the Export Activity and Maquila**, Decree 29-89: Its purpose is to promote, encourage and develop the production of goods for export or re-export. It regulates a series of incentives for the import of primary goods to be processed for export in Guatemala; especially for the production, transformation, assembly, assembly and processing of industrial goods related to the apparel and textile industry, as well as the provision of services related to technologies, including call centers; and within the benefits it is worth mentioning:

- Suspension of customs duties and import taxes, including Value Added Tax, VAT, on raw materials, semi-processed products, materials, containers, packaging and labels, for up to 1 year.
- Suspension of payment of customs duties and taxes, including Value Added Tax, VAT, on samples, instructions, patterns, and others, for up to 1 year.
- Exemption from Income Tax (ISR) obtained from the exportation of goods manufactured or assembled in the country, for a period of up to ten 10 years.
- Exemption from customs duties and import taxes on machinery, equipment, parts, components and accessories necessary for the production process.

**Emergency Law for the Conservation of Employment**, Decree 19-2016: reformed the Law for the Promotion and Development of the Export and Maquila Activity, and eliminates a series of activities that could not be produced or commercialized from Free Trade Zone, including:

- Exploitation, commercialization, deposit or storage of crude oil, fuel, as well as natural gas or its derivatives.
- Fishing and breeding of marine or freshwater species.
- Recreation centers and hotels.
- Forestry, timber exploitation.
- Cane sugar, refined sugar and molasses.
- Coffee in cherry, parchment and gold, among others.

**Special Public Economic Development Zones Law (ZDEEP)** (Decree 30-2018): This is designed to encourage economic development in specific areas of the country through tax incentives and other facilities.

A Special Public Economic Development Zone in Guatemala is a geographically defined area within the national territory, extra-customs, for the development of industrial goods and services or commercial activities, with special tariffs, temporary customs regime and foreign trade, authorized by the Free Zone of Industry and Commerce "Santo Tomas de Castilla" (ZOLIC). ZDEEPs allow for a variety of economic activities, including manufacturing, agribusiness, trade, services, and research and development activities.

The main tax incentives of the ZDEEP are:

- Income Tax Exemption (ISR): Companies established in the ZDEEP may be exempt from ISR for a period of up to 10 years.
- Exemption of Tariff Duties: Imports of machinery, equipment, raw materials and other goods necessary for operations within the ZDEEP are exempt from tariffs.
- Value Added Tax (VAT) Exemption: Transactions of goods and services within the ZDEEP are exempt from VAT.
- Municipal Tax Exemption: Companies may be exempt from municipal taxes during the ISR exemption period.

**Law of Incentives for the Development of Renewable Energy Projects**, Decree 52-2003 and its Regulations: Grants tax benefits to companies that develop energy projects with renewable sources, including:

- Tax exemption, as well as Value Added Tax, VAT, and import duties on machinery, equipment, parts and accessories, for up to 10 years.
- Extension of the Income Tax (ISR) for a period of 10 years.

## 3. Labor Framework

In Guatemala, the relationship between workers and employers is regulated by the Guatemalan Constitution, which establishes the minimum rights of workers; by the Labor Code and its regulations; and by other labor or social security laws and regulations.

Some key elements of Guatemalan labor legislation are:

a. The protection of workers against the employer.
b. It constitutes a minimum of protective guarantees for workers; guarantees that cannot be waived for them.
c. It is of forced application and limits the autonomy of the will of the parties.

The elements that, according to Guatemalan law, differentiate an employment contract from a civil or commercial contract are the following:

- The economic-legal bond. It implies a worker-employer relationship, which implies reciprocal obligations and entails an economic benefit for both parties.
- The personal rendering of the service. The person rendering the service cannot be substituted within the same relationship.

- Continuous dependence. The worker renders his services within a structure, in which the employer must provide everything necessary for the performance of their work.
- Direction. The employee must follow the employer's instructions and perform the work for which he/she was hired. It also implies that the employer may apply disciplinary measures.
- Remuneration. An employment contract can only be onerous. The worker must receive remuneration in exchange for their work.

It is important to note that, even if the parties have given a different name to the contract, if these elements concur, then the relationship must be of an employment nature; and for the relationship to be perfected, it is sufficient that the rendering of services or the execution of the work begins, without there necessarily being a written contract.

Generally, the employment contract is understood to be for an indefinite term. However, fixed-term contracts and contracts for specific work are also contemplated.

**a. The Benefits that Every Employer Must Pay the Worker are:**

**i. Ordinary Salary**

The ordinary salary must be paid in legal tender, on a weekly, biweekly, or monthly basis, according to the economic activity of the employer.

It is forbidden for the salary to be paid totally or partially in merchandise, vouchers, tokens, or any other means that pretends to substitute money; and it must be adjusted to the minimum salary that is periodically fixed according to the activity (agricultural, non-agricultural, exporting and maquila).

The worker must issue a payment voucher for the salary received from the employer.

It is important to consider that any commission, benefit or gift paid to the worker, for purposes of calculating labor benefits, will be taken as part of the ordinary salary.

**ii. Incentive Bonus**

The amount of the incentive bonus may be defined by mutual agreement between the employee and the employer. However, at a minimum, the employer must pay Q.250.00 per month, in addition to the accrued salary. It may be paid daily, weekly, biweekly (proportionally) or monthly.

The incentive bonus does not increase the value of the salary for the calculation of indemnities or compensation for time served, or other labor benefits.

For the employer, the amount paid under this concept is a deductible expense for the determination of taxable income for income tax purposes. For the employee, it is income subject to the payment of such tax. It will not be subject or affected to the payment of employer's or labor contributions of the Guatemalan Institute of Social Security (IGSS), nor of the Institute of Workers' Recreation and Technical Institute of Training and Productivity (INTECAP).

Upon termination of the labor relationship, the worker must be paid the proportional amount corresponding to the last period worked.

**iii. Christmas Bonus**

Every employer is obliged to pay its workers annually, as Christmas bonus, the equivalent of one hundred percent (100%) of the ordinary monthly salary they earn for one year. It begins to be computed on December 1 of one year and ends on November 30 of the following year.

It must be paid 50% in the first fortnight of December and the remaining 50% in the second fortnight of the following January.

However, in practice, the Christmas bonus is paid in full in December.

In the event of dismissal or resignation, the employee must be paid the Christmas bonus in proportion to the time worked since the last time it was paid (December) or since the beginning of the labor relationship.

**iv. Annual Bonus for Private and Public Sector Workers (*Bono 14*)**

This benefit consists of the employee's right to receive an annual bonus equivalent to one hundred percent (100%) of the ordinary salary earned in a month. This annual bonus must be paid during the first fortnight of July of each year and is computed from July 1 of a year to June 30 of the following year.

For the calculation of the Bonus 14, the average of the ordinary salaries accrued in the year, which ends in June, will be taken as the basis.

In the event of dismissal or resignation, the Bonus 14 must be paid proportionally according to the time worked since the last month of July in which it was received or since the beginning of the labor relationship.

**v. Vacations**

Every worker is entitled to 15 working days of paid vacation after each year of continuous services rendered.

The payment of these days is calculated by taking the average of the ordinary and extraordinary salaries earned by the worker during the previous year. The Labor Code regulates when they must be taken and when they can be divided in a maximum of two periods.

At the time of dismissal or resignation, the employee will no longer be able to enjoy his/her vacation, so the part of the annual period already worked (proportional vacation) must be paid.

**vi. Economic Advantages**

Article 90 of the Labor Code contemplates the possibility for workers to receive part of their salary in the form of benefits or non-monetary benefits of any nature called "economic advantages". Economic advantages constitute an exception to the obligation that the payment of salary must be made in legal tender.

Economic advantages constitute up to thirty percent (30%) of the total amount of the salary. Due to the ambiguity of the regulation on this subject, its interpretation has caused problems.

However, there are jurisprudential rulings that determine that the benefits or allowances indicated below do NOT constitute economic advantages:

a) Benefits that are granted generally to all workers.
b) The benefits that are contained in a Collective Agreement on Working Conditions, since in that case, the employer would be merely complying with such agreement and not granting an economic advantage to the workers.
c) Benefits that are granted for the performance of the work and not for the work (for example, the vehicle provided to a salesman to cover his sales route).

If an employer grants economic advantages to a worker, in the case of unjustified dismissal, thirty percent of the salary (30%) would have to be added in the calculation of his severance pay for time served.

**vii. Severance for Time Served**

The severance indemnity for time served must only be paid in case of unjustified dismissal or indirect dismissal outside the probationary period (2 months), unless the company has adopted as a custom the universal indemnity, in which case the indemnity will be paid regardless of the cause of termination of the labor relationship (for example, when the employee resigns from his job).

The indemnity for time served is equivalent to one month's salary for each year of continuous services rendered; and if the services do not reach one year, in proportion to the time worked.

Its amount must be calculated based on the average of the salaries earned by the employee during the last six months of the contract or the time worked if such term has not been adjusted. The last six-monthly salaries (ordinary and extraordinary) are added, and the result is divided by six.

**viii. Working Hours**

Guatemalan legislation establishes three types of working hours, which are classified as follows:

1) Day shift: 8 hours per day, 44 hours per week.
2) Mixed workday: 7 hours per day, 42 hours per week.
3) Night shift: 6 hours per day, 36 hours per week.

If an employee works more hours than those established above, this constitutes overtime, which must be paid for at a higher rate than the ordinary working day.

**ix. Part-Time Work**

By means of Congressional Decree No. 2-2017, Guatemala approved Convention No. 175 of the International Labor Organization (ILO), the Part-Time Work Convention.

According to Article 1(a) of this convention, part-time workers are all salaried workers whose work activity has a normal duration shorter than that of full-time workers in a comparable situation.

According to Governmental Agreement No. 89-2019, Regulation of ILO Convention 175 on Part-Time Work, any employer may hire its personnel on a full or part-time basis, respecting and complying with the provisions of the Labor Code and said Convention.

In this sense, when an employer decides to hire part-time personnel, it must consider the following:

a) The part-time worker is entitled to receive a salary on an hourly basis, which may not be less than the minimum hourly wage set for each year.
b) Part-time workers enjoy all the rights established in ordinary laws and international labor, welfare, and social security agreements, with the understanding that benefits may be determined on a proportional basis.
c) The transfer of a worker from full-time to part-time and vice versa is permitted, provided it is voluntary.
d) The part-time worker shall have preferential right to enter full-time jobs, provided that he/she complies with the requirements established for such jobs.
e) The IGSS, by means of Agreement No. 1520 of its Board of Directors, established that the base amount for the calculation of the minimum monthly social security contribution is defined as the amount resulting from multiplying the fixed minimum salary (whether per hour, day or month) by the expansion factor indicated in said Agreement. This allows the affiliation of part-time personnel to the IGSS.

**b. Some of the Employer's Obligations are:**

**i. In Relation to Social Security**

Every employer is obliged to register in the Social Security Regime of the Guatemalan Institute of Social Security (IGSS) and to register the worker or workers, except for the exceptions established in the regulations of said Institute. From the beginning of its activities, every employer is obliged to deduct from the total salary earned by the workers, the percentage corresponding to the employer's contribution and the discounted labor contribution.

The registration must be made before the Employers and Workers Registry Division of the IGSS, with the IGSS Inspectors intervening in the registration procedure.

Once registered, every employer is obliged to report monthly a list of its employees and the salaries (ordinary and extraordinary) earned during the month on the Social Security Spreadsheet.

Based on the reported salaries, the employer and employee contributions must be calculated for the IGSS, the Technical Institute of Training and Productivity (INTECAP) and the Institute of Recreation of the Workers of the Private Enterprise of Guatemala (IRTRA), which must be paid simultaneously.

The current social security contributions, according to the programs in force, are as follows:

| | **Employee** | **Employer** |
|---|---|---|
| IVS (disability, old age and survivorship) | 1.83% | 3.67% |
| IGSS (sickness, accidents and maternity) | 3.00% | 7.00% |
| INTECAP (training) | – | 1.00% |
| IRTRA (recreation) | – | 1.00% |
| **TOTAL** | **4.83%** | **12.67%** |

**ii. Regarding Income Tax (ISR)**

In accordance with the Tax Update Law, Congressional Decree No. 10-2012, the employer must act as a withholding agent with respect to the workers. For this purpose, employers must project the taxable income and calculate the tax withholding for each worker, as regulated by articles 76 of the Tax Update Law and 69 of Governmental Agreement No. 213-2013, Regulation of Book I of the Tax Update Law.

This income affects the employee in the amount of his ordinary and extraordinary salaries, commissions, and bonuses. Payments received by the worker as the Christmas bonus, indemnifications, old age, disability, or survival pensions are not subject to income tax.

If the annual income does not exceed Q.36,000.00, there is no obligation to declare Income Tax.

The employer must pay the Tax Administration (SAT), during the first ten working days of each month, the amounts withheld from the workers for income tax.

**iii. In Relation to Work on Days of Rest or Weekly Rest Days**

Companies in which work of a very special nature or of a continuous nature is performed must request authorization from the General Labor Inspectorate to be able to work during days off or weekly rest days. In this case, the worker has the right to have the time worked computed as extraordinary work.

In Guatemala the following are days off with pay: January 1st; Thursday, Friday and Saturday of Holy Week; May 1st; May 10th for working mothers; June 30th; September 15th; October 20th; November 1st; December 24th (half day, starting at noon); December 25th; December 31st (half day, starting at noon); and the day of the local holiday (August 15th in Guatemala City).

**iv. In Relation to the Internal Labor Regulations**

The Internal Labor Regulations are the set of rules prepared by the employer in accordance with the laws, regulations, collective bargaining agreements and contracts in force that affect him, with the purpose of specifying and regulating the rules to which he and his workers must be subject in the performance or rendering of the work. It is not necessary to include in the regulations the provisions contained in the law.

Every employer who permanently employs 10 or more employees in his company is obliged to draw up and enforce his respective regulations. All regulations must be previously approved by the General Labor Inspectorate.

**v. Regarding the Annual Report**

Every employer must send to the Department of Labor Statistics Unit, a report that must contain at least the following information: 1) total expenditures for wages during the previous year, with due separation for ordinary and extraordinary workdays; and 2) names and surnames of its workers with an expression of their approximate age, sex, occupation, number of days worked by each one and the salary that individually corresponded to them during said year. This must be turned in using the form provided, within the first two months of the year,

**vi. In Relation to the Wage Book**

Every employer who permanently employs 10 or more workers must keep a wage book authorized and stamped by the Administrative Department of the Ministry of Labor and Social Welfare. This book may be kept in manual or computerized format. The Ministry of Labor will send the authorization with the corresponding electronic stamp. The stamp may be kept with the electronic book or printed to be inserted or incorporated into the book.

## 4. Intellectual Property Framework

Any company wishing to enter new markets or interested in starting operations should make it a priority to protect IP, as these are the assets that will differentiate them in the market and make them more competitive.
Guatemala has a legal framework that protects intellectual property, which is recognized in the constitution, in various international treaties and agreements, and the main national laws on the subject are the Industrial Property Law (Decree 57-2000) and the Copyright Law (Decree 33-98).

The three main types of IP rights in Guatemala:

### a. Trademarks and Other Distinctive Signs

Even if a trademark has been registered in its country of origin, to protect it in Guatemala, a registration process must be carried out before the Intellectual Property Registry. The following are the necessary steps to register a trademark in Guatemala:

**i. Availability Search:**

Before filing a trademark application, it is advisable to perform an availability search to verify that the trademark to be protected is not already registered by a third party. This helps to avoid conflicts and possible objections in the registration process.

**ii. Submission of the Application:**

A trademark application must be filed with the Intellectual Property Registry. The application must include information about the applicant, a graphic representation of the trademark if applicable, and a list of the goods or services to be protected by the trademark.

**iii. Application Review:**

Once the application is filed, the Intellectual Property Registry will conduct an examination to determine if it complies with the formal requirements and if the mark is eligible for registration. If the application is correct and complies with the requirements, the registration process will proceed.

**iv. Publication and Oppositions:**

After passing the corresponding examinations, the trademark will be published in the Industrial Property Bulletin, allowing third parties to file oppositions if they consider that the trademark affects their previously established rights. If there are oppositions, a process will be carried out to elucidate this aspect.

**v. Granting of Registration:**

If there are no oppositions or if they are resolved in favor of the applicant, the trademark registration will be granted. This will give the owner the exclusive right to use the mark in connection with the goods or services specified in the application.

Once the trademark is granted in Guatemala, the trademark registration has a duration of 10 years from the filing date of the application. After that period, the trademark may be renewed for additional 10-year periods.

### b. Patents of Invention

As in the case of trademarks, to protect patents in Guatemala, it is necessary to comply with a registration process through the Intellectual Property Registry. The following are the necessary steps to register a trademark in Guatemala:

**i. Determine the Patentability of the Invention:**

Before filing a patent application, the owner must be sure that his invention is patentable according to the patentability criteria, i.e.: to be new, to have an inventive step and to be susceptible of industrial application.

**ii. Background Search:**

It is suggested to perform an exhaustive search to identify whether the invention is new and has not been previously patented or disclosed. This is important to ensure that the invention meets the novelty requirement.

**iii. Preparation of the Application:**

A patent application must include a detailed description of the invention, the necessary drawings or diagrams and all claims defining the specific aspects of the invention to be protected.

**iv. Submission of the Application:**

The patent application is filed with the Intellectual Property Registry. The application must comply with the established requirements and must include all the necessary documents, such as the description of the invention, drawings and claims.

**v. Examination and Evaluation:**

Once the application has been filed, the Intellectual Property Registry will conduct a formal and substantive examination to verify whether the application complies with the requirements and whether the invention meets the patentability criteria.

**vi. Grant of Patent:**

If the application meets all the requirements and passes the examination, the patent will be granted. This will generate exclusive rights to produce, sell and use the invention in Guatemala during the established protection period.

Once granted, patents in Guatemala have a duration of 20 years from the filing date. It is important to pay maintenance fees known as annuity to keep the patent in force during its entire protection period.

It is important to mention that if someone infringes the rights of the registered patent, legal action can be taken to restore the infringed rights and protect the invention.

**c. Copyrights**

Copyright protects works, i.e. all productions in the literary, scientific and artistic fields, whatever the mode or form of expression, provided that they constitute an original intellectual creation. In this section we will focus specifically on software protection. Below, we will share information on how to protect it in Guatemala:

**i. Software Copyrights:**

In Guatemala, software can be protected under copyright laws. This means that the moment an original software program is created and is embodied in a tangible form, such as source code or object code, it is automatically protected by copyright.

To strengthen this protection, it is recommended that a copyright notice be included in the software and related documentation. In addition, it is advisable to keep records that prove the creation and development of the software, as these may be useful in case of disputes.

**ii. Software Licensing:**

By protecting copyrighted software, licenses for use can be granted to third parties under certain conditions. Establishing the terms and conditions of use through a software license agreement allows you to control how the technology is used and the protection of your interest.

**iii. Copyright Registration:**

Although not mandatory, copyright registration with the Intellectual Property Registry can provide solid evidence of the date of creation and ownership of the software in case of legal disputes.

It is important to note that if not only software is involved, but also innovative technology (hardware inventions, technical processes or systems), it could be eligible for patent protection. Patents in Guatemala can cover inventions that are new, involve inventive step and are susceptible of industrial application.

It is important to remember that not all technological innovations are eligible for patent protection. Before starting the application process, it is advisable to conduct an exhaustive search to determine whether the technology is novel and has the potential to meet patentability requirements.

The process of registering trademarks and patents, as well as software protection can be complex and require compliance with various legal requirements. To ensure that these processes are carried out correctly, it is advisable to have the advice and support of an attorney specialized in intellectual property who is familiar with the Guatemalan legal system.

**d. Guatemalan Context**

Despite having laws and agreements that seek to protect intellectual property, Guatemala faces significant challenges in this area. Some of the most common problems include:

- Low awareness: Many entrepreneurs and creators are not informed about the importance of intellectual property and how to protect it adequately.
- Poor enforcement: Lack of resources and adequate training in the institutions in charge of enforcing intellectual property rights can lead to poor enforcement and hinder the protection of rights.
- Piracy and counterfeiting: The sale of counterfeit goods and piracy of protected works are frequent problems in Guatemala, affecting legitimate businesses and creators.
- Slow procedures: Trademark and patent registration processes can be lengthy and bureaucratic, which may discourage some people from seeking legal protection.

**e. How To Avoid IP Infringements**

Companies, regardless of their size, must take measures to prevent innovations from being copied, stolen or misused. Here are some tips to protect IP in Guatemala:

- Registration of rights: It is essential to register trademarks, patents and copyrights in Guatemala to obtain legal protection. This will provide solid evidence in case of disputes.
- Prior trademark and patent search: Before registering a trademark or patent, it is essential to conduct a thorough search to ensure that there are no prior rights that may conflict with your application.
- Distinctiveness: Avoid weak trademarks. It is suggested to make sure to protect trademarks with sufficient distinctive capacity to increase legal protection.
- Surveillance and defense: Constantly monitor the market to detect possible infringements of your intellectual property rights and take legal action when necessary.
- Education and counseling: Registrants should receive training on the importance of intellectual property and how to properly protect it. Consultation with IP attorneys can be of great help.
- Contracts and agreements: Establish clear contracts with employees, suppliers and partners to protect intellectual property and avoid future disputes.
- Public awareness: Participate in awareness campaigns on the importance of respecting intellectual property rights to create a culture of respect for creativity and innovation.

These recommendations can help protect intellectual property in Guatemala and provide greater security and value to creators and companies that invest in the generation of new ideas and technologies.

###

# HONDURAS

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## 1. SPECIAL REGIMES FOR FOREIGN INVESTMENT

Honduras has extensive legislation that attracts and promotes investments through fiscal efficiencies in Special Regimes, such as: Free Zone Regime (ZOLI), Temporary Import Regime (RIT), and the Tourism Promotion Law. Additionally, it offers a series of incentives in the outsourcing services sector (BPO).

- **Free Zone Regime (Régimen de Zona Libre)**: Its objective is to grant Free Zone status to special areas within the honduran territory, where national and foreign companies can be established and operate, dedicated to commercial and industrial activities for export or re-export, international services through electronic services, and related or complementary services and activities. The areas designated and authorized to be "Free Zones" correspond to areas of the national territory, physically delimited, without resident population, and with fiscal supervision.
- **Temporary Import Regime (Régimen de Importación Temporal)**: Its objective is to establish a temporary import mechanism to promote exports, consisting of the suspension of payment of Duties and Taxes caused by the import of raw materials, semi-finished products, packaging, supplies, machinery, equipment, tools, spare parts, etc., to modify or produce goods or services destined for export.
- **Tourism Promotion Law (Ley de Fomento al Turismo)**: Its primary objective is to incentivize and promote the tourism industry in Honduras, in line with the expected impacts and projected indicators of the "National Program for Employment Generation and Economic Growth Honduras 20/20," contained in Legislative Decree No. 36-2016, through the application of second-generation incentives.

The corresponding governmental authorization from the Ministry of Economic Development in Honduras must be obtained in order to be subject to any of these special regimes.

## 2. CORPORATE MATTERS

In Honduras, the corporation (sociedad anónima) and the limited liability company (sociedad de responsabilidad limitada) are the most commonly used companies.

Their description and applicable provisions are established in the Commercial Code (Legislative Decree No. 73-50). Having fulfilled the legal requirements, for a commercial company in Honduras to be duly incorporated, it must be registered in the Commercial Registry of the company's domicile. Additionally, for tax purposes, every commercial company in Honduras must have a National Tax Registry (RTN or Tax ID) issued by the tax autority (Servicio de Administración de Rentas). The company will have its own legal personality, distinct from the shareholders/partners who constituted it.

The company is incorporated with the granting and subscription of a public deed authorized by a Notary Public in Honduras (the “Articles of Incorporation”). In the Articles of Incorporation, at least one natural or legal person must appear if the social purpose is not an activity regulated by the State, or two natural and/or legal persons if its purpose is an activity regulated by the State, who will be called shareholders or partners depending on the type of company being incorporated. The approximate time to incorporate a company is 2-5 business days from the receipt of the corresponding legal information and documentation, but it may vary depending on its domicile.

Additionally, there is the option to incorporate a Branch of a foreign company in Honduras, which grants it a certain legal recognition allowing it to operate in Honduras. The Branch can operate in the same manner as a Honduran company but the applicable legal requirements must be fulfilled so as to be incorporated and registered in the Commercial Registry of the branch's domicile.

## 3. TAX MATTERS

**Sales Tax (ISV):** This tax affects sales made throughout the national territory and is applied in a non-cumulative manner at the import stage and at each stage of sale of goods or services. The general tax rate is 15% on the taxable base value of imports or the sale of goods and services subject to it.

**Income Tax (ISR):** In Honduras, there is an annual tax called Income Tax, which taxes income from capital, labor, or a combination of both.

a) **Tax Rate for Non-Residents or Non-Domiciled Persons (Withholding)**

Gross income obtained from Honduran sources by non-resident or non-domiciled natural or legal persons will pay income tax according to the following percentages:

| No. | Category | Percentage |
|---|---|---|
| 1 | Income from movable or immovable property, except those included in items 5 and 7 of this article. | 25% |
| 2 | Royalties from mining, quarrying, or other natural resources operations. | 25% |
| 3 | Salaries, wages, commissions, or any other compensation for services rendered either within or outside the national territory, excluding remittances. | 25% |
| 4 | Income or profits obtained by foreign companies through branches, subsidiaries, affiliates, agencies, legal representatives, and others operating in the country. | 10% |
| 5 | Income, profits, dividends, or any other form of profit or reserve participation, of natural or legal persons. | 10% |
| 6 | Royalties and other amounts paid for the use of patents, designs, secret procedures and formulas, trademarks, and copyrights. | 25% |
| 7 | Interest on commercial operations, bonds, securities, or other types of obligations. | 10% |
| 8 | Income from the operation of aircraft, ships, and land vehicles. | 10% |
| 9 | Income from the operation of telecommunications companies, use of software, IT solutions, telematics, and others in the telecommunications area. | 10% |
| 10 | Insurance and bond premiums of any kind of policies contracted. | 10% |
| 11 | Income derived from public shows. | 25% |
| 12 | Films and video tapes for cinemas, television, video clubs, and cable television rights. | 25% |
| 13 | Any other income not mentioned in the above numbers. | 10% |

b) **Tax Rate for Resident Legal Entities**

Income Tax (ISR) will be charged to resident legal entities at a rate of 25% on the total taxable net income. Nevertheless, legal entities, except those included in special export and tourism regimes, without prejudice to the provisions of Article 22 of the Income Tax Law (Ley de Impuesto sobre la Renta), will pay a solidarity contribution applicable to the excess of taxable net income exceeding One Million Lempiras (L.1,000,000.00), which will be included in the same annual tax return and payment. This temporary solidarity contribution corresponds to 5% and is regulated as a surtax on income tax and will not be deductible from the same tax, even subject to the payment regime in accordance with the Income Tax Law.

Additionally, resident legal entities in Honduras will pay 1.5% on gross income equal to or greater than Three Hundred Million Lempiras (L.300,000,000.00) of the tax period when the application of the rate results in less than 1.5% of the declared gross income. The following natural or legal persons are not subject to the 1.5% payment referred to: (i) Taxpayers whose annual gross income is less than Three Hundred Million (L.300,000,000.00), who nevertheless must comply with the declaration and payment of the Income Tax Law and the Net Asset Tax; (ii) Companies during the 2 years following their incorporation or in the pre-operational period after the validity of this law, that is, until they start their first commercial sale transaction; and, (iii) Natural or legal persons who incur losses due to fortuitous events or force majeure, derived from natural disasters, catastrophes, wars, states of exception, duly certifiable before the Tax Authority, for up to two (2) fiscal years from their occurrence.

**Dividend and Profit Participation Tax:** Income received by natural persons, residents, or domiciled in the country in the form of dividends or any other form of profit or reserve participation, in cash or in kind, from any type of entity, whether or not it has legal personality, is subject to this tax.

The concept of profit participation includes: a) Accounts receivable from partners or related companies that do not arise from a commercial operation and have a term of more than one hundred (100) calendar days. b) Capital reductions with the distribution of contributions in the part corresponding to the capitalization of reserves or profits.

The legal entity will withhold a rate of 10% of the gross amount paid or credited in the form of profit or reserve participation, and when such distribution is in kind, the withholding base will be the market value of the good or right transferred. Dividends and profits distributed will be taxed in the form of a single and definitive withholding by the company.

**Capital Gains Tax:** Capital gains obtained by natural or legal persons (seller), domiciled or not in Honduras, will pay a unique tax of 10% calculated on the gain obtained, so they are not subject to the progressive rate established in the Income Tax (ISR). However, if the seller is a foreigner, the buyer must withhold 4% of the value of the transaction to be paid to the tax authority on behalf of the foreign person as an advance payment of the capital gains tax.

**Net Asset Tax:** It is the monetary value of all kinds of assets possessed by the taxpayer, listed in the General Balance Sheet, minus the receivable reserves, the accumulated depreciations allowed by the Income Tax Law, the asset revaluations while not disposed of, and the values corresponding to investment expansions registered as projects in process or fixed assets that are not in operation. The balance of obligations with financial institutions directly related to the financing of fixed assets in operation will also be deducted.

The tax is levied on legal entities whose total net assets exceed Three Million Lempiras (L. 3,000,000.00), reflected in the general balance of the taxable fiscal year.

The applicable rate to determine the tax levied on the total net assets is one percent (1%) on the difference resulting from deducting the floor of Three Million Lempiras (L. 3,000,000.00) from the total net assets reflected in the General Balance of the taxpayer. This means that when the total net assets exceed Three Million Lempiras (L. 3,000,000.00), the tax will be applied on the excess of that amount.

The following are exempt from the net asset tax: i. Legal entities whose total net assets do not exceed Three Million Lempiras (L. 3,000,000.00). ii. Legal entities exempt from paying Income Tax. iii. Merchants operating in special regimes such as free zones (ZOLI), and maquilas (RIT) and others under special tax exemption regimes. iv. Legal entities in the pre-operational stage of their activities; that is, until they start their first commercial sale transaction. v. Taxpayers who suffer operational losses due to fortuitous events or force majeure, such loss must be certified by an auditing firm duly registered with the respective college, without prejudice to subsequent auditing.

**Credits on Income Tax:** The amounts paid as Net Asset Tax for the period will constitute a credit against the value of the Income Tax payable. For this purpose, the law establishes the mandatory payment to the total net assets, depending on the value determined for income tax, meaning that the determination of the net asset tax payable must be made comparatively with the income tax, resulting in the following circumstances:

(a) If the income tax payable for the taxable year is equal to or greater than the tax determined for the net asset, the material obligation or payment of the latter is deemed fulfilled; consequently, there will be no obligation to pay this tax. (b) If the income tax payable for the taxable year is less than the tax determined for the total net assets, the difference between the income tax and the net asset tax will constitute the tax payable for the latter.

## 4. LABOR MATTERS

Labor relations between private companies and workers in the Republic of Honduras are governed by the Constitution, international treaties, and the Labor Code (Legislative Decree No. 189 of May 19, 1959). The official body responsible for applying labor laws and regulations administratively is the Secretariat of Labor and Social Security, while labor courts, appellate courts, and the Supreme Court of Justice handle judicial matters.

The following are the most relevant labor provisions established in our Labor Code:

**a) Working Hours:** There are three types of working hours: Day Shift, Night Shift, and Mixed Shift, detailed as follows:

1. **Day Shift**: Between 5:00 a.m. and 7:00 p.m., not exceeding eight (8) hours per day and forty-four (44) hours per week. For minors under 16, the ordinary shift cannot exceed six (6) hours per day and thirty-six (36) per week.
2. **Night Shift**: Between 7:00 p.m. and 5:00 a.m., not exceeding six (6) hours per day and thirty-six (36) hours per week.
3. **Mixed Shift**: Includes periods of both day and night shifts, provided the night period is not less than three (3) hours. The maximum duration of a mixed shift is seven (7) hours per day and forty-two (42) hours per week.

**b) Overtime:** Overtime is paid at 25% above the day shift wage and 50% above the day shift wage if performed at night. If overtime extends into night hours, the surcharge is 75% of the night shift wage (Art. 330 Labor Code). Payment is double the ordinary wage if work is performed on a holiday or rest day by agreement.

**c) Unjustified Dismissal and Labor Indemnities:** In the case of unjustified dismissal of an employee on an indefinite contract, the worker is entitled to choose one of the following:

1. **Reinstatement**: Demand reinstatement to the same position with the same seniority, salary, and benefits, plus the wages lost from the time of dismissal until reinstatement is decreed by final resolution.
2. **Compensation**: Demand payment of benefits and labor indemnities, plus the wages lost until the resolution decreeing their right is final.

**d) Acquired Rights of Workers:** Acquired rights must be granted during the term of the employment contract and in case of resignation, justified or unjustified dismissal. If the worker does not complete the established working time, rights are granted proportionally to the time worked. The acquired rights (benefits) include:

1. **Salary**: The employer must always pay the worker for the days worked in the month up to the time of resignation, justified or unjustified dismissal.
2. **Vacation**:

| Years Worked in the Company | Amount |
|---|---|
| After 1 year | 10 days of salary |
| After 2 years | 12 days of salary |
| After 3 years | 15 days of salary |
| After 4 years or more | 20 days of salary |

3. **Thirteenth Month Salary**: Established by Decree No. 112 of October 28, 1982, a thirteenth-month salary as a bonus for all permanent workers, retirees, and pensioners, payable in December each year, calculated based on the average ordinary wages received during the year.
4. **Fourteenth Month Salary**: Established by Decree 135-94 of October 12, 1994, a fourteenth-month salary as social compensation, payable in June each year.

**e) Types of Employment Contracts:**

1. **Fixed-Term Employment Contract**: Employee provides services for a specific time, with continuous subordination to the employer.
2. **Indefinite-Term Employment Contract**: Employee provides services for an indefinite time, with continuous subordination to the employer.
3. **Professional Services Contract**: Contractors, not subordinate to the company, carry out work independently and may employ others. The company is jointly liable with the contractor for wages, benefits, and indemnities if the contractor's work relates to the company's normal activities.

**f) Outsourcing:** To reduce labor liabilities and associated costs, companies may outsource personnel. Honduran law generally permits this, but the Labor Code includes a provision for joint liability in certain cases, ensuring companies are responsible for wages and benefits if the contractor fails to pay their employees.

###

# MEXICO

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**Please refer to the firm's Doing Business in Mexico GUIDE.**

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# NICARAGUA

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Nicaragua, located in Central America, is a country known for its vibrant culture and a growing economy. With a strategic position in the heart of the Americas, Nicaragua offers unique opportunities for international businesses looking to invest in a market with untapped potential.

Nicaragua offers a favorable business climate that allows foreign investors to develop and operate their projects with ease and in a conducive environment. There is a One-Stop Shop for Investment (VUI) that has the purpose to simplify the procedures related to establishing, registering, and legalizing a company. The main goals are to lower costs and reduce the number of steps and legal and administrative requirements necessary for the incorporation of a company in Nicaragua, as well as to develop a high-quality customer service mechanism for the establishment of these corporations.

## 1. KEY ECONOMIC HIGHLIGHTS

- In 2023, Nicaragua's GDP grew by 4.3 percent driven by sectors such as electricity, mining, trade, construction, finance, transport, and communications. GDP growth is projected at 3.7 percent in 2024 and stabilize at 3.5 percent in the medium term.
- Abundant Forest Resources: Approximately 27.5% of Nicaragua's land area is covered by forests, providing opportunities for sustainable forestry and natural resource management investments.
- Digital Connectivity: With 57% of the population using the internet as of 2021, Nicaragua's growing digital connectivity creates opportunities for tech-related investments and digital services.
- Foreign Investment: In 2022, Nicaragua attracted a net FDI equivalent to 8.3% of its GDP, underlining its appeal to foreign investors across various sectors.
- Robust Agricultural Sector: The fertile land and agricultural potential in Nicaragua continue to attract investment in agribusiness and agro-industrial ventures.
- Renewable Energy Prospects: With 43.6% of electricity generated from renewable sources (excluding hydroelectric power) as of 2015, Nicaragua offers a promising environment for clean energy investments.
- In 2023 US$4,660 Million were received in concept of family remittances.

## 2. TRADE AGREEMENTS

Nicaragua has strategically positioned itself to access major global markets through various trade agreements and initiatives. These agreements provide preferential access to the world's most significant markets, making it an attractive destination for international businesses.

| Agreements | Countries |
|---|---|
| **Free Trade Agreements** | United States and Dominican Republic (known as DR-CAFTA), Mexico, Panama, China, Dominican Republic, Chile, European Union and Republic of Korea (with Central America), United Kingdom of Great Britan and Ireland (with Central America) |
| **Central American Common Market** | Nicaragua, Guatemala, El Salvador, Honduras and Costa Rica. Additionally, free movement of capital, services, and human resources between CA-4 countries |

| | |
|---|---|
| **ALBA** | Venezuela, Bolivia, Cuba, Antigua and Barbuda, Dominica, Nicaragua, Saint Kitts and Nevis, Saint Lucia and Saint Vincent and Grenada |
| **Recent Agreements** | On November 17, 2023, the full text of the Decree of the National Assembly No. 8868 that approves the Free Trade Agreement between the Government of the People's Republic of China and the Government of Nicaragua was published in La Gaceta, Official Gazette No. 2023. |
| *Source: Ministry of Development, Industry and Commerce (MIFIC)* | |

### 2.1. Requirements to obtain residency in Nicaragua

Residency in Nicaragua is available to foreigners and can be obtained for various purposes, including retirement, investment, or employment. In accordance with Law 761. General Law on Migration and Foreigners, of 06 and 07 July 2011 and its regulation Decree No. 31-2012, of 27 and 28 September and 01 October 2012, the General Directorate of Migration and Foreigners (DGME) is the entity that shall process, issue, and determine residency status in Nicaragua.

## 3. LEGAL FRAMEWORK FOR INVESTMENT

Nicaragua has a legal framework for investment that provides all the guarantees that investors need to operate in the country.

### 3.1. Promotion of Foreign Investments Law (Law 344)

The main legislation that governs foreign investments is the Promotion of Foreign Investments Law and its bylaws.

### 3.2. Tax Concertation Law (Law 822)

The Tax Concertation Law establishes different tax benefits for certain production sectors of the economy with the purpose of promoting their growth and development. Exemptions and exonerations granted by this Law are established without prejudice to those granted by the legal provisions set forth in Article 287 of this Law.

### 3.3. Temporary Admission Regime (Ley 382)

The Temporary Admission Regime for Inward Processing is a tax system that allows both the entry of merchandise into the national customs territory, and the local purchase of goods or raw material without paying any kind of taxes or duties under the condition that the merchandise be processed, that is, subjected to some subsequent operation. Companies are eligible for this regime provided that they export directly or indirectly at least 25% of their total sales and the exported value is not less than U$50,000 per year.

Goods that qualify under this regime are:

- Intermediate goods and raw materials such as: supplies, semi-finished products, containers, labels, packaging, and any merchandise that is incorporated into the final product to be exported, samples, models, and patterns that are essential for production and staff training.
- Capital goods directly involved in the production process, its spare parts and accessories, such as: machinery, equipment, pieces, molds, dies, and utensils that complement such capital goods.
- Materials and equipment that will be an integral and essential part of the facilities necessary for the production process.

## 4. FREE ZONES

### 4.1. Industrial Free Zones for Exports (Law 917)

Nicaragua offers important tax incentives through the Free Zones regime for companies interested in setting up operations aimed at exporting goods or services. The incentives granted by this Law are:

- 100% exemption from Income Tax for income generated by their activities in the Free Zone during the first ten years of operation, and 60% from the eleventh year onward. The initial period of ten years of exemption from 100% of the payment of Income Tax may be extended only once, for an equal period with the prior authorization of the National Commission of Free Zones
- Exemption from the payment of taxes on the transfer of real estate for any purpose, including payment of the Capital Gains Tax, if applicable, provided that the company is closing its operations in the Zone and the real estate continues to be subject to the Free Zone regime
- Exemption from the payment of taxes on incorporation, transformation, merger and reform of the company, as well as the Stamp Tax
- Exemption from all taxes, customs, and excise duties related to imports, applicable to the introduction into the country of raw materials, materials, equipment, machinery, dies, parts or spare parts, samples, molds and samples, molds and accessories destined to enable the Company to operate in The Zone; as well as the taxes applicable to the equipment necessary for the installation and operation of affordable diners, health services, medical assistance, daycare centers, leisure services, and any other type of other types of goods that tend to satisfy the needs of the company's personnel working in the Zone
- Exemption from customs duties on transportation equipment and vehicles, whether cargo, passenger, or service vehicles, destined for the normal use of the company in the Zone. In the event of the transfer of these vehicles to purchasers outside the Zone, the customs taxes will be charged, with the reductions due to time of use that are applied to similar transfers made by Diplomatic Missions or International Organizations
- Total exemption from General Value Tax (IGV)
- Total exemption from municipal taxes
- Total exemption from export taxes on products manufactured in the Zone
- Exemption of fiscal and municipal taxes on local purchases (VAT, ISC and IMI)

**4.2. Law on the Promotion of Renewable Electricity Generation from Renewable Sources (Law 532)**

Projects that are generating power with renewable sources have tax benefits in accordance with Law 532. These tax benefits cover new projects and those that expand their installed capacity.

**4.3. Special Law on Exploration and Exploitation of Mines (Law 387)**

The activities related to the exploration and exploitation of mineral resources are regulated by Law 387 and its Regulation, Decree 11-2001. Given the importance of the mining sector for the economic development of the country, the State guarantees tax stability for national and foreign investments related to mining activities.

**4.4. Tourism Incentives Law (Law 306)**

The Tourism Incentives Law of Nicaragua offers various tax incentives for investment in this sector. They are considered the most generous and competitive in the region. This provides incentives and benefits for investment in accommodation, food and beverage, travel agencies, tourist transportation, airlines, among others.

## 5. DEVELOPMENT ZONES

**5.1. Light Manufacturing**

The light manufacturing industry is an important economic driver and one of the most dynamic sectors in Nicaragua. Manufactured products account for 68 percent of the country’s total exports in 2020. Additionally, the manufacturing of goods has progressively diversified in recent years to include increasingly sophisticated processes.

- Manufacturing of automotive parts
- Manufacturing of footwear
- Manufacturing of medical devices

**5.2. Nicaragua, an agro-exporting country**

Nicaragua offers a diversity of products in international markets, having preferential tariffs, being competitive in the market, like in the case of the treaties with the United States, the European Union, Central America, among others. In addition, Nicaraguan products have been recognized for their quality, like in the case of cocoa, coffee, rum, bananas, sugar, and others. The following table shows the merchandise exports by product from 2021 to 2023:

| **Products** | **2021** | **2022** | **2023** |
|---|---|---|---|
| Gold | 867.6 | 927.4 | 1,127.9 |
| Coffee | 507.9 | 714.1 | 607.0 |
| Beef | 726.3 | 680.1 | 688.7 |
| Dairy products | 200.1 | 219.5 | 274.2 |
| Sugar | 151.9 | 168.2 | 193.3 |
| Beans | 88.2 | 114.2 | 155.2 |
| Peanut | 102.1 | 107.6 | 127.6 |
| Lobster | 60.0 | 34.3 | 44.3 |
| Shrimp | 34.4 | 32.1 | 15.9 |
| Livestock | 16.8 | 14.6 | 3.4 |
| Source: DGA, INPESCA and BCN | | | |

###

# PANAMA

FABREGA MOLINO

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## 1. GENERAL INFORMATION

The Republic of Panama, located on the Central American isthmus, is located between the Republic of Colombia and the Republic of Costa Rica; to the north is the Caribbean Sea and the Pacific Ocean to the south. The Panama Canal crosses the Republic, from north to south, in the narrowest part of the Isthmus. With an estimated population of 4.2 million inhabitants, the country is a clear example of the concurrence of ethnicities. The official language is Spanish, although an important sector of the population speaks English, mainly the service sector of the economy.

### 1.2 CONSTITUTIONAL, LEGAL AND POLITICAL SYSTEM

In accordance with the Panama Political Constitution, Panama is organized into a sovereign and independent State, with a republican, unitary, democratic and representative system of government. The government is structured in three branches, the Legislative, Executive and Judicial, headed by the Supreme Court of Justice.

The Panamanian legal regime is structured in a system of formal sources headed by the Political Constitution, as the main normative source, which organizes the State. At a lower level, there are the laws of the Republic, of an organic or ordinary nature, the decree laws and cabinet decrees. Next, the executive decrees, regulations, general resolutions and individual resolutions (administrative or judicial). International treaties or conventions have the force of law.

The Panamanian system is governed by the principle of legality, which implies that acts of state authority must be based on previously defined legal norms. That is, officials cannot perform acts that are not expressly authorized by law. Individuals, for their part, are governed by the principle of autonomy; they can do what the law does not prohibit.

#### LEGAL STABILITY REGIME

It is worth mentioning the existence of Law No. 54 of 1998, through which measures are taken for the legal stability of investments. This law expressly establishes equality between foreign and national investors.

The Law is applicable to investors who are involved in tourist, industrial, agricultural, export, agroforestry, mining, export processing zones, commercial and oil free zones, telecommunications, construction, port and rail development, generation, transmission and distribution of electrical energy, irrigation projects and efficient use of water resources and all activities approved by the Cabinet Council.

Law 54 establishes as guarantees for the investor:

- legal stability in such a way that legislative changes do not affect their acquired rights (unless there are causes of public utility or social interest),
- tax stability, both at the national and municipal level;
- stability in the customs regime,
- stability regarding the labor regime.

To benefit from the benefits of this law, it is necessary to register with the National Office for Business Development of the Ministry of Commerce and Industries (DINADE).

ECONOMIC SYSTEM

The exercise of economic activities corresponds mainly to individuals. The most flourishing economic sector is that of services, especially due to the international trade that takes place in and from Panama. In this matter, the international banking center, as well as the Colon Free Zone, are of high importance, and the latter provides added value to foreign trade financing opportunities from Panama, and is the second most important in the world after Hong Kong.

Panama is one of the first ship registries worldwide according to Lloyd's Register. The recent expansion of the Panama Canal has allowed a greater transit of vessels through the Canal.

The official monetary unit is the Balboa, which has a value on par with the United States dollar (US $), a currency of free circulation and convertibility in the country since 1903. The absence of official issuance of paper money by constitutional mandate allows the circulation of the US dollar, which is of enormous significance for transactions, both local and international.

The creation of regulation and the establishment of institutions for the supervision of commercial activities in the country have been consistent with the openness orientation towards services in the Panamanian economy. Both the letter and the spirit of the legislation seek to offer facilities and incentives that make investments in and from Panama attractive.

There are few existing limitations in the Panamanian legal system for foreign investment. Both nationals and foreigners receive equal legal treatment, a characteristic that also operates for foreign investors among themselves. Except for the exercise of retail trade, which is reserved for nationals, and restrictions for the acquisition of real estate 10 km from the borders with Costa Rica and Colombia, there are no general restrictions in Panama for foreigners to participate, as owners, for example, in local companies and/or joint ventures. Regarding the provision of public services, foreign participation is allowed, excepting, unless there is an express legal exception, that of foreign governments, either directly or through a third party.

INTERNATIONAL TRADE

Panama has a long international commercial tradition dating back to colonial times. Its open-minded spirit has led to the gradual development of international trade policies. The Colon Free Zone, the Panama Canal, the flexible legal system and the geographic position of the Republic are factors that contribute to keep the country in a significant place in world trade.

COMMERCIAL LICENSES

With Law No. 5 of 2007, Panama simplifies and streamlines the process for the exercise of commercial or industrial activities within the country, for which the interested parties only need to notify the State of the start of their operations through a Notice of Operation. The following activities are exempted from this notice: a) agricultural, livestock, beekeeping, poultry, aquaculture, agroforestry or similar activities, b) the production and sale of handicrafts and other manual or home industries, provided that the salaried work of up to five workers is used, c) non-profit activities, d) the exercise of activities that are not commercial or industrial activities, carried out by individuals or civil companies, e) the exercise of liberal professions, individually or through civil companies, since they are not considered acts of commerce.

ELECTRONIC COMMERCE

The regulatory framework for electronic commerce in Panama is contained in Law 51 of 2008. Companies that sell products and services through the Internet do not require a special permission to operate, besides the common registrations for any other company. There is a government-kept registry, but it is voluntary.

The Law considers that the company is located in the Republic of Panama, with all the tax and regulatory consequences that this entails, if its domicile is located in Panama and maintains an effective administration of the business from Panama, or when the company or one of its subsidiaries has obtained a Notice of Operation, detailed above.

This same Law regulates the use of the electronic signature in Panama, which can take two forms, electronic signature (simple) and qualified electronic signature. The difference between the two is the validity they grant to the document to which they are subscribed, the qualified version being the version necessary to validate documents that need to be granted by means of a public instrument.

As of March 29, 2021, Law 81 of 2019 on data protection will take effect. This Law will be applicable to all databases that are located within the Republic of Panama, or if the person responsible for processing the data is domiciled in Panama. Among other points developed by this Law, is the granting of rights to users regarding their personal data.

DIRECT SALES

In Panama there is complete freedom to import and/or export products from and/or to any country, regardless of their political regime. Panamanian international trade policy, flexible and at the same time selective, includes ports or free zones for export and re-export, processing zones for export, a protective system for agriculture and national industry, and incentives for industry and export.

AGENCY, REPRESENTATION AND DISTRIBUTION CONTRACTS

In the Republic of Panama, agency, representation and distribution agreements constitute atypical contracts; that is to say, contracts without special regulation. The foregoing is the product of the ruling of August 2nd, 1989, by which the the Supreme Court of Justice declared Cabinet Decree No. 344 of 1969 unconstitutional, which regulated the matter.

All contracting is then governed by the rules common to contracts, especially the principle of autonomy of the will, according to which the parties can agree on all those clauses, pacts, conditions and terms that they deem appropriate, as long as they are not contrary to the law, morality and public order.

Under the current legal regime, there are no judicial pronouncements regarding the situation of agents, distributors and / or representatives.

FRANCHISES

The agreements for the establishment of franchises do not have any express special regulation, so the common contracting rules, contained both in the civil codification and in the Commercial Code, are also applicable. This situation has not constituted an obstacle for the establishment of important commercial chains in Panama, which operate under this type of contract.

INTELLECTUAL PROPERTY

Under the protection of Article 49 of the National Constitution, the Republic of Panama adopted Law No. 35 of 1996, which dictates provisions on industrial property. The purpose of this normative body is to protect the invention, utility models, industrial models and drawings, industrial and commercial secrets, product and service brands, collective and guarantee brands, indications of source, designations of origin, trade names and advertising expressions and signs.

PATENTS

As has been seen, invention patents are protected by Law No. 35 of 1996. In accordance with this Law, any natural person who makes an invention has the exclusive right to exploit it for his or her benefit. To do this, they must request a patent from the General Office of Industrial Property Registry (DIGERPI) of the Ministry of Commerce and Industries, which covers new inventions that result from an inventive activity and that are susceptible to industrial application. The patent is valid for twenty non-extendable years, counted from the filing date of the application, subject to payment of the rights established by law.

UTILITY MODELS

The Law also contemplates the registration of utility models, as long as they are new and capable of industrial application. The registration of utility models is valid for ten years, non-extendable, counted from the filing date of the respective application, upon payment of the corresponding fee.

INDUSTRIAL MODELS AND DRAWINGS

Law No. 35 contemplates the protection of industrial models or drawings, as long as they are new, through a first disclosure in Panama or the respective registration, which must be processed before DIGERPI. The registration of an industrial model or drawing expires after ten years, counted from the date of filing the application for registration in Panama. Said registration, however, may be extended, upon request to DIGERPI, for an additional period of five years.

INDUSTRIAL AND COMMERCIAL SECRETS

The Law protects industrial or commercial secrets. Anyone who, due to their employment, work, position, performance of their profession or business relationship has access to a commercial or industrial secret, the confidentiality of which has been prevented, must refrain from using it for lucrative purposes for their own benefit or disclosing it without just cause and without the consent of the person who keeps said secret or the authorized user. The violation of secrecy gives rise to request the immediate suspension of the disclosure and to claims for damages.

TRADEMARKS OF PRODUCTS AND SERVICES

Panamanian law protects both product and service trademarks, famous or renowned, well-known, collective and guarantee brands, under the international classification system. There is no distinction between national and foreign trademarks. The right to register a trademark is acquired by its use and the right to its exclusive use by the respective registration.

The registration has a duration of ten years, counted from the date of submission of the application, renewable indefinitely for equal periods, provided that it is requested in a timely manner and the respective government fees are canceled. Indications of origin and appellations of origin are also contemplated by Panamanian law.

TRADE NAMES

Trade names and associations are protected by Panamanian law. The right to register a commercial name is acquired by its first adoption or use in commerce; its exclusive use, by registering with DIGERPI. The registration has a duration of ten years from the date of submission of the application, renewable indefinitely for equal periods.

TAGLINES AND SLOGANS

Taglines and slogans can be registered in Panama. Said registration has a duration of ten years, counted from the date of presentation of the respective application, renewable indefinitely for equal periods.

COPYRIGHT

In mid-1994, Law No. 15 was approved, which regulates copyright and related rights. The aforementioned norm protects the rights of authors over their literary, didactic, scientific or artistic works, regardless of their gender, form of expression, merit or destination. For the adequate protection of copyright, the legislation contemplates procedural channels, both in civil and criminal jurisdiction.

CORPORATIONS REGIME

Among the main regulated corporations in Panama are the following: a) Limited Liability Companies (Law No. 4 of 2009), b) Corporations. The latter constitutes the main vehicle for conducting business both in Panama and abroad, for which we expose their regime below.

CORPORATIONS

The regime of incorporation and regulation of corporations is found mainly in Law 32 of February 26th, 1927, although certain provisions of the Commercial Code are applicable to them (Law No. 9 of 1946, Cabinet Decree No. 247 of 1970 and Decree Law No. 5 of 1997). The procedure for constitution and registration is simple and expeditious.

Corporations can do whatever is necessary for the development of the objects listed in the articles of incorporation or its amendments, or whatever is convenient for the protection and benefit of the corporation and, in general, any lawful business in the absence of any limitation contained in the articles of incorporation. The management or administration of the company will be in charge of a Board of Directors composed of natural and/or legal persons, without distinction of their domicile and without it being necessary for them to be shareholders. It will have the absolute control and full direction of the corporation, being able to exercise all the powers granted to the corporation, except for the restrictions established by law, the articles of incorporation and the statutes or those reserved for shareholders.

The Panamanian corporation that does not do business in the Republic is not obliged to present a tax declaration or its financial statements to any local authority and the accounting books, as well as any other information about its activities, may be maintained and carried anywhere in the world. The information regarding the final beneficiaries must be registered in the Private and Unique Registry System of Final Beneficiaries of Legal Persons, created by Law 129 of 2020.

However, corporations that carry out operations that are taxable within Panamanian territory, are obliged to file an income tax declaration, as well as to comply with any other formality required by law depending on the type of activity they carry out.

Every corporation, regardless of where it carries out its operations, must keep a Register of Minutes and another of Shares. Accounting and other records can be kept using books, electronic means or other mechanisms authorized by law, as long as they can be printed.

Corporations registered in the Public Registry of the Republic of Panama must pay a first single annual rate of US$250.00 and subsequent single annual rates of US$300.00. The absence of payment of said fee in the period in which it is charged has the effect of not registering any act, document or agreement and the non-issuance of certifications related to the respective company, except those ordered by the competent authority or those requested by third parties for the specific purpose of asserting their rights. The delay in payment generates a surcharge of US$50.00 plus the imposition of a fine of US$300.00 and the annotation in the Public Registry indicating that it is in a state of delinquency.

REDOMICILIATION

Corporations organized under the laws of other countries or jurisdictions may continue their existence under the laws of the Republic of Panama.

The continuation of the company under Panamanian laws will take effect between the parties and against third parties from the date of initial incorporation of the company in the country or jurisdiction of origin.

Panamanian corporations may, as established in the articles of incorporation or its amendments, continue under the protection of the laws of another country or jurisdiction, as long as the laws of that country or jurisdiction so authorize it and that the company is up to date in their tax obligations in the Republic of Panama.

TRUST REGIME

The acts of constitution, amendment or termination of the trust are exempt from any tax, as well as the acts of transfer or encumbrance of the trust assets and the income from said assets or any other act on them, if the trust deals with the following:

- assets located abroad,
- money deposited by people whose income is not from Panama or taxable in Panama, or
- shares or securities of any type, issued by companies whose income is not from Panama, even when such securities are deposited in Panama.

PRIVATE INTEREST FOUNDATION REGIME

Through Law No. 25 of 1995, private interest foundations were created in Panama, as a legal vehicle to facilitate charitable activities within a family environment, as well as to fulfill economic purposes. They are an ideal instrument for wealth management and tax planning.

Although the Law prohibits private foundations from carrying out lucrative activities, they can participate in investments of any type of assets, form part of partnerships, and control companies as holding companies. Likewise, they can be used for the administration of funds in schemes or systems of benefits for workers in any company.

The private interest foundation is an ideal instrument for a successful entrepreneur to ensure the continuity of his company in the event that he does not find suitable successors. The purpose is to provide a vehicle for the continued existence of personal businesses after the death of the owner.

On the other hand, the private interest (family) foundation is established for the purpose of ordering the succession of assets, for the preservation of family property and for the maintenance of members of one or more families. In the same way, they are attractive as tax planning instruments, since they can receive assets that generate tax-free income, and as vehicles to lower inheritance and gift taxes.

FOUNDATION COUNCIL

The private interest foundation must have a Council, composed of no less than three (3) members, except in the case of a legal person. The Council can be made up of natural and legal persons at the same time and its members are not required to be residents. The founder can belong to said Council. The Council is in charge of fulfilling the purposes of the foundation, for which it manages the assets of the foundation and conducts any legal business. If the foundation charter so provides, the Foundation Council will exercise its functions under the authorization of a supervisory body appointed by the founder.

SUPERVISORY BODIES

Law 25 allows the constitution of supervisory bodies, whether they are natural or legal persons (auditors, protectors, advisory boards, bodies representing the interests of the beneficiaries or others similar).

TAX REGIME

Private interest foundations must pay registration fees and a single initial annual fee of US$350.00 and subsequent single annual fee of US$400.00. As established in this Law, the acts of constitution, amendment and termination of the foundation, as well as those of transfer of the assets of the foundation, are exempt from the payment of any type of tax, as long as said assets are located abroad, constitute deposited money whose income is not from a Panamanian source or are securities of any kind, issued by companies whose income is not from a Panamanian source. Acts of transfer of real estate, titles, certificates of deposit, securities, money or actions carried out because of the fulfillment of the purposes or the extinction of the foundation in favor of the founder's relatives within the first degree of consanguinity and of the founder's spouse are also exempt.

REDOMICILIATION AND CONTINUATION

The Law contemplates the change of domicile or transfer of the forum for the constitution of Panamanian private interest foundations. It also provides that foreign foundations can avail themselves of Panamanian legislation by means of a certificate of continuation that must be notarized before a notary public and registered in the Public Registry.

LEGAL PROVISIONS ON INHERITANCES

Panamanian private interest foundations are not subject to the legal provisions that exist in hereditary matters at the domicile of the founder or the beneficiaries.

CONFIDENTIALITY

The members of the Foundation Council, the supervisory bodies, public servants and employees of private entities who have knowledge of the activities, operations or transactions of the foundations are obliged to keep their knowledge in strict reserve and confidentiality, except in the cases expressly indicated in the law. In case of violation of this restriction, a prison sentence of 6 months and a fine of US$50,000.00 is contemplated.

BANKING REGIME

In order to comply with international standards, principles and sound practices, increase confidence and stability of the banking system and protect the small saver, Decree Law 9 of 1998 was reformed, through Decree Law 2 of 22 of 2008, commonly known as the "Banking Law".

In relation to the changes introduced by the legislation is the rapid process that guarantees to address situations of troubled banks, specifically, by establishing a rapid process that guarantees the recovery of the savings in which they are paid, within 15 days after the date on which the resolution that orders the liquidation is executed, the deposits of US $ 10,000.00 or less. The possibility of designating beneficiaries in deposit accounts in the event of the death of the holder is incorporated, without the need for legal proceedings.

The International Banking Center of Panama has more than 55 banks, both international and local, as of February 2020. According to data from the Superintendency of Banks, the assets of the Center amounted to US $ 130,367 million as of September 2020. The liquidity of the System stands at 63.3% as of September 2020, well above the 30% required by the Banking Law.

FINANCIAL COMPANY REGIME

Through Law No. 42 of 2001, financial companies and their operations are regulated in Panama. Credit operations carried out by banks (including credit cards) and other entities regulated by the Superintendency of Banks (trust companies), insurers, cooperatives, mutual companies, savings and loan associations, pawnshops, furniture stores and the financing operations carried out by merchants with respect to their own sales are excluded from the scope of this law.

For the operation of a financial company, prior authorization is required, granted by resolution of the Directorate of Financial Companies of the Ministry of Commerce and Industries, an entity that maintains a special registry for that purpose.

In accordance with the Law, natural persons and legal representatives of legal persons authorized to engage in financial activities must be domiciled in Panama. In addition to the above, the persons authorized to carry out financing businesses must obtain a Notice of Operation.

LEASING REGIME

By means of Law No. 7 of 1990, the regime of the financial leasing contract of movable property is regulated in Panama. In accordance with the Law, if the goods will be used within Panamanian territory, the contract will be deemed local; conversely, it will be considered international. The contract may apply to ships, aircraft, machinery, equipment, vehicles or any other movable property susceptible to individualization and must have a minimum term of three years.

To carry out leasing operations, the interested party must obtain a Notice of Operation and then be registered with the Directorate of Financial Companies of the Ministry of Commerce and Industries. After being authorized to start operations, the interested party must register in the Registry of Financial Lessors of the Ministry of Economy and Finance. The minimum capital required to engage in the business is US $ 100,000.00.

The rents that are paid due to a local contract of this nature will be taxable income for the lessor if the goods object of the contract are used in Panama and deductible expenses for the lessee if the goods contribute to the production or conservation of income from Panamanian source. They are also deductible for the lessor or the lessee, as the case may be, the expenses incurred for taxes on the property, insurance premiums and other normal expenses incurred in the use and preservation of the property for the production or conservation of income. The rents paid by virtue of the leasing of merchant vessels or those engaged in international maritime trade do not cause Income Tax in Panama and the royalties paid by virtue of the leasing contracts do not cause the Transfer Tax of Movable Property.

In international leasing contracts, the rents paid to the lessor are considered foreign source income, therefore they are not taxable in Panama. The granting of this type of contract does not generate the stamp tax, unless the document is to be used before the Panamanian authorities.

Finally, it is worth mentioning that through Law No. 4 of 1997, Panama adopted the UNIDROIT Agreement on International Financial Leasing, held in Ottawa (1988).

CAPITAL MARKET REGIME

The securities market is regulated by Decree Law No. 1 of 1999. The institution in charge of supervising the different actors of the securities market is the Superintendency of the Securities Market. Among the companies and persons regulated by the Superintendency, are the following, among others:

- Brokerage houses,
- Investment advisers,
- Stock exchanges,
- Investment Companies,
- Investment managers.

To date, there is only one stock exchange in Panama, the Panama Stock Exchange. In 2020, 33 new issues were registered for 6,804 million dollars. During that same year, principal, interest and dividend payments were made for a total of $ 2.973 million, and local brokerages traded a total of $ 82.493 million, mainly in bonds. These companies closed 2020 with a total managed portfolio in the amount of 42,945 million dollars.

INSURANCE COMPANY REGIME

Through Law No. 12 of 2012, companies dedicated to the insurance business and the granting of bonds, management companies of insurance companies, administrators of insurance brokers, adjusters and damage inspection, and natural or legal persons engaged in insurance brokerage are regulated in Panama. Likewise, the activities carried out by entities that are dedicated to the provision of services or health plans aimed at preventing or restoring the health of the users of said services are subject to this Law, directly with their own resources, through third parties or the combination of both, through the prepayment of fixed sums that imply the transfer of risk to the provider of said services, as well as entities that promote contracts under any denomination that, involving the transfer of risk from the payer to the service provider entity, entail the payment of rents, or any type of contract that implies the transfer of the risk of mortality, survival or morbidity that includes investment or savings funds.

For the exercise of the insurance business, prior authorization from the Superintendency of Insurance and Reinsurance is required. Authorizations to operate the life, general and surety lines are granted separately.

To operate the companies, they must constitute a minimum capital of US $ 5,000,000.00 in cash. Similarly, insurers must have the following reserves, free of encumbrances:

- For life insurance (individual, industrial, annuities and pension plans), 100% of the mathematical reserve will be calculated on all current policies. The reserves for dividends to the insured are included in this calculation, for the plans with participation;
- For group insurance (life, credit, mortgage relief, personal accidents, health and freight transport), at least 10%, and for general lines, fire and allied lines, maritime (helmet), automobile, civil liability, robbery, theft, glass, mortuary, aviation, various coverage and bonds in general, at least 35%. In both types of reserves, the calculation will be made based on the net cancellation premiums retained in the twelve months prior to the valuation date;
- 100% of the reserve corresponding to the amount of the obligations for net reinsurance claims, pending to be settled or paid at the end of the fiscal year considered notified (Reserves for Pending Reported Claims) and 100% of the estimate of claims to be notified (Reserves for Occurred and Unreported Claims), plus the corresponding estimated expenses;
- Mismatch reserve, for the risks arising from the mismatch of term, interest rate, currency and investment instruments, between the assets and liabilities of the insurer, subject to the regulations issued by the Superintendency on the elements that must be considered for their calculation and constitution;
- Allowance reserve for statistical and / or contingency deviations, which will be made up of the corresponding retained net premiums, not less than 1% and up to 2.5% for all lines of business.
- Reserve for catastrophic risks and / or contingencies that will be made up of the corresponding retained net premiums, not less than 1% and up to 2.5% for all lines of business;
- Additional reserves specified by the Superintendency of Insurance and Reinsurance.

In addition, insurers are obliged to maintain in the country a reserve fund equivalent to 20% of their net profits before applying income tax, until they constitute a fund of US $ 2,000,000.00, and thereafter 10%, until reaching 50% of the paid capital. Until this reservation is made, no dividend may be declared or distributed or profits transferred.

THE MARITIME SECTOR

THE SHIP REGISTRATION

There is no minimum tonnage or age requirement for a vessel in the Republic of Panama for its registration to proceed; however, ships with more than 20 years of construction must comply with an inspection after the provisional flag of the ship.

Except in the case of yachts, all ships can be flagged through a Panamanian Consulate authorized by the Merchant Navy to issue ship documents or directly at the Consular and Ship Offices in Panama.

After the Provisional Navigation and Radio Licenses have been issued, which are valid for six and three months respectively, the interested party must present the following documents in order to complete the permanent registration of the ship:

- A power of attorney in favor of the lawyer. Said power must be authenticated by a notary public that certifies the capacity of the grantor and then must be legalized before a Panamanian Consul or it can be Apostilled.
- Property Title duly authenticated by a notary public and legalized before a Panamanian Consul or Apostille.
- If there is only one transfer of registration, without any sale, then the previous Certificate of Cancellation of Registration must be sent, duly authenticated by a notary public and legalized before an Apostilled Panamanian Consul. This document is registered with the Offices of the Public Registry of Panama, as well as the Property Title of the ship.
- An authentic copy of the International Tonnage Certificate (1969) in relation to the respective ship, issued by a corresponding classification entity on behalf of the Panamanian Government. Said authentication, as a true copy, must be made by a classification society or by a Panamanian Consul.

- A Permanent Radio License Application: In the event that the provisional radio and navigation licenses expire without the ship having obtained its permanent radio and navigation licenses, these can be extended for an additional period with the payment of renewal changes and a fine.
- Annual taxes and fees are paid during the course of January of the following year. Although these can be canceled directly at the offices of the General Directorate of the Merchant Marine of the Maritime Authority, the interested party can cancel them before a Panamanian Consul, if it is convenient.

TAX INCENTIVES OF PANAMANIAN VESSELS

Income derived from the operation of vessels registered in other jurisdictions is exempt from payment of income tax, if reciprocity exists in the respective countries regarding the taxation of income obtained in said countries by Panamanian merchant marine vessels. Also exempt from the same tax are the income generated by the operation of vessels of any nationality, by foreign persons residing or not in Panama, provided that the country of nationality of the person grants an exemption equivalent to persons domiciled in Panama in virtue of the principle of reciprocity.

COLON FREE ZONE

Through Decree Law No. 48 of 1948, the Colon Free Zone was created as an official institution in charge of the establishment, operation and development of a free trade zone. The Colon Free Zone can carry out the following activities, transactions or negotiations:

- Introduce, store, display, pack and unpack, manufacture, pack, assemble, assemble, refine, purify, mix, transform and, in general, operate and manipulate all kinds of merchandise, products, raw materials, packaging and other commercial items;
- Allow nationals or foreigners, residents or not, to carry out in their own name or on behalf of third parties, for their own benefit or not, the operations detailed in literal a), above, or allow foreign companies to be represented for the purpose of re-exporting merchandise;
- Build office buildings, factories, warehouses, warehouses or workshops for the Colon Free Zone's own use or for its lease;
- Leasing land for other people to build buildings for the purposes indicated in literal c) above;
- Build ports, docks, dry docks, places of embarkation and disembarkation, railway stations or grant concessions or franchises for the exploitation of such activities;
- Authorize all kinds of incidental banking, insurance, customs brokerage and cargo verification and inspection operations;
- Authorize the development of any type of infrastructure to carry out the activities described above by means of an investment recognition agreement;
- Allow national natural persons to sell food, through mobile stalls within the segregated area;
- Authorize the operation of collective, selective and cargo transportation activities within the Area.

To operate in the Free Zone, the interested company, whether national or foreign, must obtain an authorization from the Free Zone Administration ("Operation Code" or the "Operation Permit" in the case of leasing private buildings) .

The merchandise and other articles of commerce that enter the Zone are exempt, at all times, from the payment of taxes, levies and other fiscal, national and municipal contributions. Export and re-export operations are exempt from paying income tax, while imports to Panamanian territory are taxable. The companies authorized to operate in the Colon Free Zone pay dividend tax at a rate of 5%.

FREE TRADE ZONE

Law 32 of 2011 created a special, comprehensive and simplified regime for the establishment and operation of Free Zones that governs promoters, operators and all natural or legal persons established in them. Free Trade Zones are defined as free enterprise zones, specifically delimited on land of at least 2 hectares, within which all the infrastructures, facilities, buildings, systems and support services are developed, as well as the operational organization and administrative management that are necessary for them to establish themselves within these local and international companies.

The activities allowed in the Free Zones are:

- Higher education centers.
- Scientific research centers.
- Center specialized in the provision of health services.
- High-tech companies.
- Assembly companies.
- Companies that process finished and semi-finished products.
- User service companies abroad, to other free zones or within the same free zone.
- Environmental services companies.
- Logistics service companies.
- Manufacturing companies.

Legal Benefits - Tax Order:

- Exemption of all types of direct or indirect tax, contribution, rate, right or encumbrance on all activity, operation, transaction, procedure and transfer of goods and services for established companies. Service companies, logistics services, high technology, scientific research, higher education, general services, health and environmental services will be exempt from paying income tax for their foreign operations or operations with each other.

Legal Benefits - Immigration Order:

- Permanent Resident Permit as an investor in the Free Trade Zone for those investors who invest US$250,000.00 in a promoter or established company.
- The trusted, executive, expert and technical personnel will have the right to request a Temporary Resident Permit for the duration of the contract.
- Temporary permits: educational center teacher, student, researcher.
- Short Stay Visa for investors or merchants who come to Panama to evaluate businesses or investments in Free Trade Zones.
- Visa for dependents of permanent resident or family reunification.
- The foreigner with a permanent resident permit may become a Panamanian naturalized after 5 years.

Legal Benefits - Labor Order:

- The employer can rotate his staff on different production lines or from one production line to another.
- Fluctuations in the market that lead to considerable losses in sales are valid grounds for dismissal.
- For the purposes of social security, production bonuses, bonuses and gratuities will not be considered salary.
- The employer may indicate in advance the periods of time in which employees will use their vacations.
- The parties will freely determine the day of rest.

SPECIAL ECONOMIC AREA PANAMA PACIFICO

Created by Law 41 of 2004, it is located in the former Howard Air Force Base. It consists of 1,400 hectares, which have been awarded to a Master Developer (London and Regional), a private company, which seeks to create a new way of doing business and moving goods from Panama.

In addition to maintaining special labor and immigration regimes, the companies that operate in the area automatically obtain the stability of the legal regime of their investments, for a term of ten (10) years.

Regarding the tax regime, it follows the basic principles promulgated by the World Trade Organization, which is why exemption from income tax is granted to certain types of activities, in addition to "extraterritorial" activities, such as services related to aviation and airports, high technology manufacturing, call centers, multimodal and logistics services, transmission and retransmission of data and digital information, and others.

Users must obtain an operations permit that the regulatory authority, in coordination with the master developer, grants to users.

CALL CENTERS
The "Call Centers" or international call centers that wish to carry out operations in Panama, enjoy the benefits of the ZPE established in Law No. 25 of 1992 indicated above and can take advantage of them by requesting to be registered in the Official Registry of Call Center service company for Commercial use of the Ministry of Commerce and Industries, provided that it is dedicated to international call services in its telecommunications category.

CITY OF KNOWLEDGE
Created by Law 6 of 1998. It is an international complex for education promoting research and innovation, which seeks to create synergies between international universities, research centers and international organizations.

It has an International Technology Park, which looks for innovative companies that produce or process high-tech goods. It also has companies that provide data storage services (Internet Data Center), making Panama the gateway to the Internet and telecommunications for Latin America. Offering a secure infrastructure with servers dedicated to electronic commerce, with the most advanced networks on the market.

In order to operate in the area, the authorization of the Board of Trustees is required. The registry provides tax and tariff incentives.

BARU FREE ZONE
Created by Law 19 of 2001 with the objective of creating economic growth in one of the poorest regions of the country, in this Free Zone the following operations, transactions, negotiations and activities may be carried out:

- Import, re-export, unload, dispatch by land, sea or air, store, display, pack, unpack, manufacture, pack, assemble, assemble, refine, purify, mix, transform and, in general, operate and handle all kinds of merchandise, products, raw materials, containers and other commercial effects, with the sole exception of prohibited import items, in accordance with the laws of the Republic;
- Build office buildings, factories, warehouses, warehouses, workshops for own use or to lease them to natural or legal persons that carry out operations in the area;
- Leasing lots of land so that other natural or legal persons, nationals or foreigners, residents or non-residents, build buildings for the activities to be carried out in the area;
- Establish water, electricity, gas, telecommunications, power, heat, refrigeration, or any kind of public services, or contract with other natural or legal persons for the provision of such services;
- Build ports, aerodromes, docks, dry docks, boarding places, railway stations or land loading and unloading stations, or grant concessions and franchises to other natural or legal persons, national or foreign, for the construction and exploitation of such works;
- For reasons of social interest, duly declared: Sale of food and non-alcoholic beverages through non-permanent stalls, within the segregated area.
- Users must obtain an operating permit issued by the Baru Free Zone, as an autonomous entity.

The merchandise and other articles of commerce that enter the Zone are exempt, at all times, from the payment of taxes, levies and other fiscal, national and municipal contributions. Export and re-export operations are exempt from paying income tax, while imports to Panamanian territory are taxable. Companies authorized to operate in the Barú Free Zone pay dividend tax at a rate of 5%.

OIL FREE ZONE

By means of Cabinet Decree No. 29 of 1992, oil-free zones are created, the regime being revised and regulated by the provisions of Law 8 of 1987 and Law 39 of 2007. In oil-free zones it is possible to perform the following operations:

- introduce, store, manufacture, package, refine, purify, mix, market, transport, transfer, pump, process, transform, sell, export, re-export, supply and, in general, operate and manipulate crude oil, semi-processed or any of its derivatives;
- build, install and operate oil refineries and other means of transformation or processing of crude or semi-processed oil, storage tanks, oil pipelines, gas and multiple pipelines, pumping facilities and pipelines, office buildings, warehouses, workshops and other facilities; and introduce machinery, equipment, spare parts, containers, containers, vehicles, furniture, fire prevention equipment or spills; construct office buildings, warehouses, workshops for the use of contract beneficiaries to operate in the oil-free zone;
- lease, acquire or otherwise use land in the area;
- establish water, electricity, gas, power, heat, refrigeration or any other kinds of services;
- build ports, docks, dry docks, places of embarkation and disembarkation of ships and aircraft, railway stations or grant concessions for the exploitation of such works;
- any other own or incidental activities necessary for the introduction, storage, pumping, transfer, distribution, commercialization and refining of crude oil and its derivatives.
- Users, for their part, must obtain a permit issued by the National Energy Secretariat.

The companies that operate in oil-free zones have a special tax regime, which highlights: A special depreciation regime, exemption on the import of assets and supplies for the development of the activity to be carried out, and exemption from income tax, for exports (imports to Panamanian territory are taxable).

HEADQUARTERS OF MULTINATIONAL COMPANIES (SEM)

Law No. 41 of 2007 creates a special regime for the establishment and operation of Multinational Companies Headquarters. A SEM company is defined as that multinational company that from Panama carries out operations aimed at offering the services defined in this Law to its Headquarters or its subsidiaries or its subsidiaries or associated companies, or that establishes its Headquarters in Panama. The headquarters will always be part of multinational companies with international or regional operations or important in their country of origin. The law establishes the following incentives for a SEM:

Corporate Incentives:

- Exemption from payment of Income Tax, for services provided outside the national territory to your Business Group, which does not generate taxable income within the Republic of Panama. If the SEM provides services to its local affiliates, it must withhold the corresponding income tax.
- Tax on the Transfer of Personal Property and the Provision of Services. As they are export services, they will not cause Transfer Tax, provided that they are supplying to entities of the business group abroad, that do not generate taxable income within Panama.

Incentives for Executives:

- Exemption from income tax, when their salaries come from the parent company abroad.
- Exemption from the Import Tariff for household items when the worker moves to Panama for the first time.

Migration Incentives:

- Law No. 41 creates new visas specifically for foreign workers hired by the SEM. These visas will be processed at the Ministry of Commerce and Industries.
- SEM Permanent Personnel Visa: Will be granted to administrative-executive level workers. They will have the same validity for which the employment contract is made, renewable every 5 years. Holders of this visa will not need work permits.
- SEM Permanent Staff Dependent Visa: For spouses, minor children or children under twenty-five years of age who are students and the staff's parents, who remain in Panama under the responsibility of SEM staff. These will have the same term as SEM staff.
- SEM Temporary Personnel Visa: these visas will be granted for a period of no more than 3 months is for workers who have to come to Panama for any activity related to the SEM. Like the SEM Permanent Staff, this visa does not require a work permit.

Work Incentives:

The SEMs may have the necessary number of trusted personnel and senior management executives to carry out their operations in Panama. Dependents who wish to work may change their immigration status through the One-Stop Shop at th

SPECIAL REGIME FOR THE ESTABLISHMENT AND OPERATION OF MULTINATIONAL COMPANIES FOR THE PROVISION OF SERVICES RELATED TO MANUFACTURING (EMMA)
Through Law 159 of August 31, 2020, the Special Regime for the Establishment and Operation of Multinational Companies for the Provision of Services Related to Manufacturing , better known as EMMA, is created with the purpose of attracting foreign direct investment by emulating the successful scheme that the Multinational Companies Headquarters (SEM) have had. "EMMA" seeks to create a new regime aimed at companies from the same economic group to settle in Panama to perform their services related to manufacturing. The Law may only be applied to operations of Multinational Companies for the provision of services related to Manufacturing.

ANTIMONOPOLY REGULATIONS
In order to adapt the Panamanian legal system to the rules of the international market, the Government adopted Law No. 45 of 2007. The purpose of the Law is to ensure and protect the process of free economic competition, eliminating monopolistic practices and economic concentrations.

To carry out these objectives, the Authority for Consumer Protection and Defense of Competition, in addition to the above, receives complaints and complaints from consumers and ensures the veracity of advertising.

TAX REGIME
Among the fundamental rights recognized in the Political Constitution of the Republic of Panama there is the principle of tax legality; that is to say, the obligation to contain in a Law the taxes to be implemented, the exemptions to their payment and the procedures for their collection. Among the main national taxes established by the Panamanian tax code are the following:

- Importation
- Income Tax
- Real Estate
- Ships
- Stamps
- The Notice of Business Operation
- Banking, Financial Institutions and Currency Exchange Houses
- Insurance
- Fuel Consumption and Petroleum Derivatives
- Transfer of Personal Property and the Provision of Services

- Selective Consumption of certain Goods and Services
- Real Estate Transfer

INCOME TAX

Panama is characterized by following the principle of tax territoriality. In this sense, article 694 of the Fiscal Code establishes, in the matter of income tax, that it is considered as object of this tax "the taxable income that is produced, from any source, within the territory of the Republic of Panama, whatever is the place where it is perceived ".

The aforementioned article clearly defines certain activities as non-taxable within Panamanian territory because they are not considered as income:

- Invoice, from an office established in Panama, the sale of merchandise or products for a sum greater than that for which said merchandise or products have been invoiced against the office established in Panama, as long as said merchandise or products are moved only abroad
- Direct, from an office in Panama, transactions that are perfected, consume or have their effects abroad (offshore operations); and,
- Distribute dividends or shares of legal persons, when such dividends or shares come from income not produced within the territory of the Republic of Panama, including income from the activities mentioned in literals a) and b).
- If a natural or legal person receives income from a Panamanian source and also from a non-Panamanian source, they will only pay income tax on that part of their income that they obtained from a Panamanian source.
- Legal persons pay for their net taxable income for the fiscal year, in accordance with a 25% rate. The companies that are dedicated to the generation and distribution of electrical energy, telecommunications services, insurance, reinsurance, financial, cement manufacturing, gambling, mining and banking, will pay as follows:

| Fiscal Periods | Rate |
|---|---|
| After January 1st of 2010 | 30% |
| After January 1st of 2012 | 27.5% |
| After January 1st of 2014 | 25% |

Companies whose taxable income exceeds US $ 1,500,000.00 per year, will pay the corresponding rate according to the legal entity in question, the greater amount that results between the net taxable income calculated by the traditional method or the net taxable income that results from applying to the total of taxable income, 4.67%. Natural persons, on the other hand, pay for their net taxable income for the fiscal year in accordance with a progressive rate as follows:

| If the taxable income is: | The tax will be: | |
|---|---|---|
| Up to US$11,000.00 | 0% | |
| More than US$11,000.00 and up to | | |
| US$50,000.00 | 15% | for the exceeded of US$11,000.00 up to US$50,000.00 |
| More than US$50,000.00 | Will pay US$5,850.00 for the first US$50,000.00 and a 25% | |
| Over the exceeded US$50,000.00 | | |

The companies considered as micro, small and medium companies, will pay the Income Tax in accordance with the rate and the rules applicable to natural persons on that part of their net taxable income attributable to their annual gross income that does not exceed US $ 100,000.00 ; and in accordance with the rate and regulations applicable to legal entities on that part of their net taxable income attributable to their gross annual income that exceeds US $ 100,000.00, without exceeding US $ 200,000.00. In addition, these companies will be exempt from payment of the Complementary Tax.

People who operate in the Colon Free Zone or in oil-free zones (or in any free zone to be established in the future), pay the entire income tax in accordance with the rates for natural or legal persons before described above, on the taxable income obtained from internal operations (sales made to purchasers located in the customs territory of Panama). They do not pay any income tax on the income obtained from foreign operations.

On dividends or participation fees, shareholders or partners pay an income tax of 10% in the case of registered shares, and 20% if they are bearer shares, which must be withheld by the respective legal entity (no include income from foreign operations).

Those companies that require the Notice of Operation must withhold the dividend tax or participation fee of 10% of the sums distributed to their shareholders or partners when they are from Panamanian source and five percent (5%) in the case of Income from a foreign source or from export operations.

Musical groups, artists, singers, concert performers, sports professionals and professionals in general who come to the country on their own account or under contract with people established in Panama and receive taxable income in Panama, pay an income tax at a rate of 15 %, applicable to the total amount paid for the respective services.

IMPORT TARIFF

The establishment of import tariffs has traditionally been regulated in the Republic of Panama through Cabinet Decrees, issued by the Executive Branch. The current tariff regime was established by the Administration through Cabinet Decree No. 61 of October 10, 1997.

Panama has signed Free Trade Agreements with the United States of America, Canada, Chile, Singapore, China (Taiwan), Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua, the Dominican Republic and China. It also maintains trade agreements with Peru, Mexico, Colombia, Cuba, among others.

PROPERTY TAX

The Property Tax is an “in rem” tax, so it falls on the property, regardless of who is the owner or holder of the property. This tax applies to all lands and improvements built on them that are located within Panamanian territory, except for some legally established cases such as:

- Those of the State or official institutions;
- Those destined to cults or churches permitted by the State;
- Those destined for public charity or social assistance;
- Those that constitute the Family Patrimony;
- Those exempt according to treaties or contracts with the Nation;
- Those used by private educational entities, provided that the entity undertakes to grant no less than 5 nor more than 25 scholarships to poor students;
- Those whose tax base (including improvements) does not exceed US $ 30,000.00.

VALUE ADDED TAX (ITBMS)

In Panama, the value added tax is called ITBMS (Tax on the Transfer of Personal Property and the Provision of Services) and its general rate is 7%, except for some activities such as importation, wholesale and retail of alcoholic beverages and tobacco products whose rate is 10%.

Under the concept of transfer of tangible assets, operations such as:

- The sale, exchange, give in payment, contribution to companies, assignment or any other act or contract.
- The awards to the owner, partners and shareholders, which are made as a result of the definitive closure of the company, total or partial dissolution and liquidations definitive commercial, industrial or service entities.
- The commissions charged for the transfers of negotiable documents and of titles and values in general, commission payments generated by banking and / or financial services provided by entities legally authorized to provide this type of services, as well as commissions or fees charged by people engaged in the brokerage of movable and immovable property.

- Under the concept of provision of services, operations such as:
- Carrying out works with or without delivery of materials.
- Intermediation in general.
- Personal use by the owner, partners, directors, legal representatives, dignitaries or shareholders of the company, of the services provided by it.
- The leasing of real estate, movable property or any other act that has the purpose of giving the use or enjoyment of the property.
- Public shows, events, seminars, conferences, talks, presentations of artistic or musical groups, artists, singers, concert performers, sports professionals and professionals in general, not free, that take place within the territory of the Republic of Panama. Sports events carried out by non-profit organizations recognized by the Panamanian Institute of Sports are exempt from the above.
- Local and international air transport of passengers
- Accommodation or public accommodation service
- Commissions charged for transfers of negotiable documents and securities in general, commission payments generated by banking and / or financial services provided by the entities authorized to provide this type of service.

The obligation to pay this tax arises from:

- In the transfer of goods, at the time of invoicing or delivery, whichever occurs first of the aforementioned acts.
- In the provision of services, with any of the following acts, whichever occurs first: o Issuance of the corresponding invoice: Completion of the service provided o Receipt of total or partial payment for the service to be rendered.
- In this case, before its introduction to the Panamanian fiscal territory.
- In the case of the personal use or consumption of the owner or partners of the company, the legal representative, dignitaries or shareholders, at the time of the withdrawal of the goods or at the time of its accounting, whichever comes first.

REAL ESTATE TRANSFER TAX

Gross premiums paid to individuals engaged in the insurance business pay a 2% tax. The tax is based on the amount of gross premiums as a result of the balance and annual report submitted by the insurance companies to the National Public Revenue Authority and must be covered in the first 10 days of March of each year, on the Gross premiums for the previous year.

The gross premiums of fire insurance policies and their renewals that are paid to those who are dedicated to the business of said insurance due to risks assumed in Panama, will cause a tax of 7% on the value of said premiums.

An additional tax of 5% must also be paid on the gross premiums paid to insurance companies including premiums for the granting of bonds issued by any authorized person.

People who contract policies with insurance companies, with the exception of fire and life policies with salvage values, as well as agricultural insurance, are subject to this tax.

OPERATION NOTICE TAX

According to article 1004 of the Fiscal Code, the annual tax caused by the Operation Notices is 2% of the capital of the respective company, with a minimum of US $ 100.00 up to a maximum of US $ 60,000.00. Those persons or companies with invested capital less than US $ 10,000.00 are exempt from making this payment.

Companies established within international trade zones, the Colon Free Zone or any other free zone, which are not required to have the Notice of Operation, must pay 1% per year on the capital of the company, with a minimum of US $ 100.00 and a maximum of US $ 50,000.00.

INSURANCE TAX

Gross premiums paid to individuals engaged in the insurance business pay a 2% tax. The tax is based on the amount of gross premiums as a result of the balance and annual report submitted by the insurance companies to the National Public Revenue Authority and must be covered in the first 10 days of March of each year, on the Gross premiums for the previous year.

The gross premiums of fire insurance policies and their renewals that are paid to those who are dedicated to the business of said insurance due to risks assumed in Panama, will cause a tax of 7% on the value of said premiums.

An additional tax of 5% must also be paid on the gross premiums paid to insurance companies including premiums for the granting of bonds issued by any authorized person.

People who contract policies with insurance companies, with the exception of fire and life policies with salvage values, as well as agricultural insurance, are subject to this tax.

MUNICIPAL TAXES

The Municipalities of the Republic of Panama are also authorized by law to collect taxes and fees that are established at the District level. In accordance with Law No. 106 of 1973, a wide range of lucrative activities are taxable by the Municipalities, among which are: wholesale and retail trade, insurance companies, banking, financial and mutual fund companies, hotels, pensions, motels, canteens, warehouses, license plates, public entertainment of a lucrative nature, games allowed by law, among other lucrative activities.

As of January 1, 2013, annual gross sales pay a monthly tax ranging from US $ 2,000.00 to US $ 5.00, annual gross income will pay a monthly tax between US $ 45,000.00 and US $ 10.00, annual gross commissions will pay a monthly tax between US $ 2,000.00 and US $ 10.00 and annual gross operations will pay a monthly tax of between US $ 2,000.00 and US $ 100.00, depending on the level of income, commissions, sales volume and annual gross operations to which the taxpayer engages.

MIGRATORY REGIME

Most foreigners enter the Republic of Panama, first, with a Tourist Visa or special tourism cards, which are valid for up to 180 days. Tourism cards can be obtained from the airlines that travel to Panama and the Tourist Visa from Panamanian Consuls Abroad.

The types of visas that can be obtained in Panama to achieve residency are different. The most common for investors are the following:

Temporary 5-year retired annuitant permit: recommended for foreigners with a monthly income of B / .850.00 from interest on a fixed-term deposit in the National Bank of Panama or the Savings Bank, and whose interests are free of encumbrance or guarantees of any nature, for a minimum period of 5 years.

Short-stay Visa as merchants and Investors by Special Laws: designed for those foreigners interested in analyzing possible investments or carrying out transactions in ZPE, Call Center or special Areas designated for the development of the Cinematographic and Audiovisual Industry.

There are also special visas for those executives or foreigners who settle in special areas such as Multinational Companies Headquarters, Panama-Pacific Special Economic Area; the Ciudad de Saber Foundation, and foreigners hired by the Panama Canal Authority.

LABOR REGIME AND SOCIAL SECURITY

LABOR REGIME

Labor-management relations in Panama are mainly regulated by the Labor Code (Cabinet Decree No. 252 of December 30, 1971 and its reforms). As essential elements for determining the existence of an employment relationship, in accordance with the Code, there are legal subordination and economic dependence. The existence of the relationship then determines the obligation to pay the salary.

Workers' rights are considered a minimum, they are not waivable and cannot be diminished. Any act, contract or declaration that implies resignation or affectation of the worker's rights is considered void. Even the division of the employer or company into different legal entities does not affect the rights of the workers.

Labor Hiring and Job Stability: Employment contracts must be in writing. In the absence of said contract, the allegations of the worker in relation to the facts and circumstances that must be included in the contract will be considered true, unless proven otherwise by the employer. Contracts can be signed for an indefinite period, for a defined period and for a specific work. The maximum term for the defined-time contract is one year, and it is not extendable. Hiring under a probationary period is allowed for up to three months, provided that the provision of the service requires a certain skill or special skill and is expressly stated in the contract. Under Panamanian law, the employer cannot terminate the employment relationship indefinitely, without any just because provided by law and according to legal formalities. Workers with less than two years of continuous service, domestic workers, workers in ships dedicated to international service, apprentices, among others, are exempted from this rule.

Foreign Workers: Under Panamanian law, it is allowed to hire foreign workers in a proportion not exceeding 10% of the total ordinary workers of the company, except in the case of technicians whose percentage should not exceed 15%, except as established in international treaties and special laws (for the development of certain development poles). Foreigners require in order to work, a Work Permit issued by the Ministry of Labor and Labor Development. Which is valid for one year, extendable for the same period up to a maximum of five years.

Salary: The salary can be set by unit of time (month, fortnight, week, day or hour) and by tasks or pieces. It includes, in addition to what is paid in money or in kind, bonuses, perceptions, bonuses, bonuses, commissions, profit sharing and all income or benefits that the worker receives due to work or as a consequence of it. In any case, it may not be less than the legal minimum (established by the Government, depending on the activity and geographic area where the service is provided) or conventional. Through Executive Decree No. 263 of December 21, 2009, the Government set the new minimum wage rates for the country per hour, economic activity, occupation, company size and 2 regions. The minimum hourly wage ranges from $ 1.06 to $ 2.00. For domestic service, it is US $ 145.00 to US $ 160.00 per month, depending on the region.

Thirteenth Month: In accordance with Panamanian law, employers must pay their workers a special bonus called "Thirteenth Month", consisting of one day's salary for every eleven days of work, payable in three equal items on April 15, August 15 and December 15 of each year. This bonus is unattachable for the worker and is subject to income tax discounts and social security contributions. For the employer it constitutes a deductible sum for tax purposes, as an expense in the production of income.

Work Days and Extraordinary Hours: According to the Code, there are three work days, namely: the daytime (between the period from 6:00 a.m. to 6:00 p.m.), the night (between 6:00 p.m. to 6:00 p.m. am) and the mixed one, which includes hours of different periods as long as it does not cover more than three hours within the night period. The maximum daytime shift is 8 hours and the working week up to 48 hours; the night maximum of 7 hours and the working week up to 42 hours and the mixed maximum is 7.5 hours and the working week up to 45 hours. The 7 hours of night shift and the 7.5 hours of mixed shift are paid like the 8 daytime hours.

You cannot work more than three hours of overtime per day or more than nine hours a week. When services are provided in excess of these limits, the excess will be remunerated with an additional 75% surcharge.

The working days carried out on holidays or national mourning days carry a surcharge of 150% (which includes the remuneration of the day of rest), without prejudice to the right of the worker to be granted another day of rest in the week as compensation. Work on a Sunday or other mandatory weekly rest day is remunerated with a 50% surcharge, without prejudice to the worker enjoying another day of rest. The foregoing is the general rule, except for what is established in international treaties and special laws (for the development of certain development poles).

Vacations: Workers are entitled to an annual paid rest at the rate of 30 days for every 11 continuous months of work (one day for every eleven days in the service of the employer). The remuneration will be one month's salary when it has been agreed per month and four weeks one third when it has been agreed per week. Vacation time is non-waivable and cannot be exchanged for remuneration or compensation. The vacation period can only be divided into a maximum of two equal fractions. They can be accumulated for up to two periods, in which case the worker must have a minimum rest of fifteen days in the first period and the rest must be accumulated for the following period.

Seniority Premium and Unemployment Fund: Upon termination of any employment contract for an indefinite period, whatever the cause of termination, the worker has the right to receive from his employer a "Seniority Premium", at the rate of one week of salary for each year worked, from the beginning of the employment relationship. In the event that one year of service is not fully completed, the worker will be entitled to the corresponding proportional part.

To determine the amount of the seniority premium, the salary for each year of service provided by the worker is taken as the average of the total remuneration received by the worker during the last five years worked. As of 1995, employers are obliged to create, for indefinite-term employment contracts, a severance fund to pay the worker, upon termination of the employment relationship, the seniority premium and compensation for unjustified dismissal or just resignation.

For the establishment of this fund, the employer must quote quarterly the quota related to the worker's seniority premium and 5% of the monthly portion of the compensation to which the worker may be entitled, in the event that work is terminated due to unjustified dismissal or justified resignation. These quarterly contributions will be deposited in trusts in banks (with a General License), insurance companies (with a license to operate in Panama), and companies with a trust license, cooperatives and administrators of investment companies or mutual funds. These contributions constitute a deductible expense for the employer for income tax purposes.

Collective Labor Relations.
Under Panamanian law, it is lawful to form unions, whether company or industry unions. Likewise, workers have the right to strike as a measure to protect their rights and working conditions. It is also possible to enter into collective bargaining agreements between employers and unions. Collective conflicts are submitted to labor arbitration. There is no lockout in Panama as a measure in favor of employers.

Telework.
It has been approved the new law of Telework in Panama, with the purpose of regulate the employment relationship from the employees that performs their functions outside the offices of the employer, from their home address or from a different place rather than the offices of the employer. This employee, as the word indicates it, performs in a subordinated way accordingly to the instructions of the company or the employer, who will control and supervise their performance, using the Information and Communications Technology (ICT), meaning the resources, computer tools, applications, networks and programs. Important elements to consider in this law:

- Telework may be partial or complete;
- Overtime work will be governed by what is established in the Labor Code;
- It is reversible, that is, the employer may request to rejoin his activity at the company's offices;
- The worker can consent to work as on-call, being “on call” for any emergency or situation, outside of their working hours;
- The employer and worker will agree on the expenses that the employer will subsidize at the worker's home, however, said Expenses will not be considered as part of the worker's salary;
- The employer will assume the additional costs of bandwidth speed or network speed for the execution of the work at the worker's home, when necessary;
- The Social Security Fund, It will cover the professional risk only when the worker is in the employer's offices or during their transfer to or from them. However, it will cover illness caused by work carried out at the worker's home or where he performs his duties.
- The Law establishes that the employer is responsible for protecting the health and professional safety of the teleworker.
- The teleworker will have all the Inherent rights and obligations of the worker established in the Labor Code
- At the end of the employment relationship, the teleworker must return to the employer, in optimal condition, the technological equipment that was delivered, in order to carry out their work functions.

SOCIAL SECURITY

Both employers and workers or employees must contribute funds to the Social Security Fund (CSS), so that benefits are covered for cases of disability (temporary or permanent), death, old age, maternity leave, medical and dental assistance, pensions and retirements.

As a general rule, all employees (including foreigners) in the service of a natural or legal person operating in Panama must be insured against professional risks in the Social Security Fund. The payment of the premiums for said insurance, established by the aforementioned entity, through a rate system elaborated according to classes and degrees of risks, corresponds exclusively to the employer. The classification and location of the companies or employers corresponds exclusively to the Social Security Fund.

EDUCATIONAL SECURITY

In addition, there is also the so-called "Educational Insurance", which constitutes a tax established for the purpose of subsidizing educational activities in the country. It is made up of contributions from workers (salaried or independent) and employers. The employer or employer is responsible for contributing 1.50% and the worker or employee 1.25% of the monthly salary. Contributions to the Educational Insurance Fund are deductible from Income Tax for the taxpayer.

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# PERU

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## I. PROTECTION OF FOREIGN INVESTMENT

In order to provide greater security for investments of foreign origin, Perú has issued measures that contribute to protecting such investments, establishing a legal framework that regulates such safeguarding. Among the main regulations that protect foreign investment, the following should be highlighted:

- Article 63 of the Political Constitution of Peru[1]
- Legislative Decree No. 662, which grants a regime of legal stability to foreign investments through the recognition of guarantees.
- Legislative Decree No. 757, Framework Law for the Growth of Private Investment.
- Law No. 27342, Law Regulating Legal Stability Agreements under Legislative Decrees No. 662 and No. 757.
- Supreme Decree No. 162-92-EF, Regulation of Private Investment Guarantee Regimes.

With this in mind, we describe below the scope of the main guarantees provided to foreign investment in Peru.

### 1. The legal stability regime

Under Legislative Decree No. 662 and Supreme Decree No. 162-92-EF, all investors, as well as the companies in which they have a stake, are covered by the investment guarantees provided for in those regulations, which refer to non-discrimination between investors and companies; among others, for reasons of nationality, sector or type of economic activity, geographical location of the companies, prices, tariffs, non-tariff duties, form of business incorporation, status of individual or legal entity.

These regulations also provide for the right to non-discrimination on the basis of state ownership of capital, the right to private property, freedom of enterprise, freedom of domestic and foreign trade, to freely agree on the distribution of the full amount of profits or dividends they generate, and to use the most favorable exchange rate in the foreign exchange market, all in accordance with the provisions of Article 9 of Legislative Decree No. 662.

### 2. Conditions for access to the legal stability regime

Both the investor and the recipient company may benefit from this regime through the execution of a legal stability agreement with the Peruvian State, according to the following detail:

2.1. Investors:

Foreign investors may enter into legal stability agreements provided that the following requirements set forth in Article 2 of Law No. 27342 are met:

a) In the case of monetary contributions to Peruvian companies:
   i. Monetary contributions to the capital of a company established or to be formally established in the country must be made through the national financial system.
   ii. The investment may not be less than US$ 10,000,000.00 for the mining and hydrocarbons sectors, and not less than US$ 5,000,000.00 for the other sectors.

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1 Article 63.- National and foreign investment
Domestic and foreign investment are subject to the same conditions. The production of goods and services and foreign trade are free. If another country or countries adopt protectionist or discriminatory measures that harm the national interest, the State may, in defence of that interest, adopt similar measures.
Any contract between the State and persons governed by public law with domiciled foreigners states that they are subject to the laws and courts of the Republic and that they renounce all diplomatic claims. Contracts of a financial nature may be exempted from national jurisdiction.
The State and other persons governed by public law may refer disputes arising out of contractual relations to tribunals constituted by virtue of treaties in force. They may also submit them to national or international arbitration, in the manner provided by law.

iii. The contribution must necessarily be made within 2 years from the date of execution of the respective agreement.

b) To make risky investments that are formalized with third parties, provided that the amount of the investment is within the margin described in Paragraph ii. of Numeral 2.1.a) above and is carried out within a period of no more than 2 years from the date of execution of the respective stability agreement.

c) In the case of acquisition of shares in companies directly or indirectly owned by the State, in addition to the requirements mentioned in Paragraphs ii. and iii. of Numeral 2.1.a) above, and which must also be channeled through the national financial system, it is required that the transfer be of more than 50% of the company's shares.

2.2. Recipient Companies:

The companies receiving the investment established in the country may sign legal stability agreements that include tax stability with regard to Income Tax, provided that they are subject to the following conditions:

a) When the companies that are incorporated, or those already established in the country, receive new investments for an amount greater than 50% of their capital and reserves, provided that they are intended for the expansion of productive capacity (covering both the goods and services of the company) or for technological improvement, and they have at least one investor who makes contributions in accordance with one of the modalities provided for in Numeral 2.1. a) above; or

b) The investment comprehends more than 50% of the shares of the companies included in the scope of the State's business activity, and they have at least one investor who acquires them in accordance with one of the modalities provided for in Numeral 2.1.b) above.

3. **Guarantees granted by legal stability**

To the holders of a legal stability agreement, whether the investor or the recipient company in which they participate, legal stability guarantees for a period of 10 years -except in the case of concessions whose term of validity is subject to the term of validity of the concession- the following rights:

3.1. Stability of the tax system:

The stability of the Income Tax applicable in accordance with the regulations in force at the time of the execution of the corresponding stability agreement will be maintained, thus applying the rate in force at such date, which implies that:

a) Investors are guaranteed that, as long as the agreement is in force, the profits attributed to them and/or the dividends distributed in their favour will not be affected with a higher rate than that considered in the corresponding stability agreement.

b) The companies receiving the investment are guaranteed that, while the stability agreement is in force, the Income Tax applicable to them will not be modified, being applied in the same terms and with the same rates, deductions and scales for the calculation of the taxable income contained in the aforementioned agreement.

Note however that, as of January 1st 2022, the income tax rate that was stabilized for companies that received an investment was increased by two points (2%).

3.2. Stability of the regime of free availability of foreign currency:

It implies that the following can be transferred abroad, in freely convertible currencies, without requiring prior authorization from any Peruvian authority, but having complied with the payment of the corresponding taxes by law:

a) The full amount of its capital from investments abroad that are carried out in income-generating economic activities and registered with the Private Investment Promotion Agency (PROINVERSIÓN), including the sale of shares, participations or rights, capital reduction and the partial or total liquidation of companies;

b) The full dividends or proven net profits from its investment, as well as the consideration for the use or enjoyment of assets physically located in the country, registered with PROINVERSIÓN; and

c) The full royalty and consideration for the use and transfer of technology, including any other constituent element of industrial property authorized by the competent national body.

3.3. Stability of the right to free remittance of profits, dividends, capital and other income received:
It implies that profits, dividends, capital and other income received can be transferred abroad without restrictions, in freely convertible currencies, without requiring prior authorization from any Peruvian authority, provided that the corresponding investment has been duly registered with PROINVERSIÓN, and without prejudice to compliance with the corresponding tax obligations.

3.4. Stability of the right to use the most favourable exchange rate found in the foreign exchange market:
This implies that investors cannot be forced to carry out their foreign exchange operations under a regime or mechanism that implies less favourable treatment than that applied to any individual or legal entity for the performance of any kind of foreign exchange operation, according to the following:

a) In the case of conversion of foreign currency into national currency, the investor may sell it to any individual or legal entity at the most favourable purchase exchange rate found in the foreign exchange market at the time of carrying out the exchange operation; and
b) In the case of conversion of national currency into foreign currency, the investor may buy it from any individual or legal entity at the most favourable sale exchange rate found in the foreign exchange market at the time of carrying out the exchange operation.

3.5. Stability of the right to non-discrimination:
National and foreign investors, and the companies in which they participate, enjoy all rights without distinction of any kind, except those provided for in the Political Constitution of Peru.

The right to non-discrimination between investors and companies implies that the State at any of its levels, whether they are entities of the Central Government, Regional or Local Governments, or companies owned by them, must grant them equal treatment, that is, they will have the same rights and obligations, with no exceptions other than those established in the Constitution and those established for reasons of national security.

3.6. In the case of leasing contracts:
The execution of legal stability agreements provides total stability of the tax regime**.**

3.7. Stability of the rules that regulate the regimes for the hiring of workers, in any of their various modalities:
Especially with regard to the regimes contemplated in Legislative Decree No. 728, Law on the Promotion of Employment.

3.8. Stability of export promotion regimes:
This stability includes temporary admission, industrial, commercial and tourist free zones, special treatment zones, and others that may be created in the future.

## 4. Legal stability agreements[2]

Legal stability agreements are instruments through which investment is promoted. These agreements are materialized by signing contracts with the Peruvian State, through which guarantees applicable to investors or recipient companies are stabilized, as appropriate, for the period of validity of these, in accordance with the conditions detailed in Numeral 3 above.

Companies that are incorporated or those already established in Peru with new contributions of foreign capital, in accordance with Article 12 of Legislative Decree No. 662, may enjoy the stability of the personnel hiring regimes, under any modality; and, the stability of special regimes exclusively designed for export such as temporary admission, industrial, commercial and tourist free zones, special treatment zones, and others that may be created in the future.

2 The list of legal stability agreements signed can be found on the PROINVERSIÓN website: https://apps.proinversion.gob.pe/webdoc/convenios/convenios.aspx

4.1. Ultraactivity:

By means of the legal stability agreements, the legal regime in force at the time of the signing of these agreements is exceptionally ultraactivity. This is maintained during the validity of the same and in the matters on which stability was granted.

Ultraactivity implies that, to those who are covered by legal stability agreements, the same legislation that was in force at the time of signing the agreement will continue to apply, without being affected by the modifications that are introduced to it on the matters regulated in the respective agreements and for the period provided for in said agreements (including the repeal of legal norms), whether these are provisions that are less or more favorable.

4.2. Characteristics of legal stability agreements:[3]

The most important characteristics of legal stability agreements are the following:

- They are civil in nature and are governed by the rules of the Civil Code.
- They are entered into between the State, duly represented by PROINVERSIÓN; and investors, or the companies receiving the investments, or the lessees (in the case of financial lease contracts). In the event that two or more investors make investments in the same company, they may enter into stability agreements with the State individually or jointly.
- The guarantees applicable to recipient companies are the stability of the income tax regime, the worker hiring regimes and the export promotion regimes, provided that they are used by the company at the time of requesting them.
- The guarantees applicable to investors are the stability of the right to non-discrimination, the income tax regime applicable to investors, the free availability of foreign currency and the right to free remittance of profits, dividends and capital, applicable to foreign capital.
- At least monetary contributions must be made considering the margins described in Paragraph ii. of Numeral 2.1.a) of this document.
- Contributions may be made considering the assumptions indicated in Numeral 2 of this document, also in investments in companies holding concession contracts.
- As for the term, the provisions of the first paragraph of Numeral 3 of this document apply.
- They can only be modified with the consent of all parties.
- Disputes are resolved through arbitral tribunals, in accordance with the applicable Peruvian legislation on the matter.

## 5. Registration of foreign investment

Investments from abroad that are made in income-generating economic activities, under any of the modalities established in Article 1 of Legislative Decree No. 662, must be registered with PROINVERSION. Said registration guarantees its holder the right to transfer abroad the concepts indicated in Numerals 3.2.b) and 3.2.c) above, in freely convertible currencies, without requiring prior authorization from any Peruvian authority, but having complied with the payment of the corresponding taxes ordained by law.

The procedure for the registration of foreign investment begins with the submission of the application at the PROINVERSIÓN document reception desk, attaching to said application all the requirements demanded by the applicable Peruvian regulations.[4] PROINVERSION has a period of 25 working days to resolve the application for registration and said procedure is subject to positive administrative silence, which implies that, in the event that the aforementioned period elapses without a response from PROINVERSION, it is assumed that the application has been approved.

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3 The PROINVERSIÓN website details the procedure for signing legal stability agreements: https://www.investinperu.pe/es/clima/facilitacion-of-private-investment/legal-stability-agreements

4 The PROINVERSIÓN website lists the requirements for carrying out the aforementioned procedure: foreign-https://www.investinperu.pe/es/clima/inversion-extranjera/registro-de-inversion-extranjera/tramite-ied/registro-de-inversion-extranjera

## II. CORPORATE MATTERS

### 1. Description of most common types of companies: S.A.C., S.A. and S.R.L.

The most common type of companies in Peru are the "Sociedad Anónima (S.A.)", the "Sociedad Anónima Cerrada (S.A.C.)" and the "Sociedad Comercial de Responsabilidad Limitada (S.R.L.)".

The main characteristics of the aforementioned type of companies are described below:

| | "Sociedad Anónima" | "Sociedad Anónima Cerrada" | "Sociedad Comercial de Responsabilidad Limitada" |
|---|---|---|---|
| **Abbreviations** | S.A. | S.A.C. | S.R.L. |
| **Number of shareholders or partners** | From 2 to 750 shareholders. | From 2 to 20 shareholders. | From 2 to 750 partners. |
| **Representation of share capital** | It is divided into shares whose ownership, pledges, agreements that limits their free transfer and others, is recorded in the stock ledger book (private book). | | It is divided into quotas whose ownership, pledges and others are recorded in Public Registry. |
| **Minimum capital** | There is no minimum capital. However, in practice, the minimum capital is the amount determined by the bank chosen to open the account in which the initial share capital is deposited (approximately S/ 1,000.00[5]). In addition, regulation of certain sectors could establish a minimum capital. | | |
| **Transfer of shares or quotas** | There is freedom to transfer shares, however, the bylaws may set limitations. | Shareholders shall apply the right of first refusal. Although, the bylaws may waive the application of the right of first refusal. | The partners must exercise the right of first refusal. The transfer of quotas is formalised in a public deed and registered with the Register of Legal Entities. |
| **Governing bodies** | (i) the General Meeting of Shareholders,<br>(ii) the Board of Directors, and<br>(iii) the General Management. | (i) the General Meeting of Shareholders,<br>(ii) the Board of Directors (optional), and<br>(iii) the General Management. | (i) the General Meeting of Partners, and<br>(ii) the General Management. |
| **Responsibility** | The company's liability is limited to its assets, and the shareholders or partners are not personally liable for the obligations incurred by the company. | | |
| **Legal reserve** | The company is obliged to set aside a minimum of 10% of the distributable profits of each financial year net of income tax, to a legal reserve, until an amount equal to one fifth (20%) of the share capital has been reached. | | Not applicable. |
| **Shareholder's/ Partner's agreement** | Agreements between partners/shareholders and third parties are valid in all types of companies and are enforceable in all aspects concerning the company to the extent the company is duly notified of the existence of such agreement.<br><br>In the event of a conflict between the agreement and the bylaws, the latter shall prevail. | | |
| **Profit sharing** | Profits are distributed among the shareholders/partners in proportion to their equity contributions unless otherwise provided for in the bylaws or unanimously agreed in the general shareholder's/partner's meeting. | | |

2. **Establishing a company**

2.1. Procedure for the incorporation of companies in Peru:

The incorporation process of a company in Peru takes about four (4) weeks, counted from the date on which (i) we receive the power of attorney (as explained in Section a), below) duly legalized or apostilled, and (ii) the final text of the bylaws of the Peruvian company to be incorporated are confirmed to us. In order to incorporate a company in Peru, the following steps must be taken:

a) Power of Attorney: If the founding shareholders/partners were foreign legal entities or a foreign natural person, they must grant powers of attorney to persons residing in Peru so that they can sign the public deed of incorporation. Such power of attorney must be sent in an original copy and apostilled to Peru along with an affidavit of capacity to grant powers of attorney and a certificate of existence in the case of the foreign company.

b) Choice of Company Type: A company type shall be chosen according to Section II.1 of this document.

c) Reservation of the company name: This step is optional and consists of making the reservation of the company name to be incorporated. The reservation is issued for a period of 30 calendar days.

d) Preparation of the minutes of incorporation of the company: The minutes must include the bylaws of the company.

e) Deposit of the initial capital stock: Once the minutes are subscribed by the founders, at least 25% of the nominal value of the shares or quotas must be subscribed and paid in a Peruvian banking institution of the shareholders' or partners' choice.

f) Execution of the public deed and registration of the company before the Public Registry: The minutes of incorporation and the certificate of deposit of the initial capital stock must be presented before a Peruvian Public Notary for the purpose of executing the respective public deed of incorporation and requesting the registration of the incorporation of the company with the Public Registry.

g) Registration in the Single Registry of Taxpayers ("RUC"): Once the company is registered in the Public Registry, the legal representative of the company must apply for the tax ID ("RUC") before the National Superintendence of Customs and Tax Administration (SUNAT).

h) Legalisation of Company Books: The corporate books that the company is obliged to keep (e.g., shareholders' meeting minutes book, board of director's meeting minutes book, stock ledger book, etc.) must be legalised before a Public Notary.

2.2. Branches of foreign companies in Peru:

Branches are secondary establishments through which companies carry out in a place other than their domicile, whose activities are included in their corporate purpose. In this sense, the branch does not have it's own legal personality, since it will always belong to its principal or parent company. This means that the principal or parent company is held liable for the obligations of the branch.

Notwithstanding the above, branches are endowed with permanent legal representation and enjoy management autonomy within the scope of their activities assigned to them by their principal company, in accordance with the powers of attorney granted to their representatives (either when establishing the branch or in a subsequent act).

2.3. Procedure for the establishment of a branch of a foreign company in Peru:

In order to establish a branch of a foreign company in Peru, the following steps must be taken:

a) Preparation of the agreement to establish the branch in Peru: The competent body of the principal company must approve the agreement to establish the branch in Peru, which must be apostilled and sent to Peru.

b) Obtaining documents from the foreign company: In addition to the establishment agreement referred above, the principal company must send to Peru: (i) a certificate of good standing, and (ii) a copy of its articles of association and bylaws or the equivalent instrument in the country of origin. It is important to clarify that neither the principal company's articles of incorporation nor its bylaws prevent it from establishing branches abroad.

c) Execution of the public deed and registration of the branch before the Public Registry: The documents referred in a) and b) above must be presented before a Peruvian Public Notary for the purpose of executing the respective public deed and requesting the registration of the branch before the Public Registries. The registry qualification may take a maximum of 10 business days.

d) Registration in the Single Registry of Taxpayers ("RUC"): Once the branch is registered with the Public Registry, the legal representative of the branch must apply for the tax ID ("RUC") before the National Superintendence of Customs and Tax Administration (SUNAT).

3. **Corporate Governance**

The Superintendency of the Securities Market (SMV) has developed the Code of Good Corporate Governance for Peruvian Companies, which seeks to guide Peruvian companies on the proper implementation of best practices of good corporate governance. These practices include:

a) The implementation of a Regulation of the General Shareholders' Meeting, which regulates the conditions and procedures on the participation and exercise of shareholders' rights.

b) The implementation of a Board of Directors' Regulation, which regulates the policies and procedures for its functioning and organisational structure.

c) The establishment of policies and procedures for carrying out transactions between the company and the related parties.

d) The establishment of information policies for shareholders and third parties.

It is worth mentioning that the adoption of the Code of Good Corporate Governance for Peruvian companies is voluntary.

## III. LABOR MATTERS

1. **Employment Agreements**

1.1. General rule: indefinite term agreements:

The general rule of employment agreements is that subordinate personnel must be hired for an indefinite term (without an expiration date), unless there is some exceptional cause that justifies the temporary relationship with the employees. In other words, the rule is having an indefinite term agreement, and the exception is the temporary agreement.

There is no formality to consolidate this type of agreement, and it can be done verbally or in writing.

1.2. Exception: agreements subject to fixed/determined modality or term:

Peruvian legislation allows fixed term hiring as long as there is an enabling cause established by law. The employer must be able to objectively demonstrate the temporary need to apply a fixed-term agreement. Any of these must be interpreted restrictively and can be classified into three large groups:

1.2.1. Temporary in nature:

- By start or increase of activity: it covers the tasks that are generated by the establishment of new business activities or by the increase in demand for products or services in the market.
- By market needs: it attends unpredictable increases in production due to substantial market variations (e.g. the additional tasks required in the pharmaceutical industry to cover the demand of a determined medicine in the market due to a pandemic).
- For business reconversion: it carries out tasks that are derived from the replacement, extension or modification of the company's business line.

1.2.2. Accidental in nature:

- Occasional: it covers tasks derived from transitory needs other than the ordinary ones in the company.

- Substitution: it attends to the coverage of a position performed by an employee whose employment agreement is suspended.
- Emergency: it attends to tasks derived from needs due to fortuitous events or force majeure.

1.2.3. Work or service:

- For specific work or specific service: to execute a specific and transitory work or service. Therefore, its duration turns out to be the one strictly demanded by the work or service entrusted.
- Intermittent: to cover the needs of a company that, by its nature, are permanent but discontinuous.
- Seasonal: it seeks to meet the needs of the line of business that appears only at certain times of the year.

In this sense, it is essential that the employer is able to determine which hiring modality to use based on the specific need for the work that they wish to satisfy and, more importantly, they must be able to objectively demonstrate the temporary need to apply a certain modality, instead of hiring an employee permanently.

Each modality studied is governed by the common rules provided for temporary agreements but may have specific rules on their duration and evidentiary requirements.

1.3. Hiring of foreign employees:

Hiring of foreign employees in Peru is regulated by the Law for Hiring Foreign Employees and its Regulation. These employees may not constitute more than 20% of the employer's total staff, and their remuneration may not exceed the 30% of the entire payroll. However, employers may request a waiver of these limiting percentages for specific cases.

Employment agreements for foreign employees must necessarily be consolidated in writing and for fixed terms of up to three years, which may be renewed successively for equal periods.

The requirements for a foreign employee to work in Peru are two: (i) they must have an enabling immigration status, meaning a status that allows them to work, and (ii) they must have an employment agreement duly approved by the Labor Authority, with a Peruvian company.

Foreigners from Mercosur member countries are not subject to the mentioned regulations; instead, the general labor regulations that apply to Peruvian employees apply for them.

2. **Minimum working conditions**

2.1. Minimum Living Wage ("RMV"):

Dependent and subordinate employees have the right to receive, at least, the Minimum Living Wage ("RMV") in force, which amounts to S / 1025.00[6]. The RMV may be adjusted periodically by the Government.

In addition, there are a number of social benefits that workers are entitled to receive. The main ones are as follows:

e) **Workload:** The maximum workload in Perú is eight (8) hours per day or forty-eight (48) hours per week. It is possible to establish atypical or cumulative days, as long as the legal maximums are respected.

f) **Weekly rest day and holidays:** Employees have the right to have a duly paid weekly rest day of at least twenty-four (24) continuous hours, and preferably on Sundays. In addition, for the nonworking holidays that are legally established, they must receive their regular pay corresponding to a working day.

g) **People with disabilities:** Employees with disabilities have the right to have reasonable accommodations in their workplace implemented by the employer. Those companies with more than 50 employees, must reserve 3% of its payroll for the employment of people with disabilities.

6 Equivalent to US$ 273.33 considering an exchange of S/ 3.75.

3. **Employment benefits**

In Peru, dependent and subordinate employees are entitled to receive a series of social benefits. The main ones are the following:

a) **Family allowance:** This benefit extends to employees who have minor children; those who have children up to the age of 24, who are pursuing higher education; and those who have children with severe disabilities, unless they receive the Non-Contributory Pension for Severe Disability. This allocation is equivalent to 10% of the RMV, currently amounting to S/ 102.50[7]. Consequently, it can be adjusted periodically when the government updates the RMV value.

b) **Legal bonuses:** In the months of July and December of each year, the employee is entitled to receive an additional monthly remuneration, on occasion of the National Independence Day and Christmas, respectively. In other words, due to the legal bonuses, the employees will receive two additional monthly remunerations.
Additionally, the employer must pay the employee 9% of its value, at each opportunity, if the employee is affiliated to the public health system (EsSalud) or 6.75% if he is affiliated to a service provider entity (EPS).

c) **Compensation for Service Time (CTS):** This benefit provides a contingency fund that allows the employee to face transition in case of unemployment. Only employees who provide minimum services of 4 hours a day are entitled to it.
It is approximately equivalent to an additional monthly salary per year (approximately 8.33% of the employee's total semi-annual remuneration), which is deposited in a bank account in the name of the employee in the month of May and in the month of November of each year.
As a general rule, this amount should be withdrawn by the employee at the time of termination of the employment relationship, however, the employee is allowed to dispose of 100% of the excess of four gross remunerations and the rest at the end of their employment relationship. Exceptionally, the total withdrawal of the fund has been allowed until December 2024.

d) **Vacations:** After completing one year of service, the employee is entitled to thirty (30) calendar days of paid vacation leave.
The law contemplates possibilities of agreement between employer and employee to reduce, advance, accumulate and sell his/her vacation. It also established that the employee must receive a holiday allowance when he/she has not enjoyed his/her vacation rest the following year following in which he/she obtained that right.
The opportunity for taking this benefit is determined by agreement between the parties, but, in the absence of agreement, the employer decides based on the operational needs of the company.

e) **Profits:** Companies that generate third-category income and have more than 20 employees, are obliged to distribute a percentage of their profits among their employees. This percentage is set according to their economic activity, and ranges between 5% and 10% of their annual income before taxes. The calculation method for the distribution is made according to attendance days to work and the remuneration received in the year.
The profit share must be distributed within thirty (30) calendar days after the expiration of the period for filing the Annual Income Tax Affidavit.

f) **Overtime pay:** Overtime work is voluntary, both in its agreement and in its realization. Only employees that are subject to immediate inspection may execute it. Employees non-subject to immediate inspection or management personnel don't perform overtime work.
Overtime work is compensated with substitute rest or payment, and a surcharge of no less than 25% of the regular hourly value for the first two hours, and 35% of the hourly value for the remaining hours.

g) **Legal life insurance:** Every employee has the right to a life insurance at the expense of the employer from the beginning of the employment relationship. Its characteristics are established by law and the premium results from the agreement between the employer and the insurance company.

7 Equivalent to US$ 27.33 considering an exchange of S/ 3.75.

4. **Social contributions, pension contributions and income tax**

In Peru, in order to protect certain employees' rights, the Government has imposed obligations on employers.

4.1. Contributory Social Security in Health Regime (RCSSS):

The Social Security in Health is in charge of EsSalud, the entity responsible for providing coverage to the insured and their beneficiaries through a series of benefits (health, welfare and promotion, economic and human risks). In this case, it's the employer who must make monthly contributions to EsSalud, which amounts to 9% of the gross monthly remuneration of each employee.

Additionally, this insurance can be complemented with health plans provided by the EPS. The EPS are duly accredited institutions that provide health benefits and are subject to the control of the Superintendence of Health Providing Entities. Also, to hire the services of an EPS you must have the decision of the absolute majority of all the employees of the company.

4.2. Pension System:

Currently, there are two pension systems in Perú: the National Pension System (SNP) and the Private Pension System (SPP).

Through the SNP, the State provides retirement, death and disability benefits to its insured. This system is in charge of two institutions: the National Pension Office and the National Superintendence of Tax Collection (basically collection aspects). In the SNP, for those who are compulsory members, the contribution rate amounts to 13% of their monthly remuneration, the contribution is assumed entirely by the employee.

On the other hand, in the SPP, the institutions responsible for providing benefits are the AFPs, which are entities that administer the contributions of their affiliates made on the basis of individual capitalizations and that are under the supervision of the Superintendency of Banking, Insurance and AFP. The benefits provided in the SPP are those of retirement, disability, survival and burial expenses. Under this scheme, the employer is responsible for withholding the amount of contributions in order to declare them and pay them to the AFP. The average retention is approximately 13% depending on the AFP selected by each affiliate.

4.3. Income Tax

It is applicable to all income that comes from work and is borne by the employee; however, it is the obligation of the employer to make both its withholding and its payment to the corresponding entity.

5. **Termination of the employment relationship**

5.1. General grounds for termination of the employment relationship:

Our legislation provides an exhaustive list of grounds that justify the conclusion of employment agreements:

- Employees or employers' death, in the case of the latter being a natural person.
- Voluntary resignation or withdrawal.
- Termination of the work or service, the resolutory condition and compliance with the deadlines provided for the temporary agreement.
- Mutual dissent
- Absolute and permanent disability.
- Retirement.
- Dismissal for just cause (provided for in the norm).
- Termination for objective reasons (termination for objective reasons is the name given to collective dismissal).

5.2. Just cause of dismissal:

The cases that justify dismissal for just cause are included in the Law. These may be related to the capacity, or the employees conduct. However, the causes of dismissal for conduct are the most frequently invoked by employers to resolve employment relationships.

This requires compliance with a pre-established procedure that involves notifying a imputation of charges letter, granting 6 days to the employee to present his/her defenses and, finally, informing about the decision of dismissal, if applicable. In this way, the rights of due process and defense are guaranteed.

5.3. Compensation for arbitrary dismissal:

As a general rule, dismissals must have and objective cause. When this does not happen, or an alleged cause cannot be proven later, or the procedure established by law is not followed, the employee may request compensation for arbitrary dismissal or request the reinstatement to their previous job. These options are non-copulative alternatives.

The amount of compensation is defined by law and is calculated as follows, depending on the type of employment agreement you have:

- Employees with an indefinite agreement: compensation will be paid for arbitrary dismissal, which is equivalent to 1.5 salaries per year of service, with a cap of 12 remunerations. The fraction of the year is counted by twelfths and thirties.
- Employees with temporary agreements: compensation will be paid for arbitrary dismissal, which is equivalent to 1.5 salaries per month missing for the date scheduled for the conclusion of the agreement, with a limit of 12 remunerations.

## 6. Subcontracting of activities

There are two (2) important labor figures that allow certain activities to be subcontracted between companies:

6.1. Labor intermediation:

Agreement by which a company (usually called the "user company") hires another one to highlight its own employees to its workplace, with the aim of executing certain activities in its favor. Although the company providing the intermediation service continues to be the employer of those employees, the user company is empowered to direct and supervise their work, without this situation implying a distortion of the service contract.

The main substantive and formal requirements that our legal system requires for the correct use of labor intermediation are the following ones:

a) Labor intermediation is only permitted when the user company activities are: a) main, but temporary; b) complementary, or, c) highly specialized.
b) The intermediated personnel may not exceed 20% of the total number of employees in the user company. In the case of complementary or highly specialized activities intermediation, the percentage limit does not apply if the third party assumes full technical autonomy and responsibility for the development of its activities.
c) If the user company has its own employees who carry out the same activities as the intermediated employees, the benefits that the user company grants to their employees should be extended to the intermediated employees.
d) The company that provides the intermediation service must grant a letter of guarantee, in the name of the user company or the Ministry of Labor and Employment Promotion (“MTPE”), that guarantees the fulfillment of its labor obligations in favour of its posted employees.
e) The intermediary company must be registered in the National Registry of Companies and Entities that carry out Labor Intermediation activities (“RENEEIL”) throughout the term of the labor intermediation contract.

6.2. Outsourcing of services:

Service outsourcing is a contract by which a company (usually called "user" or "principal") hires another to take charge of a part of its production process or to provide a certain service. For these purposes, the outsourcing company makes use of its own employees, who could be assigned to the work centers of the main company but remaining under the exclusive subordination of the outsourcing company.

The main requirements that our legal system imposes for the correct use of outsourcing services are the following one:

a) The outsourcing company must carry out the agreed activities at its own risk, being responsible for its results.
b) The outsourcing company must have its own financial, technical and material resources.
c) The outsourcing company must keep its employees under its exclusive subordination.
d) Only the outsourcing of the user company activities that are considered as "main activities", but not part of its core business, are allowed. This requirement was incorporated through a regulatory change in 2022 and is currently questioned in judicial and administrative instance, with the aim of removing it from the labor regulations. For the time being, it is not being applied by the administrative authorities – when inspecting outsourcing cases – while waiting for a judicial decision on the matter.

## IV. TAX MATTERS

### 1. Main taxes and their fees

1.1. Direct taxes:

| Summary of the main income taxes | | |
|---|---|---|
| **Corporate income tax** | Name | Income Tax |
| | Rate | 29.5% |
| **Income tax of resident individuals** | Name | Income Tax |
| | Rate | 5% to 30% |
| **Income tax of non-resident individuals and non-resident entities** | Name | Income Tax |
| | Rate | a) General: 30%;<br>b) Dividends: 5%<br>c) Interest: 4.99% or 30%;<br>d) Royalties: 30%. |

1.1.1. Corporate Income Tax:

- Taxable event: The obtaining of income that comes from a durable source and capable of generating periodic income, capital gains and income from third parties.
- Tax Rate: 29.5%
- Basic regulations: Single Harmonized Text approved by Supreme Decree No. 179-2004-EF.

1.1.2. Income Tax for domiciled individuals:

- Taxable event: The obtaining of income from the exploitation of capital, work and the set of both, and the capital gain from certain assets.
- Tax rate: Depending on the type of income, it ranges from 5% to 30%.
- Basic regulations: Single Harmonized Text approved by Supreme Decree No. 179-2004-EF.

1.1.3. Income Tax for non-domiciled taxpayers (individuals and companies):

- Taxable event: Those provided for exhaustively in our legislation, among which are the provision of services in the country, technical assistance paid for or used by a domiciled taxpayer, digital services paid for by a domiciled taxpayer, those from real estate located in the country and those from shares issued by companies domiciled in the country, among others.
- Tax rate: Depending on the type of income, they range from 4.99% to 30%.
- Basic regulations: Single Harmonized Text approved by Supreme Decree No. 179-2004-EF.

1.2. Indirect taxes:

1.2.1. General Sales Tax ("VAT"):

- Taxable event: The sale of movable property located in the country including importation, the provision or use of services in the country, construction contracts and the first sale of real estate made by its builders.
- Tax rate: The applicable rate is 18% (which includes 2% corresponding to the Municipal Promotion Tax).
- Operational: The VAT is determined, declared and paid monthly. The amount to be paid in VAT is determined on the difference between the tax debit, generated by the operations carried out by the company, and the tax credit generated by the acquisitions made. If the result is a higher tax credit, it will be offset against future periods until exhausted. The tax credit can only be offset against the tax debit.
- Recovery: The VAT is recoverable through the tax credit.
- Basic Regulations: Single Harmonized Text approved by Supreme Decree No. 055-99-EF.

1.2.2. Customs Tariff:

- Taxable event: Importation of goods. The obligation arises on the date of numbering of the Customs Declaration of Goods (DAM) of import for consumption.
- Tax rate:
  - General rate: 0%, 4%, 6% or 11% (depending on the commodity and its tariff classification).
  - Exceptions: Peru has signed a significant number of Trade Agreements or Free Trade Agreements that establish reduced rates or exemptions.[8]
- Basic regulations: Legislative Decree No. 1035 approving the General Customs Law; Supreme Decree No. 010-2009-EF approving the Regulations of the General Customs Law; and, Supreme Decree No. 342-2016-EF - which approves the Customs Tariff.

1.2.3. Financial Transaction Tax ("FTT"):

- Taxable event: Among the cases are the following:
  - Credit or debit made in any type of accounts opened in the companies of the Peruvian financial system.
  - The acquisition of cashier's checks, bank certificates, traveler's checks or other financial instruments.
  - The delivery or receipt of own funds or those of third parties that constitute a payment system organized in the country or abroad, without the intervention of a company in the financial system, even when accounts opened in non-domiciled banking or financial companies are used.
- Tax rate: 0.005% on the value of the operation.
- Basic regulations: The Single Harmonized Text has been approved by Supreme Decree No. 150-2007-EF.

1.2.4. Temporary Tax on Net Assets

- Taxable event: the ownership of net assets as of December 31 of each year.
- Tax rate: 0.4% on the excess of S/ 1,000,000.00.[9]
- Basic regulations: Law No. 28424 and its amendments.

1.2.5. Other taxes:

1.2.5.1. Taxes on vehicle and real estate property: In the case of the vehicle property tax, the rate is 1% and is paid only for the first three years after the acquisition of the new vehicles; and, in the case of the real estate property tax, the cumulative progressive rate is 0.2%, 0.6% and 1%.

1.2.5.2. Real estate transfer tax: In the case of real estate transfer tax, the rate is 3% on the higher value between the sale value and the property value of the year of the transfer. All transfers of real estate are subject to taxation, except the first transfer carried out by construction companies, in which case the tax will apply only to the value of the parcel. A deduction of 10 Tax Unit (TU)[10] of the taxable base will apply. The taxpayer is the purchaser.

1.2.5.3. Excise tax: Levied on the sale of certain goods, such as fuel, ethyl alcohol, cigarettes, etc. It works similarly to VAT, and rates vary depending on the product.

8 Peru is currently part of the Customs Union and the Andean Community, has 15 trade agreements in force and 3 about to enter into force.
9 Equivalent to US$ 266,666.67, considering an exchange rate of S/ 3.75.
10 For the year 2024, one tax unit (TU) is equivalent to S/5,150.00 or approximately US$ 1,373.33, considering an exchange rate of S/ 3.75.

1.2.5.4. Contributions to certain regulatory bodies: Depending on the type of activity carried out, contributions may be paid to regulatory bodies in the economic sector, such as telecommunications, radio and television, among others. These contributions are not taxes, but they are tributes. Its rate varies by industry and is usually determined based on the company's revenue.

1.2.5.5. Inheritance tax: There is no Inheritance Tax in Peru.

1.2.5.6. Non-gift tax: In Peru, there is no taxation on gifts made between individuals. However, Income Tax Law determines that certain gifts must be duly documented with the documentation required by Law, otherwise said gifts will be deemed as a non-justified equity increase subject to income tax.

## 2. Some general tax concepts

### 2.1. Interpretation of the tax law:

The Tax Code provides that the interpretation of tax rules uses the general methods of interpretation of the law. Notwithstanding this, cases are usually interpreted according to the case law of the Constitutional Court, the Judiciary, the Tax Court and the Tax Administration or SUNAT (the latter two are administrative offices).

### 2.2. Anti-avoidance rules:

Rule XVI of the Tax Code sets out a global standard to combat avoidance based on two elements: (i) the artificial nature of the transaction and (ii) the presence of the tax motivation to carry out a transaction.

Rule XVI was incorporated into our regulations in July 2012. The substantive difference with the previous anti-avoidance rule (Rule VIII -criterion of economic reality-) is that not only the formal legal aspects are evaluated, but also whether the business structure used is artificial or improper and lacks economic justification.

As of 2018, it was foreseen that the directors of the companies qualify as jointly and severally liable for the tax debts determined in cases where Rule XVI is applicable.

Finally, on 2019 the Regulations required to apply Rule XVI were published. Furthermore, the tax administration has published Catalogues on High-Risk Business Schemes which they consider could be subject to the application of Rule XVI.[11]

### 2.3. Statute of limitations:

The action to demand the payment of the tax obligation and the application of penalties is subject to a 4-year statute of limitations. If the tax return has not been filed, the statute of limitations is 6 years.

In the case of withholding agents, the action to demand the payment of the withheld tax and the application of penalties is subject to a 10-year statute of limitations, when the agent failed to pay the withheld or perceived tax. In practice, these periods are extended for another year, as they begin to be counted the year after the affidavit is filed.

The action to request or carry out the compensation and refund of taxes is subject to a statute of limitations of 4 years.

### 2.4. Sanctions:

The main sanctions, and the most recurrent, are the following:

- Late payment interest: Annual rate of 10.8%. This interest is paid on tax and penalties paid late.
- Fine for declaring incorrect or false data in the determination of the tax: 50% of the omitted tax.
- Failure to make withholdings within the legal periods: 50% of the withholding not made.

The sanction is graduated according to different circumstances, for example, the voluntary recognition of the commission of the infraction.

11 As of the date of this document, the tax authority (SUNAT) has published the third version of its Catalogue of High Risk Business schemes, which can be accessed in the following webpage: 10. Catálogo de Esquemas de Alto Riesgo Fiscal | ORIENTACION (sunat.gob.pe)

As of January 1st, 2024, late payment interests on fines are determined according to the interest rate approved by the Central Reserve Bank.

2.5. Tax crime:

The Legislative Decree No. 813 punishes the basic crime of tax fraud with a prison sentence of not less than five nor more than eight years. The conduct of anyone who, for his own benefit or that of a third party, using any artifice, deception, cunning, trickery or other fraudulent form, fails to pay in whole or in part the taxes established by law, is punished. Likewise, those who conceal goods or income; who registers false liabilities to cancel or reduce the tax to be paid; and who do not deliver to the tax creditor the amount of the withholdings or collections of taxes that have been made, within the period established to do so by the pertinent laws and regulations are sanctioned as having committed tax fraud.

There is no minimum amount for the basic crime of tax fraud to be configured. However, if the fraud is greater than 100 Tax Units (TU), an aggravating circumstance is applied to the penalty; thus, it amounts to between eight and twelve years of deprivation of liberty.

## 3. General rules on international taxation

3.1. Treaties for the avoidance of international double taxation ("DTA"):

There is a total of 9 DTAs in force with the following countries[12]: Decision 57810, Chile, Portugal, Canada, Brazil, the Mexican United States, the Republic of Korea, the Switzerland Confederation and Japan.

3.2. Decision 578, "Regime to Avoid Double Taxation and Prevent Tax Evasion:

Decision 578 is applicable to persons in any of the member countries of the Andean Community, with respect to income and wealth taxes. This decision applies mainly to Bolivia, Colombia, Ecuador and Peru.

Its purpose is to avoid double taxation of the same income or assets at Community level. This shall also apply to the modifications made to the aforementioned taxes and to any other tax which, by reason of its taxable base or taxable matter, is essentially and economically analogous to those mentioned above and which is established by any of the member countries after the aforementioned Decision 578.

Regardless of the nationality or domicile of the persons, income of any nature that is obtained will only be taxable in the member country in which such income has its source of production, except in exceptional cases provided for in Decision 578, such as:

- Real Estate: Country where the real estate is located.
- Business profits: Country where the consideration is registered as an expense.
- Royalties: Country where the intangible asset is used or has the right to be used.
- Dividends: Country where the company that distributes them is domiciled.
- Capital Gain: Country where the goods were located at the time of sale.

3.3. Methods to eliminate double taxation:

The tax paid abroad, in countries with which Peru has a DTA or not, can be used as a credit against the Income Tax payable in Peru with the limit of the tax they would have paid in Peru on the income received.

3.4. Transfer pricing rules:

Perú has adopted the transfer pricing regulations of the Organisation for Economic Co-operation and Development (OECD). As part of the formal obligations, the following must be presented:

12 They can be consulted at: http://www.mef.gob.pe/index.php?option=com_content&view=article&id=302 [10] Andean Community of Nations / Decision 578, includes Ecuador and Bolivia.

- The informative affidavit (Local Report), if the operations exceed S/ 10,580,000.00.[13]
- The informative affidavit (Master Report), if the operations exceed S/ 92,000,000.00.[14]
- The informative affidavit (Country by Country Report), if the company is part of a multinational group.

3.5. CFC Standards – International Tax Transparency:

Since 2013, the "CFC Rules" were included in the national regulations. Thus, those taxpayers domiciled in the country and who are taxed on their foreign-source income, who are owners of controlled entities not domiciled, are subject to these rules.

## 4. Main taxes during the life of a company

4.1. Corporate or business tax:

a) Tax rate:

The tax rate is 29.5%.

b) Taxable base:

Entities domiciled in Peru (companies incorporated in Peru) are taxed on their worldwide source income, i.e., income obtained in Peru and abroad. In the case of branches, they are only taxed on their income from Peruvian sources and must pay the Income Tax applicable to dividends on their annual income, whether they distribute these amounts.

The fiscal year coincides with the calendar year. The taxable base is net income (income minus expenses). The criterion for the recognition of income and expenses is accrual. As of the 2019 financial year, the accrual is defined in the tax law, so you should not follow exclusively the accounting rules.

c) Filing and method of payment:

The payment of the Tax is annual, filing the Annual Tax Return before March 31 of the year following the end of the year. However, monthly advance payments must be made, which are called "advanced payments." The thirteenth payment is called the regularization payment, as it corresponds to the Annual Tax Return, with the advance payments being charged against the annual tax. If the advances were in excess, the refund can be requested or offset in the following year and, if they were in default, the balance is paid.
Companies domiciled in Peru are not subject to withholding of their taxes, with exceptions.

d) General requirements for the deductibility of expenses:

The main requirement to consider an expense as deductible is that it complies with the causality principle, in addition the expense must be proportional to the income of the companies and reasonable in terms of its area of activities. As formal requirements, they must be supported by receipts of payment.

Exceptionally, expenses destined to unidentifiable purposes, that is, when there is no documentation to support them, determine that an additional fee of 4.1% must be paid, as it is presumed that there is an indirect distribution in favour of the shareholders.

e) Special limitations and prohibitions on certain expenses:

There are expenses whose deduction is limited and expenses whose deduction is prohibited for the determination of the tax:

| Examples of limited expenses | Examples of prohibited expenses |
|---|---|
| Representation expenses: only for the amount that does not exceed 0.5% of net income, with a maximum limit of 40 TU. This item does not include advertising expenses. | Expenses related to tax havens, except insurance, assignment of use of ships or aircraft, credits, right of passage through Panama, among others. |

13 Equivalent to US$ 2,821,333.33, considering an exchange rate of S/ 3.75.
14 Equivalent to US$ 24,533,333.33, considering an exchange rate of S/ 3.75.

| | |
|---|---|
| Board of directors' allowances: only for the amount that exceeds 6% of the commercial profit (profit plus allowances). | Administrative fines paid to the Peruvian public sector, expenses without documentary support (receipts of payment and others). |
| Undercapitalization: Accrued interest on loans from related or unrelated parties.<br>Until 2020, the limit is that it does not exceed 3 times the company's equity. The company's equity considered for this purpose is at the end of the previous financial year.<br>As of 2021, the limit is 30% of tax EBITDA. Excess interest that is not deductible may be offset for up to the following four years. | Intangibles assets of unlimited duration, income tax assumed from third parties, among others. |

Taxpayers who make expenses in scientific research, development and technological innovation projects, linked or not to the company's line of business, who meet the established requirements, can access a deduction of up to 240% or 190% of said expense in the event that the project is carried out directly by the taxpayer or through scientific research centers domiciled in Peru, and 190% or 160% in the event that the project is carried out through scientific research centers for technological development or innovation that are not domiciled in the country. The maximum and minimum benefits also depend on whether the taxpayer generates more than 2300 Tax Units (TU) of net income in the year.

f) Use of tax losses or offsetting of negative tax bases

Companies domiciled in the country can offset their tax losses under two methods:

- Method A: Offset the amount of the loss for 4 consecutive years. The loss will be offset against the full net income. At the end of the 4-year period, if the full amount of the loss is not compensated, the right to continue offsetting it is lost.
- Method B: Offset the amount of the loss indefinitely and against 50% of the net income obtained by the company.

g) Fiscal consolidation

There is no fiscal consolidation in Peru.

5. **Third-party tax withholdings to be made by the company**

5.1. Withholdings for payment to dependent and independent resident workers:

Employers are obliged to withhold Income Tax according to the following detail:

- Dependent workers: The withholding is monthly, and the exact amount of Income Tax must be calculated. The worker is not required to submit regularization tax returns, with exceptions.
- Independent: The withholding is 8% on the income received. The independent worker must submit their regularization tax return.

Dependent and Independent workers cannot deduct expenses effectively incurred; they only deduct a universal expense of 7 Tax Units (TU). The excess is taxed at the following cumulative progressive rates:

| Net income from work and income from foreign sources | Rate |
|---|---|
| Up to 5 Tax Units (TU) | 8 % |
| More than 5 Tax Units (TU)up to 20 Tax Units (TU) | 14 % |
| More than 20 Tax Units (TU) up to 35 Tax Units (TU) | 17 % |
| More than 35 Tax Units (TU) up to 45 Tax Units (TU) | 20 % |
| More than 45 Tax Units (TU) | 30 % |

Additionally, a deduction of up to 3 Tax Units (TU) can be made for the following concepts:

- Lease and/or sublease intended for living or housing and business jointly up to 30%.
- Fees for doctors and dentists.
- Independent services for a deductible amount up to 30%.
- Contributions to ESSALUD (social security) by domestic workers.
- The amounts paid for accommodation and consumption in restaurants up to 15%.

5.2. Tax withholdings for payments to non-residents:

Non-domiciled taxpayers are taxed only on their income from Peruvian sources. The Income Tax Law establishes a restrictive list of which activities generate income from Peruvian sources. Taxable income is equal to gross income. In the case of the sale of goods, the gross rent is the difference between the price and the cost. To prove the cost, non-domiciled taxpayers must follow a procedure before the tax authority (SUNAT), so that it recognizes the cost invested. In the procedure, the existence of the investment, the title under which it was obtained and that the price was paid using the Peruvian financial system must be proved.

Exceptionally, as of 2023, the price can be paid without using the Peruvian financial system in some scenarios without losing the right to deduct the associated expense or tax basis.

The tax rate varies according to the type of income, with the general rate being 30%, and according to the type of beneficiary (individual or company).

The general rule is that the tax is paid to the treasury by the payer of the income, who acts as a withholding agent and is jointly and severally liable for the payment of the tax. The withholding is made when the consideration is paid to the non-domiciled taxpayer. Similarly, the payer of said income may only deduct the expense or recognize the related cost when he complies with paying the consideration, even if the accrual has occurred in a different year.

Below, we include a small table with the main activities and their corresponding rate, considering a beneficiary company or entity:

| **Type of income** | **Rate** |
|---|---|
| Interest from external credits, provided that it complies with (i) entering through the Peruvian financial system, (ii) that it does not exceed the SOFR rate plus 7 points, (iii) that it is used for the taxed activity, and (iv) that it is not financing between economically related parties. | 4,99 %. |
| Income derived from the rental of ships and aircraft. | 10 %. In this case, the income net is equal to the 80% of gross revenue. |
| Income from royalties. | 30 %. |
| Dividends and other forms of distribution of profits received from the legal entities referred to in the Income Tax Law. | 5% |
| Technical assistance: the local user must obtain and submit before SUNAT a report from an audit firm certifying that the technical assistance has been effectively provided, provided that the total consideration for the technical assistance services included in the same contract, considering any extensions or modifications, exceeds 140 TU in force at the time of its execution; otherwise, a 30% rate will apply. | 15 % |

| | |
|---|---|
| Live shows performed by non-domiciled performers. | 15 %. All expenses assumed by the contracting party are considered as part of the income. |
| Income from the sale of securities carried out within the country. The sale is considered to take place in the country when the securities are registered in the Public Registry of the Securities Market of the Securities Market Superintendence (SMV) and are traded through the Stock Exchange. | 5 %. |
| Other income. This includes the indirect transfer of shares, provided that the requirements for the transfer to be made within the country are not met. | 30% |

5.3. Sales and Transfer Taxes on Company Assets

VAT is a tax levied on the value added in each transaction carried out in the different stages of the economic cycle. The applicable rate is 18% (which includes 2% corresponding to the Municipal Promotion Tax).

VAT Law contains a series of exemptions. Among the main ones we have the following: the import of certain goods and the export of certain services, the transfer of goods that is made because of the reorganization of companies, and the transfer of used goods carried out by individuals or legal entities who do not carry out a business activity. The following are subject to the tax:

- The taxpayer, who is the one who carries out the taxed activity, i.e. the one who sells goods, provides services, imports affected goods, etc.
- The liable party, which is the individual or legal entity who, without having the status of taxpayer, must comply with the obligation to pay the tax.
- The VAT paid on the acquisition of goods and services entitles you to the use of VAT tax credit. The determination is monthly. In the case of taxpayers who export goods or services, the tax credit not applied against their VAT Debit can be applied against other taxes or refunded.

5.4. Other relevant taxes

5.4.1 Temporary Tax on Net Assets ("TTNA" or "ITAN")

- Description: The ITAN is a wealth tax that is applied to the value of the net assets of a legal entity as of December 31 of the previous year as a manifestation of taxable capacity. The obligation arises on January 1 of each year and is filed and paid on April of each year. Payment can be made in a single instalment or in nine equal instalments (April to December). While it was passed as a temporary tax, it has now become permanent.
  All companies domiciled in Peru, subject to the general income tax regime, that have started operations prior to January 1 of the current taxable year, including branches, agencies and other permanent establishments of non-domiciled companies, are considered taxpayers.
- Tax rate: The applicable rate is 0% up to S/ 1,000,000.00[15] on the historical value of the company's net assets, after which a 0.4% tax rate applies on any excess value, according to the balance sheet closed on December 31 of each taxable year.
- It is not a final tax: It can be used as a credit against advance payments and regularization of Income Tax, or its refund can be requested.

15 Equivalent to US$ 266,666.67, considering an exchange rate of S/ 3.75.

5.4.2 Financial Transaction Tax ("FTT")

- Description: The FTT taxes some of the operations in national or foreign currency for any deposit or outflow (credit or debit) of money in the accounts opened in companies of the Peruvian Financial System, and the operations that transmit payments of money regardless of the means used. There are exceptions.
  The obligation arises when crediting or debiting the bank accounts. The taxpayers of the tax are the holders of the accounts opened in the companies of the Peruvian Financial System that carry out operations affected by the tax. Withholding agents are liable for the tax as withholding agents, such as companies in the Financial System, among others.
- Tax Rate: The applicable rate is 0.005% of the value of the affected transaction.

## 6. Foreign investment

6.1. Investors resident in tax havens or subject to Preferential Tax Regimes (PTR):

For a tax haven to invest in the country there are no special requirements, but the expenses or costs generated by operations with tax havens are not deductible in Peru. In addition, it is necessary to comply with transfer pricing rules whenever a party domiciled in a tax haven is involved.

The Income Tax Regulations provides an exhaustive list of countries or territories considered as tax havens. However, the regulations also provide a description of characteristics that may determine that a taxpayer, while not domiciled in a tax haven, is subject to a PTR. The same consequences applicable to taxpayers domiciled in a tax haven apply to taxpayers subject to a preferential tax regime.

6.2. Current Investment Benefits:

a) Signing of a legal stability agreement:

The Income Tax regime of the operating company, in force at the time of signing the stability agreement, and the regime for the distribution of dividends to the investor are stabilized, among others. The requirement is to contribute an amount of no less than US$ 10,000,000.00, for projects in the mining and hydrocarbons sectors; and US$ 5,000,000.00, for other economic activities. There are exceptions for certain sectors.

b) Signing of an investment contract:

This allows the VAT paid during the pre-operational stage of a company to be recovered in advance. The requirement is to have a project that involves an investment of more than US$ 5,000,000.00 and that the pre-operational stage lasts a minimum of 24 months. There are exceptions for certain sectors.

On the other hand, there is also the possibility of a definitive VAT refund (valid until December 31, 2027) for holders of mining concessions and those who sign hydrocarbon contracts that are in the exploration phase.

In either of the two cases indicated, the accreditation of the investment (demonstrating the entry of money into the country and capitalizations, if necessary) must be made before PROINVERSIÓN. This State entity depends on the Presidency of the Republic and its purpose is to establish a channel of communication between investors and the State, to promote investments in the country.

## 7. Procedures before the authority to materialize the investment

No special requirements must be followed to prove investment in Peru. It will only be necessary to register with the tax authority (SUNAT) if activities begin to be carried out in Peru and as long as it is directly by the non-domiciled. If the non-domiciled person only appears as a shareholder or participant, he is not obliged to register with SUNAT, but the vehicle he uses is.

7.1. Legalization of documents issued abroad:

Peru is a party to the Hague Convention.

8. **Investment vehicle financing**

8.1. Capital:

a) General aspects:

There are no specific limitations or minimum amount of share capital. To formalize the capital contribution, it is necessary to have an agreement of incorporation or capital increase, which must be registered in the Public Registries of Legal Entities.

b) Capital contribution:

The contributions of money in the capital of a company incorporated in the country do not entail any tax consequences.

c) Remittance of dividends:

i. Remittance of dividends to non-domiciled shareholders and domiciled natural persons:

Dividends or any other type of distribution of profits received by shareholders who qualify as non-domiciled in the country (natural person or legal entity) or as a natural person domiciled in Peru are subject to Income Tax on the amount distributed. with a rate of 5%.

ii. Remittance of dividends to domiciled legal entities:

Dividends paid to legal entities domiciled in the country are not subject to Income Tax. Therefore, if a foreign investor controls a company incorporated in the country through a holding company domiciled in the country, the dividends will be taxed with Income Tax only when the holding company domiciled in Peru distributes the dividends to the foreign investor.

The taxpayer of Income Tax is the beneficiary of the dividends. However, the company that makes the distribution of profits is a withholding agent. The withholding or the creation of the withholding agent's obligation to advance the amount of the withholding tax arises at the time the distribution is agreed (adoption of the agreement) or when the dividends are made available in cash or in kind (whichever occurs first).

8.2. Debt

a) Placement and payment of capital:

No tax effects are generated, except for the obligation to assume the FTT in the event that the capital is deposited, and subsequently debited in an account opened in an entity of the financial system.

b) Interest paid in favour of an economically related party:

It is understood that there is an economic group or economic link when, among other situations, a legal entity owns, directly or indirectly, more than 30% of the share capital of another legal entity.

In this sense, the determination of the value of the transactions between them must be carried out taking into account the transfer pricing rules. Therefore, the agreed interest must correspond to the market value set in accordance with transfer pricing rules. Since the lender and borrower are related parties, a Technical Transfer Pricing Study may be necessary to verify that the interest has been agreed in accordance with the market value.

i. Implications for the non-domiciled related creditor:

Interest paid in favour of a shareholder, a non-domiciled legal entity, constitutes income from Peruvian sources affected by the withholding of Income Tax at the rate of 30%, as they are loans between economically linked parties.

The requirements for the application of a reduced rate refer to (i), in the case of cash loans, that the entry of foreign currency into the country is accredited, (ii) that it does not accrue an annual interest on the rebate (including any additional expense or commission) greater than the SOFR rate plus 7 points, (iii) that it is used for the taxed activity and (iv) that it is not financing between related parties. If the parties are not related, a withholding rate of 4.99% could be applied on interest not to exceed the SOFR rate plus 7 points.

These interests are subject to VAT for the use of services in the country, unless the creditor is a non-domiciled banking and financial entity.

ii. Implications for the domiciled linked creditor:

Interest generated by loans granted to a legal entity incorporated in the country by another company domiciled in Peru are taxed, as part of its net income, at a rate of 29.5%.
These interests are subject to VAT, unless the creditor is a domiciled bank and financial institution.

iii. Implications for the related creditor domiciled natural persons:

Interest generated by loans granted to a legal entity incorporated in the country by an individual domiciled in Peru is taxed at an effective rate of 5% as part of its capital income.
These interests are not taxed with VAT.

iv. Implications for the debtor:

Interest will constitute a deductible expense for the purposes of determining the debtor's Income Tax provided that the loan is directly related to the acquisition of assets or, in general, to the generation of taxable income. Interest on indebtedness that exceeds 3 times the debtor's initial net worth (in force until December 31, 2020) may not be deducted as an expense. From 2021, interest exceeding 30% of the EBITDA of the previous year may not be deducted, but excess interest may be offset in the following 4 periods.

Interest on indebtedness that exceeds the maximum limit referred to is not deductible as an expense for the purposes of determining the debtor's Income Tax (without prejudice to the fact that such interest will be computed as income affected by related creditors).

On the other hand, the debtor may choose to assume the Income Tax charged to non-domiciled legal entities corresponding to interest. Said assumed Income Tax may also be deducted as an expense for the purpose of determining the Income Tax payable by the debtor. This assumption must be expressly contemplated in the loan agreement.

As a general rule, the interest must be supported by the respective receipt of payment.

## 9. Disinvestment

9.1. Capital reductions and refunds of contributions to shareholders:

The partial or full refund of the monetary contributions made does not generate tax effects. However, in the event that the amount refunded is higher than the nominal value of the shares issued in its favour – plus the capital premium if any – the surplus will be treated as a distribution of dividends subject to Income Tax.

A capital reduction will also be considered as a dividend distribution for an amount equal to undistributed profits, premiums, reserves, provided that:

a) They were capitalized prior to the capital reduction, unless the capitalization was destined to cover losses; or,
b) Exist when the capital reduction is approved. If after the capital reduction, the existing profits, premiums or reserves are distributed, this distribution will not be taxed. Moreover, if these are capitalized, the subsequent capital reduction of this amount will not be considered as a dividend distribution.

9.2. Capital gains from direct sale of shares:

In relation to the Peruvian tax treatment of the sale of shares issued by a legal entity incorporated in the country, by a legal entity incorporated abroad, we must state the following:

a) Source of income:

The income obtained from the sale of shares is considered income from a Peruvian source taxed with Income Tax because it is income originated in the sale of shares issued by a company incorporated in the country.

b) Tax regime:

Non-domiciled legal entities must pay an Income Tax amounting to a rate of 30% applicable on the capital gain obtained on the sale of the shares, that is, on the difference between the sale price and the tax basis of said shares.

The Income Tax rate of 30% is applicable when the income comes from the sale of securities made outside the country, as the shares that are sold are not registered in the Public Registry of the Securities Market of the SMV or because such shares have been traded outside a centralized trading mechanism in Peru. If these two requirements are met, the rate is 5% and not 30%.

However, in order for the non-domiciled, selling legal entity to be taxed by applying the rate of 30%, or 5% of the income tax on the capital gain obtained on the sale of the shares, it is necessary for them to obtain a Certificate of Recovery of Invested Capital issued by the tax authority (SUNAT), through which it can substantiate the tax basis of the shares it intends to dispose of.

For these purposes, the tax authority (SUNAT) has a period of 30 business days from the submission of the application to issue the Certificate of Recovery of Invested Capital. If this period has expired without the tax authority (SUNAT) ruling on the application, the certification will be understood to have been granted in the terms presented by the applicant.

On the other hand, we must point out that, if the certificate is requested before the sale of the shares, it will be valid for 45 calendar days from its issuance, if, on the date of sale, the tax basis of the shares does not change. In addition, the transferor and purchaser of the shares must notify the tax authority (SUNAT) of the date of sale of the securities within 30 days carrying it out.

In addition to the above, the capital invested may not be deducted with respect to those payments of the price that were made prior to the issuance of the certificate. In this case, an Income Tax equivalent to 30% on the full amount of the payments made before the issuance of the certificate.

c) Payment method:

We must point out that, if the payer of the income is a non-domiciled taxpayer, the non-domiciled seller is obliged to pay directly to the tax authority (SUNAT) the Income Tax levied on the capital gain. This payment will be made definitively within 12 working days of the month following receipt of the rent.

Joint and several liability has been established for the legal entity issuing the shares, under certain specific assumptions.

9.3. Capital gains from indirect transfer of shares:

a) General explanation:

The gain generated by this operation is taxed with Income Tax, and said gain is considered to be of Peruvian source despite the fact that the shares that are sold were issued by a foreign entity. The Income Tax rate is the same as that provided for the direct transfer of shares.

b) Taxable event:

Among other cases, an indirect transfer is considered to exist when, in any of the twelve months prior to the sale, the market value of the shares issued by the legal entity domiciled in Peru is equivalent to 50% or more of the market value of all the shares issued by the non-domiciled legal entity (the percentage is determined according to certain requirements), and in any period of twelve months, shares representing 10% or more of the capital of the foreign company are disposed of.

If the shares to be sold correspond to a legal entity resident in a country or territory with low or no taxation, it is presumed that there is an indirect transfer, unless proven otherwise.

Joint and several liability of the legal entity issuing the shares has been established under certain specific cases.

As in the direct transfer of shares, it is required to obtain the Certificate of Recovery of Invested Capital before SUNAT.

## 10. Business restructuring

10.1. Tax neutrality rules in business reorganizations: mergers and spin-offs:

There is fiscal neutrality of Income Tax and VAT in mergers and spin-offs, under the requirements that will be mentioned.

10.1.1. Mergers:

a) From a tax perspective, a merger is considered a neutral act, since in principle it does not generate profits taxed with Income Tax or VAT. There is only an Alcabala Tax in the case of a transfer of real estate.

b) Likewise, the FTT would be applicable to the extent that there are money transfers that occur as a result of the integration of the participating companies through the merger procedure.

c) It is worth mentioning that, in the merger by absorption, both the balances in favour of Income Tax and the VAT tax credit are transferred in full to the absorbing company.

d) As a general rule, the "gain" resulting from the revaluation of the assets of the companies involved in the merger is not affected by Income Tax if the merger is neutral from a tax point of view.

e) However, exceptionally, taxpayers may choose to carry out a revaluation with tax effects, in which case the "gain" generated will be subject to Income Tax.[16] This option allows the tax basis of the transferred assets in the merger to be modified (step-up).

f) The absorbing company cannot offset the tax losses of the absorbed company. Likewise, in the event that the absorbing company has tax losses, it may not offset an amount greater than 100% of the value of its fixed assets (after deduction of accumulated depreciation) before the reorganization, against the corporate income generated after the reorganization, without taking into account the voluntary revaluation mentioned in the previous paragraph.

g) The merger agreement must be communicated to the tax authority (SUNAT), within ten business days following its entry into force. Failure to do so will determine that the merger will have tax effects on the date of execution of the public deed.

10.1.2. Spin-offs:

a) Similar provisions provided for mergers are applicable.

b) However, it should be noted that when an equity block is spin off and transferred to another company (NewCo) at its carrying value without revaluation, at the same tax cost and with the same useful life as the assets had in the company being spin off, if more than 50% of the shares of NewCo received by the shareholders of the spin-off entity are transferred, amortized or cancelled before the end of the taxable year following the effective date of the spin-off, NewCo must pay Income Tax (at the rate of 29.5%) levied on the difference between the market value of the assets transferred through the spin-off and their tax basis. This is without prejudice to the tax to be paid by NewCo shareholders who sell their shares, in accordance with the general rules.

c) In this way, a time limit has been established that implies that if the spin-off comes into force, for example, in Jule 2024, the shares in the NewCo that receives the assets cannot be sold until January 2026; if they are sold before this, the transfer of assets by spin-off may be taxed, at the expense of the acquirer (NewCo), considering as profit the difference between the market value of the assets and their tax cost.

d) The spin-off does not achieve an increase in the tax basis of the shares, provided that no revaluation takes place.

10.1.3. Exchanges of shares in mergers and spin-offs:

In the case of shares or units received as a result of mergers or spin-offs, their computable cost will be that resulting from dividing the total cost of the taxpayer's shares or units that are cancelled as a result of the reorganization, by the total number of shares or participations that the taxpayer receives (neutrality is maintained in the computable cost of the shares received in the exchange ratio as a result of mergers or spin-offs).

10.2. Contributions of assets:

The contribution of assets, located or used economically in the country, is considered a transfer taxed with Income Tax and VAT (if it is movable property). The Alcabala Tax will be applied if it involves the transfer of real estate. Such a transaction does not enjoy fiscal neutrality.

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16 Numeral 1 of Article 104 of the Income Tax Law.

# PUERTO RICO


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Puerto Rico is part of the United States. U.S. Federal Laws are applicable in Puerto Rico unless "locally inapplicable" pursuant to the Federal Reactions Act. As such, when doing business in Puerto Rico U.S. Federal laws should be considered as also applicable to Puerto Rico, although there may be additional local statutes and regulations. For the purposes of this document, we will only discuss local Puerto Rico laws.

## 1. FOREIGN INVESTMENT AND TRADE

Since Puerto Rico is a United States territory, its foreign trade is governed by several federal regulations and laws. However, throughout the years the Government of Puerto Rico has encouraged foreign trade and investment by establishing financial and tax incentives that also promote the creation of local jobs.

Furthermore, there are local laws that create entities to promote foreign investment on the Island, such as the "Puerto Rico Trade and Export Program Act" that created the Puerto Rico Export & Commerce Program ("PCE", for its Spanish acronym) of the Department of Economic Development and Commerce, a governmental entity that establishes public policy regarding the development of trade, with emphasis on small and medium-sized companies, and provides informational programs, counseling, and direct services to companies or individuals dedicated in Puerto Rico to local and international commerce.

Through local incentives legislation, Puerto Rico has for a long time provided incentives to stimulate investment and job creation in Puerto Rico. Act 60-2019, known as the Incentives Code of Puerto Rico ("Incentives Code") consolidates incentives granted for various incentivized activities throughout the decades, such as manufacturing activities and export services activities, with the purpose of promoting economic development. The type of incentivized activities under the Incentives Code are the following: (i) manufacturing activities, (ii) export services, (iii) financial and insurance activities, (iv) tourism related activities, (v) creative industries (e.g., film), (vi) research and development activities, (vii) agriculture, among others. This statute is further discussed in the Tax section of this document.

## 2. CORPORATE MATTERS

Corporate law in Puerto Rico is regulated by Act No. 164 of 2009, also known as "General Corporations Law", which is intended to be similar to Delaware's General Corporations Act.

Foreign companies and individual investors can conduct business in Puerto Rico. The Secretary of State of Puerto Rico is responsible for administering the public registry of local entities and foreign entities authorized to do business in Puerto Rico, and local registration is currently done online through a very straightforward process.

**Corporations**

Any natural person with legal capacity or any juridical person, alone or jointly with others, may form a corporation. A corporation has legal capacity separate from its members. In order to become a member of a corporation you need to acquire or purchase shares of capital stock. There are five types of corporations in Puerto Rico: (1) Domestic corporations; (2) Foreign corporations; (3) for-profit corporations; (4) non-profit corporations; and (5) social benefit corporations. Every corporation must have a set of bylaws which details the elements of governance.

Every corporation shall have a certificate of formation and maintain in Puerto Rico a registered office and a resident agent. All corporations are required to file an annual report and pay a fee on or before April 15 of each year. Failure to file the report or pay the fee could result in the imposition of penalties.

When a corporation is created pursuant to this statute, it shall have power to: (i) sue and be sued under its corporate name; (ii) buy, own, lease or rent real or personal property; (iii) appoint officers and agents; (iv) adopt, amend and repeal corporate bylaws among other powers.

**Limited liability company**
A limited liability company may be created by one (1) or more persons through an organization's certificate. Unlike corporations, the members of a limited liability company execute a Limited Liability Company Agreement.

Every limited liability company shall have a certificate of formation and maintain in Puerto Rico a registered office and a resident agent. Limited liability companies are required to pay an annual fee on or before April 15 of each year. Failure to pay the fee could result in the imposition of penalties.

A non-U.S. entity may be naturalized as a limited liability company in Puerto Rico by filing with the Secretary of State a certificate of naturalization and certificate of organization issued by one or more authorized persons.

Any corporation organized under the laws of the Commonwealth or under a jurisdiction outside of the U.S may merge or consolidate with one or more limited liability companies organized in any other state of the United States.

**Partnerships**
Commercial enterprises in Puerto Rico may also organize in the form of a partnership. There are two types of commercial partnerships: general partnerships and limited partnerships. Such partnerships are legal entities entitled to execute valid and binding contracts. Commercial partnerships in Puerto Rico must meet certain formal requirements such as being executed in deed form and must be registered with the Mercantile Registry. Commercial partnerships are passthrough entities. Hence, their income is taxed at the partner level.

**Limited Liability Partnerships**
A Limited Liability Partnership (LLP) is a type of partnership that has certain characteristics of a corporation. Similar to the case of commercial partnerships in Puerto Rico, an LLP organized in Puerto Rico must be executed in deed form by two or more natural persons. Professionals requiring a license in Puerto Rico to practice as such may join as partners in an LLP to practice their profession. LLPs are similar to a corporation in the registration requirement and limited liability. However, such entities differ in that they are pass-through entities for income tax purposes. LLPs are required to register with the Puerto Rico Department of State and renew their registration annually.

These topics are further discussed in the Tax Section.

## 4. LABOR MATTERS

### I. INTRODUCTION

Although in Puerto Rico most federal employment laws apply, Puerto Rico has adopted multiples laws that are more beneficial and has transformed our jurisdiction into one considered employee friendly. What follows is an overview of the most relevant labor and employment laws applicable in Puerto Rico. It includes details on wage and hour regulations, employment contracts, employee rights, leave policies, discrimination laws, and more.

### II. GENERAL OVERVIEW OF THE MOST RELEVANT LABOR AND EMPLOYMENT LAWS APPLICABLE IN PUERTO RICO

**1. Non-Exempt Employees**

(a) Wage and Hour: minimum wage, overtime, working hours

Employers in Puerto Rico must adhere to both the federal Fair Labor Standards Act (FLSA) and local wage and hour legislation. This dual compliance ensures that employees receive the highest benefits available under either federal or local laws. The FLSA covers a wide range of employment standards, including minimum wage, overtime pay, recordkeeping, among others. Puerto Rico's labor laws supplement these federal protections with additional and more beneficial provisions specific to the jurisdiction.

Under Puerto Rico Law, wages must be paid at intervals not exceeding fifteen days. The current minimum wage for non-exempt employees in Puerto Rico is $9.50 per hour. However, it is set to increase to $10.50 per hour starting on July 1, 2024, unless it is changed by the Minimum Wage Review Board by issuing a decree.

Regular working hours for non-exempt employees are defined as eight (8) hours per day and forty (40) hours per week. Any work performed beyond these limits is considered overtime. Daily overtime must be compensated at a minimum rate of one and a half times the employee's regular hourly rate. However, if a mandatory decree, collective bargaining agreement, or individual employment contract stipulates a higher rate, such as double time, the higher rate must be applied. Employers should be meticulous in tracking hours worked and overtime to ensure compliance and avoid disputes.

In order to provide flexibility for non-exempt employees in Puerto Rico, applicable legislation allows the establishment of alternate weekly schedules through mutual agreement between the employer and the employee. This arrangement allows for the completion of a forty-hour (40) workweek with daily shifts of up to ten (10) hours. If the employee works more than ten (10) hours in a day, any additional hours must be compensated as overtime. This type of schedule is voluntary and must be documented in writing. Either party can terminate the agreement after one (1) year.

Additionally, Puerto Rico Laws establish that every non-exempt employee is entitled to a weekly rest period of at least twenty-four (24) consecutive hours for every six (6) consecutive days of work. Work performed on the designated rest day must be compensated at a higher rate, which is double the regular rate for employees hired before January 26, 2017, and time and a half for those hired after that date.

(b) Meal Periods

Non-exempt employees are entitled to a one (1) hour meal period, which must commence after the conclusion of the second consecutive hour of work and before the beginning of the sixth consecutive hour of work. Employers are prohibited from requiring or allowing employees to work more than five (5) consecutive hours without a meal period. For shifts exceeding ten (10) hours, a second meal period is mandatory unless the total work period is no longer than twelve (12) hours and the employee voluntarily waives the second meal period. Written agreements are necessary to reduce the meal period to a minimum of thirty (30) minutes. Work done during the meal period must be paid at double the regular rate of pay for those employees hired before January 26, 2017, and time and a half the regular rate of pay for those employees hired on or after January 26, 2017.

(c) Vacation and Sick Leave

Puerto Rico Law provides for statutory vacation and sick leave entitlements for non-exempt employees and outside sales representatives based on the date of hire and the employee's years of service. For employees hired before the 2017 Labor Reform was enacted on January 26, 2017, covered employees accrued vacation leave at a rate of one and one fourth full working days and sick leave at a rate of one full workday, for each month during which they have worked at least one hundred fifteen (115) hours. The Labor Reform maintained the same accruals for those employees hired before January 26, 2017, but allows employers to require employees to work at least one hundred thirty (130) hours during the month in order to be entitled to such benefits. According to the Labor Reform, covered employees hired on or after January 26, 2017 accrue vacation leave at the following rates: half a day per month in the first year, three-fourths of a day per month from the second to the fifth year, one day per month from the sixth to the fifteenth year, and one and a quarter days per month for those with over fifteen years of service. Sick leave accrues at the rate of one day per month, provided the employee has worked at least one hundred thirty (130) hours in that month.

**2. All Employees**

(a) Hiring and termination

Pre-employment screening, including background checks, is permissible under Puerto Rico law, provided it complies with the Fair Credit Reporting Act.

Puerto Rico Equal Pay Act makes it illegal for employers to include inquiries regarding salary history in the hiring process. Thus, employers are prohibited from seeking wage or salary history of prospective employees prior to making a job offer.

The Act does allow employers to confirm prior wages or salary history after an offer of employment has been made and the compensation has been negotiated, or if the applicant voluntarily discloses that information during the hiring process.

As in the United States, employers in Puerto Rico must verify the employment eligibility of new hires using Form I-9, as mandated by the 1986 U.S. Immigration Reform and Control Act. Employers must also report new hires and rehires to the local Directory of New Hires, managed by ASUME, within twenty (20) days.

Probationary periods of up to nine (9) months are allowed under Puerto Rico law. During this period, employees do not qualify for the full range of benefits provided by law including those provided by the Wrongful Termination Act. The probationary period must be reasonable and related to the skills required for the job. For employees classified as executives, administrators, and professionals under the FLSA and local laws, the probationary period can be up to twelve (12) months.

With regards to employment contracts, Puerto Rico law recognizes both written and verbal employment contracts. There are no specific mandatory language requirements except those imposed by federal law for benefit plans. Employment contracts may be written in any language understood by the employee. Key contractual terms such as temporary employment agreements, non-compete clauses, and educational reimbursement agreements must be documented in writing.

Employers in Puerto Rico must protect the personal data of employees, including Social Security numbers. Applicable laws impose stringent requirements on the use and dissemination of Social Security numbers and other personal information, prohibit all polygraph testing, and regulate video monitoring of employees in the workplace. Additionally, the Health Insurance Portability and Accountability Act, the Federal Occupational, Safety and Health Act of 1970 (OSHA), and the Americans with Disabilities Act all have privacy and confidentiality provisions with respect to employee medical information apply in full in Puerto Rico.

Puerto Rico Law permits five (5) types of drug testing: pre-employment, mandatory, post-accident, reasonable suspicion, and random testing. Employers must establish a written drug-testing policy and notify employees at least sixty days before implementation. First-time positive drug test results do not constitute just cause for dismissal, but employers can require the employee to enter a rehabilitation program.

Puerto Rico Wrongful Termination Act provides that employees hired for an undefined period that are dismissed without just cause are entitled to indemnity payments. The amount depends on the employee's length of service and salary. Accordingly, employers must ensure that any terminations are handled lawfully and that employees receive any due compensation.

(b) Benefits

Employers in Puerto Rico must pay a Christmas bonus based on a percentage of the employee's earnings and number of hours worked. The maximum bonus required by law is $600.

Female employees are entitled to eight (8) weeks of paid maternity leave. This leave can be extended for medical complications. Adoptive mothers may also qualify for maternity leave on similar terms. Additionally, Puerto Rico legislation requires employers to provide a one (1) hour break for breastfeeding mothers and must also ensure a private, secure, and hygienic area for breastfeeding or milk extraction.

Employers in Puerto Rico must comply with federal COBRA regulations with regards to providing for the continuation of health benefits for employees under specific conditions.

(c) Leaves

Puerto Rico legislation provides for a vast array of leaves that employees can enjoy for different situations. Among these leaves are jury duty, being called to serve as a witness in a criminal case, sports leave, Family and Medical Leave Act, diverse military leaves, voting leave, short term disability, occupational accidents, leave for being victim of sexual harassment or domestic violence.

(d) Safety and Health in the Workplace

Employers in Puerto Rico must provide a safe and healthy work environment in compliance with OSHA and Puerto Rico's occupational safety regulations. Employers must implement safety programs, conduct regular inspections, and address workplace hazards to prevent accidents and injuries.

(e) Labor Relations

Employers must comply with labor relations laws, including respecting employees' rights to organize and bargain collectively. This includes recognizing labor unions, engaging in good faith negotiations, and adhering to collective bargaining agreements. Clear policies and procedures for managing labor relations can help ensure compliance and support a collaborative workplace environment.

(f) Equal Employment Laws

All federal Equal Employment laws apply in Puerto Rico. Additionally, Puerto Rico has its own set of laws prohibiting similar and additional behaviors.

Puerto Rico Law prohibits employment discrimination based on race, sex, color, sexual orientation and gender identity, religion, national origin, age, disability, political ideology, social condition, being a victim or being perceived as a victim of domestic violence, sexual harassment or staling, military status, among others protected characteristics. Employers must maintain records of hiring practices, promotions, and other employment practices. Violations to applicable laws can result in substantial civil and criminal penalties.

Additionally, Puerto Rico Laws prohibits sexual harassment in the employment. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that affects employment conditions or creates a hostile work environment. Violations to applicable laws can result in civil and criminal penalties.

Retaliation against employees for exercising their legal rights, such as filing complaints or participating in investigations, is also prohibited under Puerto Rico Law. Employers must not take adverse actions against employees for asserting their rights under employment laws. Violations to applicable laws can result in civil and criminal penalties.

Puerto Rico is one of the few jurisdictions that has enacted legislation prohibiting workplace harassment. Accordingly, employers must take measures to prevent and address workplace harassment. Employers should implement a workplace harassment protocol, training programs, and complaint procedures to prevent harassment regardless of whether it is based on any protected characteristic. Violations to applicable laws can result in civil and criminal penalties.

Victims of domestic violence, sexual aggression and stalking are also protected from discrimination in the workplace in Puerto Rico. This protection includes those individuals "perceived" as victims of such situations. Additionally, Puerto Rico law requires employers to make work adjustments or reasonable accommodations to protect their employees from current or potential aggressors. This affirmative duty is triggered when the employer is notified that a dangerous situation may occur in the workplace. Failure to provide reasonable accommodation creates a presumption of discrimination. Also, all public and private sector employers are required to establish a formal protocol to handle domestic violence situations in the workplace. Violations to applicable laws can result in civil and criminal penalties.

Finally, under some circumstances employers must provide reasonable accommodations to employees under several protected categories such as disabilities and religious beliefs.

**III. CONCLUSION**

Understanding and complying with Puerto Rico labor laws is crucial for maintaining a lawful workplace and to avoid incorrect practices that can be very costly. This summary provides an overview of key legal requirements and the complexities of labor law in Puerto Rico. However, it does not pretend to be a detailed and comprehensive study or summary of said legislation.

## 5. TAX MATTERS

### I. Types of Business Entities and Tax Treatment

1. Business Entities

Businesses commonly adopt a corporate form to do business in Puerto Rico.

The principal elements to classify an entity as corporation for Puerto Rico income tax purposes are: (a) perpetual existence—continues to exist regardless of the changes of its members or participants, (b) centralized administration— its business operations are directed by one person, a committee, a board or any other organism acting with representative capacity, and (c) limited liability—its owners have limited liability for the debts and liabilities of the entity.

As an alternative, businesses can form a limited liability company ("LLC"). Except under certain circumstances, LLCs are treated by default as corporations for Puerto Rico income tax purposes. Similar to corporations, LLCs may also exist regardless of the changes of its members and provide limited liability to the members, but it provides more flexibility with respect to the management of business, the allocation of profit and loss, and the income tax treatment.

The entities commonly used as transparent entities for Puerto Rico income tax purposes are partnerships or LLCs with an election to be treated as passthrough entities for income tax purposes. Corporations may also elect passthrough treatment in Puerto Rico. The Puerto Rico trade or business of an entity that elected passthrough treatment for Puerto Rico income tax purposes is imputed to its owners with respect to their distributive share in the net income of the entity. Disregarded entities are also recently recognized under Puerto Rico law.

2. General Taxation Principles of Domestic Corporations

Domestic corporations taxed as a corporation for Puerto Rico income tax purposes are taxed on their worldwide income at the regular or preferential corporate tax rates. However, subject to certain limitations and restrictions, a domestic corporation may take a credit against its Puerto Rico income tax for the amount of income and excess-profit taxes imposed on income from sources outside Puerto Rico by the authorities of the United States, any possession of the United States or any foreign country. The foreign tax credit is subject to a per-country limitation and an overall limitation. The per-country limitation is based on the ratio that the normal-tax net income from sources within the particular country (or foreign jurisdiction) bears to the total-normal-tax net income for that year. The overall limitation is based on the ratio that the corporation's normal-tax net income from sources outside Puerto Rico bears to its entire normal-tax net income, for the same tax year. Instead of the foreign tax credit, a domestic corporation can elect to take a deduction against gross income for the income tax paid or accrued during the year to the United States, any possession thereof or a foreign country.

3. General Taxation Principles of Foreign Corporations

Non-Puerto Rico corporations and non-resident individuals may be subject to two different Puerto Rico income tax regimes. If the entity or individual are engaged in a trade or business in Puerto, Puerto Rico income taxes will apply on their income effectively connected with the Puerto Rico trade or business, which includes income from sources within Puerto Rico.

On the other hand, non-resident individuals and non-Puerto Rico corporations that are not engaged in a trade or business in Puerto Rico are subject to withholding taxes on interest, dividends, and royalties, to the extent such payments constitute fixed or determinable income from Puerto Rico sources.

Puerto Rico withholding taxes ("WHT") will apply on the gross amounts received as interest, dividends, and royalties to the extent such payments constitute Puerto Rico source income. Interest payments are subject to a WHT of 29% if made to a related party that is a non-Puerto Rico resident individual or a non-Puerto Rico entity not engaged in a trade or business in

Puerto Rico. As a general rule, actual or deemed dividends are subject to a WHT of 10% if paid to corporate stockholders, whereas if paid to an individual it is subject to a WHT of 15%. Royalty payments will be subject to a WHT of 29%.

Specific sourcing rules apply for each type of income. Generally, interest is Puerto Rico source income if it is paid with respect to obligations of individual residents of Puerto Rico, Puerto Rico entities or non-Puerto Rico entities that are engaged in a trade or business in Puerto Rico. However, there are several exceptions to this rule, including interest received by U.S. citizens, which is not considered Puerto Rico source income.

Dividends are considered Puerto Rico source income if distributed by a corporation organized in Puerto Rico as long as 20% or more of such corporation's gross income is from sources within Puerto Rico during a three-year look-back period. Dividends distributed by a non-Puerto Rico corporation that is engaged in a trade or business in Puerto Rico may be considered Puerto Rico source income if the corporation derives 20% or more of its gross income as income from Puerto Rico sources or as income effectively connected with a Puerto Rico trade or business. In the case of the non-Puerto Rico distributing corporation, dividends will be treated as Puerto Rico source income only in the proportion of income from Puerto Rico sources or effectively connected with a Puerto Rico trade or business to the entity's total income from all sources.

Royalties are Puerto Rico source income if paid for the use of intellectual property in Puerto Rico.

The 29% withholding tax may be reduced or eliminated pursuant to a provision of Puerto Rico tax law in case it can be demonstrated the withholding would cause under hardship because the amounts withheld would have to be reimbursed to the person or the withholding would be excessive. Certain taxpayers with tax incentives grants issued by the Government of Puerto Rico qualify for reduced rates of withholding or no taxation on dividends and/or royalties.

## II. Principal Taxes Applicable in Puerto Rico

1. Income Tax

In general, entities treated as corporations for Puerto Rico income tax purposes are subject to a progressive tax rate structure, which consists of a flat tax of 18.5% on the normal tax net income and surtax. The graduated surtax rates are as follows:

- 5% for surtax net income up to USD 75,000.
- USD 3,750 plus 15% of surtax net income from USD 75,001 to USD 125,000.
- USD 11,250 plus 16% of surtax net income from USD 125,001 to USD 175,000.
- USD 19,250 plus 17% of surtax net income from USD 175,001 to USD 225,000.
- USD 27,750 plus 18% of surtax net income from USD 225,001 to USD 275,000.
- USD 36,750 plus 19% of surtax net income in excess of USD 275,000 for a maximum tax rate of 37.5%.

Certain types of income (e.g., dividends, and long-term capital gains) may be subject to preferential income tax rates. Corporations may also be subject to an alternative minimum tax ("AMT") if it exceeds the regular tax. The AMT includes various AMT adjustments in order to calculate the tentative minimum tax. Such minimum tax is subject to an 18.5% flat rate, or 23% in the case of taxpayers with gross proceeds of USD 10 million or more. In addition, actual or deemed dividend distributions are generally taxed at 15% for individuals and 10% for corporate entities. Therefore, taxes on corporate distributions subject business income to two levels of taxation (at the entity level and upon actual or deemed distribution).

The Puerto Rico Internal Revenue Code of 2011, as amended (the "PR Code") allows LLCs, corporations, and partnerships to elect to be treated as pass-through entities for Puerto Rico income tax purposes ("Pass-Through Entities"). The PR Code provides that the tax code provision applicable to partnerships are equally applicable to Pass-Through Entities. The income (loss) of a Pass-Through Entities flows through to its owners so that the entity itself is not subject to tax. Instead, the owners/partners are responsible for the payment of such income taxes on their distributive share of the Pass-Through Entities' income. Additionally, each owner/partner of a Pass-Through Entity is deemed to be engaged in trade or business in Puerto Rico with respect to its distributive share of each item of income, gain, loss, deduction, credit, or other items if the entity is so engaged.

Therefore, Pass-Through Entities are required to report to each owner/partner their respective distributive share on certain separate identifiable items of income, gain, losses, deductions, credits, and/or other items. Moreover, each owner/partner is deemed to have realized or incurred such items of income, gain, losses, deductions, credits, and/or other items as if realized or incurred directly by the owner/partner. Thus, each owner generally accounts for their distributive share of the entity's taxable income (loss).
Pass-Through Entities for Puerto Rico income tax purposes would be subject to quarterly estimated income tax payments of 30% on their distributive share (or lower applicable tax on preferential items), which would be withheld at source by the entity and creditable against the income tax liability of the owners.

In addition, the PR Code and relevant guidance from the Puerto Rico Treasury Department ("PR Treasury") provide that, for taxable years beginning after December 31, 2022, a single member foreign limited liability company that has an election to be treated, or that, for federal income tax purposes or by virtue of the laws of a foreign country, is treated as a disregarded entity, may elect to be treated as a disregarded entity for Puerto Rico income tax purposes (the "Disregarded Entity"). The owner of a Disregarded Entity recognizes the activity of the Disregarded Entity in its income tax return as if the Disregarded Entity did not exist.

Individuals are also generally subject to a progressive tax rate structure of up to 33%. Certain types of income (e.g., dividends, and long-term capital gains) may be subject to preferential income tax rates. Individuals may also be subject to an alternative basic tax ranging from 10% to 24% on their alternative minimum taxable income of %150,000 or more, when it exceeds the regular tax.

2. Sales and Use Tax

As a general rule, the SUT shall be applied, collected, and paid on all transactions of taxable items in Puerto Rico. Taxable items consist of tangible personal property, taxable services, admissions, digital products, and what is known as bundled transactions. Excluded from this definition are professional associations and certain membership fees; stamps issued by professional associations, the Commonwealth of Puerto Rico, or the federal government; human blood, tissue, and organs; maintenance fees paid to resident associations; air and maritime tickets; real property; and bingos, raffles, and lottery. Other transactions that are exempt from SUT include export transactions; duty-free stores located at airport or maritime ports; prescription medicines; insulin; taxable items acquired for certain manufacturing operations (e.g. raw materials); and food and ingredients for food (except for prepared food, diet supplements, sweets, and carbonated beverages), legal and consulting services rendered by authorized members of the bar.

The SUT rate is imposed at 10.5% at the state level and an additional 1% at the municipal level, for an aggregate 11.5%. Designated professional services and business-to-business ("B2B") services are taxed at a 4% SUT rate.

Certain taxable services are excluded from SUT, including, among others, the following:

- Services rendered by merchants with annual volume of business of less than USD 50,000.
- Effective 1 July 2020, services to other merchants rendered by merchants with annual volume of business of less than USD 300,000.
- Services rendered by a non-resident to a related party that is engaged in a Puerto Rico trade or business and holds a tax grant pursuant to Act 60-2019, Act No. 73-2008, Act No. 83-2010, Act No. 20-2012, or any similar act.
- Intangible rights.
- Advertising and promotion services.
- Construction subcontracted services and subcontracted telecommunication services.
- Toll manufacturing services or contract manufacturing services.
- Repair, maintenance, and conditioning of aircraft provided by a merchant that holds a tax grant pursuant to Act No. 73-2008 or any other similar act.

Tangible personal property introduced into Puerto Rico is subject to use tax upon importation. The use tax paid upon importation of the merchandise to be sold can be claimed as a credit on the SUT return.

Every natural or juridical person who conducts business of any kind in Puerto Rico is required to register in the Merchant's Registry of the PR Treasury at least 30 days before commencing operations. Upon registration a Merchant's Registration Certificate is issued by the PR Treasury. This certificate constitutes the merchant's authorization to do business in Puerto Rico and confirms the merchant's obligation as a withholding agent.

Unless specifically exempted, all persons selling taxable items are required to file a monthly SUT return. This return shall be filed electronically with PR Treasury no later than the 20th day of the calendar month following the month during which the sales occurred. Also, all persons that import tangible property to Puerto Rico must file a use tax on imports return no later than the 20th day of the calendar month following the import.

Recent legislation introduced marketplace rules in Puerto Rico for SUT purposes. It also introduced the concept of specified digital products and how these would be taxed in Puerto Rico for SUT purposes.

3. Customs duties and import tariffs

Puerto Rico does not have customs duty and import tariff provisions. Since Puerto Rico is a territory of the United States, United States customs duties and import tariffs are applicable in Puerto Rico.

4. Excise Taxes

Certain articles subject to a special excise tax in Puerto Rico, including the following: cigarettes, fuels, crude oils, vehicles, alcoholic beverages, cement, sugar, and plastic products, among others.

5. Act 154 Excise Tax

Entities conducting manufacturing operations in Puerto Rico may be subject to a 4% excise tax on goods or services provided to offshore-related entities under Act No. 154 of 2010, as amended. The instances in which the excise tax applies, it is in lieu of the tax that otherwise would arise from the application of Act No. 154's source rules. Various tax credits are provided to offset the excise tax mentioned above.

Act No. 52 of 2022 introduced an election for Puerto Rico resident entities that hold or apply for a tax grant under manufacturing tax incentives laws to be subject to a higher alternate fixed rate in exchange for an exemption of Act 154 sourcing rules, amongst other benefits.

6. Personal property taxes

Any entity engaged in a trade or business in Puerto Rico that on 1 January of each year owns personal property used in its trade or business within Puerto Rico, whether it is leased to another entity or not, is subject to tax on such property. The tax is self-assessed and ranges between 5.80% and 10.33%, depending on the municipality in which the entity conducts business.

The personal property tax liability must be satisfied through estimated tax payments. The amount of estimated taxes should be paid in equal instalments on the 15th day of August, November, February, and May of the taxable year of the entity. The estimated payments should equal or exceed 90% of the actual personal property tax for the year or 100% of the personal property tax as reflected in the personal property tax return for the preceding taxable year, whichever is less.

The personal property tax is generally based on the book value of the asset as of 1 January. The finished goods inventory, however, is assessed on the average of the monthly balances for the 12-month period preceding 1 January of each year.

7. Real property taxes

Tax on real property is assessed by the Municipal Revenue Collection Center and ranges from 8.03% to a maximum of 12.33% depending on the municipality. The tax is paid in two installments, and it is determined by applying the applicable tax rate to an amount based on the hypothetical fair market value ("FMV") of the relevant property in the year 1957. In general terms, this hypothetical FMV normally ranges between 40% and 50% of the cost of the property.

8. Municipal license tax

Any business that is conducting operations within a municipality in Puerto Rico is required to file an annual volume-of-business declaration with each of the municipalities in which it establishes or conducts business operations during the year. The declaration must indicate the actual volume of business (i.e., net sales, gross income from any service rendered, and other gross receipts) attributable to each municipality.

For a non-financial business, the license tax payment varies from a minimum of 0.20% to a maximum of 0.50%, depending on each municipality. The payment must be made in two equal instalments on or before 15 July and 15 January on the basis of the volume of business generated by the entity during its accounting year ended within the immediately preceding calendar year before the due date of the declaration. A 5% discount is available when the tax is fully paid on the declaration due date (on or before five working days after 15 April of each year).

During the first semester of the calendar year in which a new business is established, the entity is generally exempt from the municipal license tax, provided that the business files a notice with the municipality indicating that it has established a new business in the municipality within the first 30 days of operations and requests the provisional license tax as established in each municipality.

9. Transfer and stamp taxes

Puerto Rico does not have transfer or stamp tax provisions. However, recordation fees are imposed at the time of officially recording a real estate transaction with the Puerto Rico Property Registry.

10. Withholding taxes on salaries and wages

All employers are required to withhold Puerto Rico income tax from all wages paid to its employees.

11. Federal Social Security and Medicare (“FICA”)

The Federal Social Security and Medicare Law applies in Puerto Rico. The tax rate is imposed on both the employer and the employee. As of 2024, the tax rate is 7.65%, which consists of 6.2% of Social Security and 1.45% of Medicare Tax. The Social Security Tax is calculated on the first USD 168,600 (year 2024) of wages received, and the Medicare Tax is calculated on the total wages, without any ceiling.

In addition, an employer must withhold a 0.9% Additional Medicare Tax from wages paid to an employee in excess of USD 200,000 (for a single taxpayer; married filing jointly is USD 250,000 and married filing separately is USD 125,000) in a calendar year. The employer is required to begin withholding Additional Medicare Tax in the pay period in which wages are paid in excess of USD 200,000 to an employee and continue to withhold it each pay period until the end of the calendar year. Additional Medicare Tax is only imposed on the employee. There is no employer share of Additional Medicare Tax. All wages that are subject to Medicare tax are subject to Additional Medicare Tax withholding if paid in excess of the USD 200,000 withholding threshold.

12. State Unemployment Tax (“SUTA”)

The unemployment tax is paid only by the employer and is paid on the first USD 7,000 of total wages paid to each employee during the calendar year, based on an experience rating system. In addition, the employer must also pay a special tax equal to 1% of the wages subject to unemployment tax. However, the special tax together with the experience-based tax cannot exceed 5.4%.

13. Federal Unemployment Tax (“FUTA”)

FUTA also applies in Puerto Rico. All persons who employ at least one individual during any 20-week period or pay USD 1,500 or more in salaries during any trimester of the calendar year are subject to the FUTA tax.

The employer is solely responsible for payment of the tax. The rate is 6.0% on the first USD 7,000 of total wages paid during the calendar year to each employee. However, a credit of 5.4% is granted for the Puerto Rico unemployment tax paid. Therefore, the effective tax rate is 0.6%.

**II. Tax Credits and Incentives for Certain Activities**

1. Incentivized Activities

Act 60-2019, known as the Incentives Code of Puerto Rico ("Incentives Code") consolidates incentives granted for various incentivized activities throughout the decades, such as manufacturing activities and export services activities, with the purpose of promoting economic development. The type of incentivized activities under the Incentives Code are the following: (i) manufacturing activities, (ii) export services, (iii) financial and insurance activities, (iv) tourism related activities, (v) creative industries (e.g., film), (vi) research and development activities, (vii) agriculture, among others.

A corporation engaged in specific eligible activities, like manufacturing or exportation of services, may apply for a reduced corporate income tax ("CIT") rate, among other incentives, through the request of a Tax Exemption Grant to the Puerto Rico Office of Incentives under the Incentives Code.

2. Income Tax Benefit

Exempt entities may elect one of the following two scenarios:

- The Incentives Code introduces a general 4% CIT rate applicable to eligible income.
- Novel Pioneer Activities are eligible for a 1% CIT rate.
- Dividend distributions enjoy a 100% exemption.
- Any exempt business having operations in the municipalities of Vieques and Culebra may qualify for a 2% CIT rate during the first five years of operations as established in the Incentives Code. The remaining years covered by the Incentives Code may qualify for a 4% CIT rate.
- Exempt businesses eligible due to manufacturing activities will have the option of a general or two alternate fixed tax regimes:
    - General scenario: 4% CIT rate with a WHT rate on royalty payments of 12%. Under this scenario, the amount of WHT on the royalty payments is creditable against the 4% CIT.
    - Alternate scenario 1: 8% CIT rate with a WHT rate on royalty payments of 2%. Under this scenario, the WHT on royalty payments is creditable against the 8% CIT.
    - Alternate scenario 2 (effective 1 July 2022): 10.5% CIT rate that increases to 15% if the United States imposes a CIT of at least 15%; a WHT rate on royalty payments of 12% or 13%, depending on levels of average direct employment, industrial development income, and prior royalty payments made; and an exemption of Act No. 154 of 2010 sourcing rules for non-resident related entities.

3. Special Deductions

Special deductions for exempt manufacturing businesses are available for capital investment in buildings, structure, and machinery and equipment.

4. Credits

The following credits are only available for exempt manufacturing businesses under the Incentives Code: (i) 25% tax credit for purchases of Puerto Rico manufactured products; (ii) 50% tax credit granted for research and development activities, and (iii) technology transfer credit.

5. Property tax incentives

The Incentives Code allows for a 75% property tax exemption on personal and real property for exempt businesses.

6. Municipal license tax and other municipal tax incentives

Under the Incentives Code the municipal license tax exemption is 50% for exempted businesses. Exempt businesses operating in Vieques or Culebra are 100% exempt for the first five years and have a 50% exemption for the remaining period of exemption. Small or medium-exempt businesses are also 100% exempt for the first five years and have a 50% exemption for the remaining period of exemption.

###

# TURKS & CAICOS


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The Turks and Caicos Islands (TCI) lie 575 miles southeast of Miami and 39 miles southeast of the Bahamas. There are eight principal inhabited islands which have an estimated combined population of 60,000.

The legal system is based upon English common law with local modifications and the islands are governed by a Cabinet of locally elected ministers, presided over by a British appointed Governor. To the extent that TCI statutory law does not apply or requires interpretation, the common law of England applies. The local currency is the U.S. dollar.

**FOREIGN INVESTMENT**

Foreign investment is heavily promoted. International firms and investors are encouraged to invest mainly in the areas of tourism and finance. Certain incentives such as customs duty exemptions are, in practice, made available for developments that are determined to be beneficial to TCI.

Main Rights

There are no exchange controls and funds may be moved freely in and out of the jurisdiction.
A statutory body called the Financial Services Commission has been established with a view to licensing and supervision of various business and financial areas of interest including the banking, trust and insurance sectors.

Acquisition of Land by Foreigners

There is no restriction as to ownership or sale of land, which by far represents the most active market in TCI.

Companies Receiving the Investment

Receipt of foreign investment by TCI companies is not regulated. All companies incorporated in the TCI are permitted to acquire and/or hold land (unless expressly stated otherwise in the Articles of Incorporation for that specific company).

Residency Requirements

Not required of foreign investors. However, foreign investors may become eligible for residency status in the TCI depending on the level of investment that is made.

Environmental Regulations

At the present time no environmental legislation exists in TCI. An environmental impact study of land which is to be the subject of development is often required of large scale real estate developers prior to the grant of development permission.

**BUSINESS ENTITIES**

The incorporation and regulation of companies in TCI is governed by the new Companies Ordinance 2017 and by English common law. The Companies Ordinance recognizes four main forms of company: the company that is limited by shares, the company that is limited by guarantee (that may or may not be authorized to issue shares), the unlimited company (that may or may not be authorized to issue shares) the non-profit company, and the foreign company that is registered in the TCI.

Directors

All companies are required to have at least one director and one secretary, save for non-profit companies that are required to have at least two directors, neither of which need to be resident in TCI. A sole director of the company may also serve as the secretary. There is also provision in the new Companies Ordinance 2017 for Protected Cell Companies. Other officers for TCI companies may be established by way of the company's articles of association.

REGISTERED OFFICE
All companies are required to have a registered office in TCI.

Registered Agent
All companies are required to have a licensed corporate service provider as its registered agent.

Accounts and Records
All companies in TCI are required to keep proper books of accounts which give a true and fair view of the company's affairs and explain its transactions.

Minimum Capital Stock
There is no minimum capital requirement for companies in TCI. However, a company which is required to be licensed under the Banking Ordinance 1979, the Insurance Ordinance 1989, or the Trustees Licensing Ordinance 1992 will be obliged to have capital appropriate to the business it intends to carry on.

Number of Shareholders
One shareholder is sufficient, and shares may be held by nominees or trustees if desired.

Annual General Meeting
Save for the first general meeting which is to be held within 15 months of the date of incorporation, a general meeting is required once per year. There is no statutory requirement to hold the meeting in TCI.

Formal Requirements
The requirement for original registration for TCI companies (thus excluding Foreign Companies) involves the filing at the Companies Registry of Articles of Association, which are executed by a person agreeing to take at least one share or the registered agent.

**TRUSTS**
As a common law British Overseas Territory in which the concept of the trust has long been accepted, TCI offers a highly favorable situs for trusts. The Law of Trusts in TCI is governed by the Trusts Ordinance of 1990. This provides statutory regulation of trusts in the islands. The Ordinance is comparable to the present trust legislation in the Channel Islands and the Cayman Islands and is generally regarded as a benchmark for off-shore trust legislation. It provides a safe jurisdiction for the assets of business persons and investors alike. The freedom afforded by the absence of tax treaties and exchange controls and the privacy ensured by the non-registration of trust documents is restrained by a strict licensing regime under which the activities of those who hold themselves out as professional trustees are regulated.

The Ordinance is not intended to be an exhaustive code and the English principles and applicable case law continue to apply insofar as they are not overridden or varied by the statutory provisions. The Ordinance was enacted in TCI to cater to modern demands and includes features from other jurisdictions and some original provisions resulting from recommendations by respected English counsel.

It is to be noted that the Courts of the Turks and Caicos Islands have jurisdiction where the trust is a Turks & Caicos Trust; the trustee resides in the islands, the trust property is situated in the island, or the administration of the trust is found within the island jurisdiction.

Some of the main features of a TCI Trust are as follows:

Severable Aspects
The validity of the trust, the interpretation of its terms and the administration of the trust property are each regarded as severable aspects. The trust instrument may also provide for the law applying to each aspect to be changed from time to time.

Exclusion of Foreign Law
The Ordinance contains provisions excluding the applicability of foreign law to the creation of a TCI Trust and to dispositions made under it. For example, in the absence of an express term to the contrary, the laws of the settlor's home jurisdiction have no application to the question of whether the trust or any disposition of property of the trust is valid or enforceable.

Rule Against Perpetuities
This does not apply to a TCI trust. The trust instrument may specify the duration of the trust.

Concept of the Protector is Given Statutory Recognition
It is common, particularly in discretionary trusts where it is for the trustee to decide who is to benefit under the trust and when, to require the trustee to obtain the consent of a named party before exercising his powers.

Protective Trusts
The trust instrument may provide that the interest of a beneficiary is liable to be diminished or terminated or subject to a restriction on alienation (a protective trust).

Trustee to Act Fairly as Between Beneficiaries, Not Necessarily Even-handedly
Trustees can be given wide discretion in relation to the various interests of beneficiaries and wide powers of accumulation and advancement. The overriding consideration is that they act fairly between one beneficiary and another.

Privacy
The Ordinance provides that a trustee is not required to disclose to any person any document showing he has exercised a power or discretion or performed a duty, nor to disclose to any person other than a beneficiary any document relating to or forming part of the accounts of the trust, unless required to do so by the terms of the trust or by an order of the court.

Supervision
All professional trustees in TCI must be licensed by The Financial Services Commission via the Superintendent of Trustees.

Benefits of a TCI Trust
Trusts can be used for tax planning purposes. There are several different sets of circumstances under which persons might wish to dispose of their property during their lifetime. For example, in countries where taxes are levied upon a person's estate upon their death, it is prudent to mitigate the incidence of taxation by reducing the size of estate before death. Similarly, where the property is income producing, disposing of the property may reduce the settlor's income tax liability. Settlors can minimize their tax liabilities through the use of TCI trusts particularly if they intend to move from one country to another. Where TCI is the situs of the trust, it may be possible to avoid tax on capital gains in the settlor's domicile in addition to any income tax which would otherwise be payable.

Where settlors reside in a country which does not recognize the trust concept and has laws which can override their will, they may, by the use of a TCI trust, be able to prevent their property passing to members of their family who they wish to exclude.

Since the trust is a separate legal entity created when the settlor transfers assets by deed to a trustee for the benefit of named beneficiaries, the need for probate or letters of administration on the death of the settlor is eliminated. Individuals, for any number of good reasons, may wish to keep their affairs private, for example, regarding asset ownership and this is effectively achieved by creating a TCI trust. Settlors can isolate property in an offshore trust and thereby minimize risk associated with economic and political instability.

**TAXATION**
There is no direct form of taxation in TCI – no income tax, company tax, withholding tax, capital gains or other tax on income, profits or assets. TCI does not tax foreign income, is not a party to any taxation treaty, and has no exchange control.

The main sources of government revenue are customs duty and stamp duty, the bulk of the latter coming from real estate transactions.

Stamp Duty

At the present time, the rate of stamp duty for a land transaction on the island of Providenciales where consideration exceeds USD$25,000.00 begins at 6.5% of the sale price (which can increase to 10% depending on the level of consideration). Stamp duty is also payable upon registration of security documents - 1% of the amount borrowed, 0.2% on share transfers – based on consideration passing, and 8% on the transfer of shares in a landholding company.

**TREATIES/INTERNATIONAL TRADE AGREEMENTS**

On March 8 2002 the TCI entered into formal written commitment to OECD's principles of transparency and information exchange, in furtherance to the Tax Information Exchange Ordinance 2009 that deals with the exchange of information relating to taxes and for connected purposes. The Ordinance provides that where the TCI Government becomes a party to tax information exchange agreement, the Governor may prescribe that the terms of the Ordinance shall apply to the said Agreement, with such specified modifications as may be specified in the Order.

The functions and powers under the Ordinance are to be exercised by a person described as a "Competent Authority" who is appointed by the Permanent Secretary of Finance. When making an information request the Competent Authority can require a person to provide such information as is requested in their notice provided that: (a) the person is reasonably believed to have the said information and (b) provided that the information is held by a bank, financial institution, person acting in an agency or fiduciary capacity such as a nominee or trustee or the information relates to beneficial ownership of a company, partnership or other person. Penalties for non-compliance could include a fine up to $10,000 USD or imprisonment for a term not exceeding two years, or both.

The TCI has entered into tax information exchange agreements with the following countries: Ireland, Netherlands, United Kingdom, Denmark, France, Sweden, Norway, Iceland, Greenland, Finland, Faroes Islands, Australia, New Zealand, Germany and Canada.

**LABOUR LAW**

The Employment Ordinance regulates the terms of employment in TCI.

Hiring of Employees; Labour Contracts

Within fourteen days of commencement of employment an employer must provide a written statement to the employee which contains specific employment terms relating to dates, remuneration, terms and conditions relating to work hours, holidays, sick time and other terms which are listed in the Employment Ordinance.

Benefits and Labour Rights

Where an employer requires an employee to work overtime and the employee agrees to do so, the wage rate for the period worked overtime is double time on any public holiday, and at any other time where the employee works in excess of 40 hours in any week, one and a half times the basic wage.

Hiring of Foreign Employees

Hiring of foreign employees can only be effected by first obtaining a work permit authorizing the employment of that individual. The work permit can be limited in duration, may have attached conditions or restrictions, and can be revoked by the Immigration Board for a variety of reasons including public interest. Preference is given to the local labour force and every business requires a business license under the Business Licensing Ordinance. There are a number of categories in the Business Licensing Regulations reserved for businesses with majority ownership held by Turks and Caicos Islanders.

Taxes Affecting Salaries

There are no taxes affecting salaries. There is a national insurance system that provides payments in respect of retirement, incapacity, maternity, employment injury and old age. The amount of contribution payable in respect of an employed person other than public officer is 8% of one's earnings for that week (subject to a maximum contribution), of which 4.6% is payable by the employer and the remaining 3.4% is payable by the employee.

There is also a National Health Insurance scheme; contributions are 3% of the employee's salary payable each by the employer and the employee.

Termination of Employees; Severance Benefits

Severance is payable where an employee has been continuously employed for at least two years by the same or associated employer at a rate of two weeks' pay for each year of service and *pro rata* for each incomplete year.
Notice of termination of employment is also required for all employees who have been employed for one month or more. The notice period ranges from one week to twelve weeks depending on the employee's length of employment.

**CHECKLIST OF QUESTIONS ON DOING BUSINESS IN THE TURKS AND CAICOS ISLANDS**

1. **What role does the government of the Turks and Caicos Islands (TCI) play in approving and regulating foreign direct investment?**
   - In the most part the Government of the Turks and Caicos Islands (TCI), while generally promoting inward foreign direct investment to the TCI, does not have any direct involvement in approving or regulating foreign direct investment.
   - There are exceptions to that general position, which will depend on the nature of the investment. Through the Government's statutory investment agency, TC Finance, it is possible to apply for import duty and other concessions relating to foreign direct investment in the TCI. Typically, these concessions are associated with substantial tourism-related developments, but concessions may be available with respect to investments in other areas. In the event a foreign investor wishes to benefit from Government concessions then the TCI Government will require the development to be pre-approved and for the investor to enter into a formal development agreement with the TCI Government. That agreement will include some regulation with respect to the operation of the development.
   - In the area of financial services, the Government's financial regulator, the Turks and Caicos Islands Financial Services Commission, may also require the approval and/or licensing of a foreign investor investing in a regulated financial services business. The regulation will apply to most financial businesses, including banking, insurance and trust related business.

2. **Can foreign investors conduct business in the Turks and Caicos Islands without a local partner? If so, how does the Turks and Caicos Islands government regulate commercial joint ventures between foreign investors and local firms?**
   - Generally speaking, in order for a person or corporation to conduct business in the TCI, a business license is required. There are a large number of business license categories covering most areas of business (excluding certain financial services related businesses). Currently business licenses are divided into three categories – reserved, restricted and unrestricted licenses. Only if the category of business falls into an unrestricted category may a foreign investor conduct business in the TCI without a local partner.
   - The Government regulates commercial joint ventures between foreign investors and local firms only to the extent that ownership structure of the business must be disclosed to the Business Licensing Unit to ensure, where business is in the reserved or restricted category, the local ownership is at least 51%.
   - If the investment does not include ownership of a business, the TCI Government would not generally seek to regulate commercial joint ventures involving foreign investors.
   - There are also some other exceptions to the general rule set out above, namely in relation to utility and telecom suppliers where particular statutory regimes will apply relating to the regulation of a joint venture involving foreign ownership.

3. **What laws influence the relationship between local agents and distributors and foreign companies?**
   - There are no specific TCI statutes which govern the relationship between local agents and distributors and foreign companies.
   - General principles of contract law will apply and the TCI follows English common law principles with respect to the formation and enforcement of contracts.

- Contracts between local agents and distributors and foreign companies may be governed either by TCI law or the law of the foreign company.

4. **How does the Turks and Caicos Islands Government regulate proposed merger and acquisition activities by foreign investors and are there any areas of the economy where they are prohibited (e.g., natural resources, energy or telecommunications)?**
   - As above, the regulation of any proposed merger and/or acquisition will typically only be regulated with respect to local partner requirements for businesses falling into reserved or restricted business categories.
   - In the areas of energy and telecommunications, each area is governed by its own specific local statute, and it will be the provisions of the relevant statute which apply in terms of acquisition or merger.

5. **How do labor statutes regulate the treatment of local employees and expatriate workers?**
   - There are two primary relevant statutes which apply – the Immigration Ordinance and the Employment Ordinance.
   - The Immigration Ordinance applies to expatriate workers and requires that all expatriate workers must obtain a work permit before they may lawfully work in the TCI.
   - The Employment Ordinance regulates all aspects of employment in the TCI, both local and expatriate. It includes provisions dealing with the minimum periods of holiday, minimum wages payable, maximum hours of work and other employee rights including provisions relating to minimum periods of notice prior to dismissal, and the right not to be dismissed "unfairly".
   - The TCI does not operate an "employment at will" system. In order to dismiss an employee lawfully, the employer must comply with the provisions of the Employment Ordinance.
   - In the event that an employer does not comply with the provisions of the Employment Ordinance an employee may seek compensation arising from their dismissal or other claims in relation to their employment. Those claims are heard by the Employment Tribunal, which is a stand alone tribunal set up to deal only with employment related issues.

6. **How do local banks and government regulators deal with the treatment and conversion of local currency, repatriation of funds overseas, letters of credit, and other basic financial transactions?**
   - The official currency of the TCI is the United States Dollar. There are no restrictions on the receipt of or repatriation of funds overseas.
   - Banks and other financial institutions are subject to strict anti-money laundering laws and may refuse to accept or repatriate funds if they consider there is a risk of these funds being the proceeds of crime and/or related to the financing of terrorism.

7. **What types of taxes, duties, and levies should a foreign investor in the Turks and Caicos Islands expect to encounter?**
   - There is no corporate, income, capital gains, inheritance, or value added tax in the TCI.
   - The taxes, duties and levies that foreign investors are likely to encounter are primarily as follows:
     (i) stamp duty
     (ii) share transfer duty when purchasing the shares of a company that directly or indirectly owns land in the TCI,
     (iii) import duty with respect to goods being brought into the TCI and,
     (iv) if an employer, national insurance and national health insurance programme payments.

8. **How comprehensive are the intellectual property laws of the Turks and Caicos Islands, and do the local courts and tribunals enforce these laws regardless of the nationality of the parties?**
   - Trademarks may be registered in the TCI pursuant to the provisions of the Trademarks Ordinance.
   - Patents may be registered in the TCI pursuant to the provisions of the Patents Ordinance, subject to registration in either the UK or the EU.
   - The Supreme Court of the TCI will enforce intellectual property rights regardless of the nationality of the party seeking to protect their rights.

9. **If a commercial dispute arises, will local courts or will international arbitration offer a more beneficial forum for dispute resolution to foreign investors?**
   - The TCI Supreme Court (which is, essentially, equivalent to the English High Court) has professional judges appointed by Governor of the TCI on the recommendation of an independent judicial panel.
   - The Supreme Court deals with substantial commercial transactions on a regular basis albeit, as with other jurisdictions in the region, the proceedings may take longer than those conducted via a private international arbitration.
   - If a person is dissatisfied with a decision made by the Supreme Court, there is an appeal to the TCI Court of Appeal and then, subject to leave being obtained as required, a further appeal to the Judicial Committee of the Privy Council in London. Therefore, in terms of decision making a foreign investor can be satisfied that there is an effective and impartial judicial regime in the TCI.

10. **What advice can you provide for how best to negotiate or conduct business in the Turks and Caicos Islands?**
   - We would advise that any foreign investor in any country who is considering undertaking any substantial investment or conducting business in the TCI obtain professional, legal and if necessary other professional advice relating to their proposed investment.
   - There are a number of experienced and well-regarded attorneys in the TCI including some ranked in the various international directories.
   - Attorneys in the TCI are well used to advising foreign investors and are able to give not only strict legal advice, but also practical advice as to how to conduct business in the Islands.

###

# VENEZUELA

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## 1. Foreign Investments

**Overview**

The legal regime for foreign investment in Venezuela is governed by the Venezuelan Constitution, the international investment treaties that Venezuela has entered into, the Constitutional Anti-Blockade Law and the Constitutional Law on Productive Foreign Investment (*Ley Constitucional de Inversión Extranjera Productiva*) issued by the National Constituent Assembly (*Asamblea Nacional Constituyente*) back in 2017 and published in the Venezuelan Official Gazette number 41,310 dated December 29th, 2017.

The Venezuelan Constitution provides for foreign investment under the same conditions and benefits established for national investments.

In the other hand, the Constitutional Law on Productive Foreign Investment, it only applies to:

- Foreign companies and their affiliates, subsidiaries or related companies, whether governed by international agreements and treaties, as well as other forms of foreign organizations with economic and productive purposes that make investments in the territory of Venezuela.
- Grand National Companies whose objectives and operations are subject to a strategic plan of two or more States, executing investments of mutual interest through public, mixed companies, cooperative forms and projects of joint administration, strengthening solidarity among the peoples and enhancing their productive development.
- National private, public and mixed enterprises, and their affiliates, subsidiaries or related companies, whether governed by international agreements and treaties, and other organizations with economic and productive purposes receiving foreign investment, as provided for in the legal system of Venezuela.
- National individuals accredited as residents or domiciled abroad and foreign individuals residing abroad who make investments in the national territory.
- Foreign individuals residing in the country who make foreign investments.

**Types of foreign investments**

Foreign investment is defined by the Constitutional Law on Productive Foreign Investment as the productive investment made through the contributions made by foreign investors, comprised of tangible and intangible resources, destined to form part of the patrimony of the entities receiving foreign investment in the national territory. In this sense, there are two (2) types of foreign investment, namely:

a) Direct Foreign Investment: productive investment made through contributions made by foreign investors made up of tangible or financial resources, destined to form part of the patrimony of the entities receiving foreign investment in the national territory, with the purpose of generating added value to the productive process in which it is inserted. These contributions must represent a participation equal to or greater than 10% of the corporate capital.
b) Foreign Portfolio Investment: acquisition of shares or corporate participations in all types of companies that represent a level of participation in the corporate equity of less than ten percent (10%).

**Regulatory agency**

The Constitutional Anti-Blockade Law created the International Center for Productive Investment (CIIP), as a State institution in charge of the registration, evaluation, approval and promotion of national and international investment projects in Venezuela.

In general, such governmental agency oversees supervising and exercising controls over foreign investment and approving the investment projects or contracts with national and foreign investors in Venezuela

**Key obligations regarding in investments**

### Registration of the investment

Investments made by foreign investors must be registered before the competent Ministry in charge of the investment system's administration, of keeping records thereon and of processing any applications concerning the approval, rejection, renewal and periodic review of foreign investment records.

### Value and constitution of the investment

The constituent value of the foreign investment must be represented by one hundred percent (100%) of assets located in the country.

The contributions must be constituted at the official exchange rate in force, for a minimum amount of eight hundred thousand euros (€800,000) or six million five hundred thousand renminbi (6,500,000) or its equivalent in another foreign currency, in order to obtaining the registration of a foreign investment.

The governing body may establish a minimum amount for the constitution of the foreign investment that may not be less than ten percent (10%) of the amount described above.

### Internal financing

Any internal financing requested in Venezuela by foreign investors in connection with the investment to be made, may not exceed from fifteen percent (15%) of the total amount of the investment.

### Timeframe of the investment

The foreign investment must remain in the territory of Venezuela for a minimum period of two (2) years, counted as from the date on which the Foreign Investment Registration has been granted. Once this period has expired, the investors may, upon payment of taxes and other liabilities, make remittances abroad for the capital originally invested, registered and updated.

### Remittances and dividends

Foreign investors shall have the right to remit abroad annually and as from the closing of the first fiscal year up to one hundred percent (100%) of the proven profits or dividends coming from their foreign investment, registered and restated in freely convertible foreign currency, prior compliance with the purpose of the investment.

Only in cases of force majeure or extraordinary economic situations, the National Executive may reduce this percentage between sixty percent (60%) and eighty percent (80%) of the profits.

In case of partial remittance of dividends, the difference may be accumulated with the profits obtained for a maximum of three (3) fiscal years. The dividends that were not remitted abroad due to force majeure or extraordinary economic situations declared by the National Executive are excepted from the application of this provision.

**International Investment Treaties**

### Bilateral Investment Treaties

As of this date, Venezuela has entered into at least twenty-nine (29) Bilateral Investment Treaties (BITs) with third countries and is a member of the Caribbean Community (CARICOM).

However, as to this date, Venezuela is not a member of the International Centre for the Settlement of Investment Disputes (ICSID) as the country denounced the ICSID Convention back in January 2012.

### Tax Avoidance Treaties

Treaties in force entered into by Venezuela with third countries for the avoidance of double taxation are explained later in the Tax Matters section.

**Special Economic Zones**

On July 20th, 2022, the Organic Law of the Special Economic Zones (*Ley Orgánica de Zonas Económicas Especiales*) was published in Official Gazette No. 6,710 Extraordinary, through which Special Economic Zones can be created, organized, operated, administered and developed in the national territory.
Special Economic Zones are defined as the geographical delimitation that has a special and extraordinary socioeconomic regime and where strategic economic activities for the economic and social development of the nation are developed.

Such law applies to legal entities, public, private, mixed and communal, national or foreign, which participate in a Special Economic Zone, as well as the organs and entities of the State directly or indirectly linked to the development of such zones.

Per said Law, the President of the Republic is exclusively responsible for the creation or suppression of the Special Economic Zones, by means of a decree approved by the Council of Ministers, following a report from the Ministries with competence in matters related to the activities of these zones.

The National Superintendence of the Special Economic Zones is the governmental agency in charge of the management, administration, direction, coordination, control, supervision and inspection of the Special Economic Zones. Additionally, it will oversee collaborating with the International Center for Productive Investment (CIIP) in the evaluation of participation projects presented to operate within the SEZ.

Individuals and legal entities interested in executing projects in a Special Economic Zone must enter into an agreement (named Economic Activity Agreement) with the National Superintendence of the Special Economic Zones and the International Center for Productive Investment.

The aforementioned Law provides several economic and fiscal incentives for those who execute projects in the Special Economic Zones and who have subscribed the Economic Activity Agreement. These incentives provided for in the referred Law are generic, which means that those applicable to each Special Economic Zone must be defined depending on the economic-financial evaluation carried out by the Ministries with competence in economic planning and finance.

As of this date, at least, five (5) Special Economic Zones have been created in national territory: Paraguaná (Falcón), Puerto Cabello – Morón (Carabobo), La Guaira (La Guaira), Margarita (Nueva Esparta) and Isla La Tortuga (Miranda Insular Territory).

## 2. Corporate Matters

**Overview**

The Venezuelan Code of Commerce is the main law applicable to corporate structures in Venezuela. Under Venezuelan Law, the purpose of companies or business associations is to engage in one or more commercial activities listed in the Venezuelan Code of Commerce.

In general, corporate structures or vehicles are regulated by their articles of incorporation and by-laws and fall under the provisions of the Venezuelan Code of Commerce and, supplementarily, of the Venezuelan Civil Code.
Suggestions in terms of the appropriate vehicle for performing local operations in Venezuela often depends on a combination of the local vehicle (form of entity) being afforded with the protections of a Bilateral Investment Treaty (BIT) and by a Tax Treaty (TT), with specific tax consequences generated in the jurisdiction of a foreign investor as regards the results of the local operation, among other aspects.

The main forms of legal entities provided by the Venezuelan Code of Commerce are:

- Stock Company or Corporations (*Sociedad Anónima* or *Compañía Anónima*). This is the type of company most used in Venezuela by both foreign and national investors. Their key characteristics are common to comparable entities in many jurisdictions. The capital stock is represented by shares and the responsibility of the shareholders is limited to their share capital. Such share capital must be fully subscribed at the time of incorporation of the company, but it is not required that the shares be fully paid in. Transfers of shares are recorded in the stock register.
- Limited Liability Company (*Sociedad de Responsabilidad Limitada*). This is a private company, and its capital is represented by membership quotas. The liability of the owner of the quota is limited to the aggregate amount subscribed. Complementary equity may nonetheless be made (to provide for a larger working capital). The assignment of membership quotas must be made by notarized document and shall have no effect as regards to third parties until registered at the Commercial Registry.
- General Partnership (*Sociedad en Nombre Colectivo*). Same as in other legal systems, in this type of legal entity the partners have unlimited liability and are jointly and severally bound (they are generally bound by the acts of the others). Foreign investors rarely resort to this vehicle in Venezuela due to the scope of the liabilities involved and the absence of significant tax benefits.
- Simple Limited Partnership (*Sociedad en Comandita Simple*). In this type of entity, one or more general partners have unlimited liability, while the liability of the limited partners is confined to their investment in the partnership.

Additionally, the Venezuelan Code of Commerce provides the possibility for foreign companies to open or establish subsidiaries or branches in Venezuela as another alternative for doing business in the country. The branch is not a legal entity independent from its parent company. The corporate resolutions authorizing the establishment of the branch must indicate its assigned capital.

**Legal Entities and Incorporation Requirements**

In general, any corporate structure regulated under the Venezuelan Code of Commerce can be constituted by two or more persons or corporate entities, even if they are not domiciled in Venezuela. However, certain formalities must be complied to establish a legal entity in Venezuela.

Incorporation formalities vary depending on the type of company or entity, be it a corporation, limited liability company, general partnership or a simple limited partnership.

### Corporations *(Sociedad Anónima or Compañía Anónima)*

As stated before, a corporation is the most used legal entity by national and foreign investors in Venezuela. The capital stock is represented by nominative shares and the responsibility of the shareholders is limited to their share capital. The initial amount of the capital stock of a corporation is unlimited, but it must be subscribed to in full, and at least twenty percent (20%) thereof paid in upon incorporation. Transfers of shares are recorded in the stock register.

Any name available at the Mercantile Registry can be used as long as it is reserved priorly for its use before said Registry and the words *Sociedad Anónima* or *Compañía Anónima*, or its corresponding initials (S.A. or C.A.), be added to the name.

At least two (2) shareholders, individuals or legal persons, must sign the articles of incorporation to form this type of entity. Usually, the articles of incorporation are drafter with sufficient scope for them to also serve as the by-laws. The document that comprises the articles of incorporation and by-laws must be submitted to the Mercantile Registry within fifteen (15) days of execution by the founding shareholders, together with the bank deposit slips evidencing the payment, in whole or in part, of the par value of the shares.

Once registered in the Mercantile Registry, the articles of incorporation and by-laws must be published in a local newspaper, to be considered validly incorporated. Upon publication, the corporation is considered validly incorporated.

The Venezuelan Code of Commerce does not expressly provide for the provision of preferential rights to subscribe new shares resulting from a capital increase or for a right of first refusal in the event of a sale of shares in this type of entity. However, it is a common practice to include provisions governing preferential rights in these types of situations whenever there are two (2) or more shareholders.

As per Article 296 of the Venezuelan Code of Commerce, the transfer of ownership of shares is accomplished by the execution of the respective transfer entry in the company's share registry book by the transferor and the transferee. Moreover, a review of the Articles of incorporation of the company whose shares are being transferred must be conducted, as the company may have preferential rights granted to other shareholders.

The supreme authority and control of the corporation is attributed to the Shareholders' Meeting, which has the power to appoint the members of the board of directors or the administrators of the entity, whichever the case. The powers of these individuals are generally assigned by the articles of incorporation or by-laws, and they do not need to be shareholders of the corporation.

The profits of the corporation are distributed per a resolution adopted by the Shareholders' Meeting or the Board of Directors, whichever the case. Per the Venezuelan Code of Commerce, at least five percent (5%) of the net profits of the corporation must be set aside annually to constitute a legal reserve.

In general, the articles of incorporation and by-laws of a corporation must include the following specifications:

- Company name and domicile of its establishments and representatives.
- Business nature.
- The amounts of subscribed and paid-up capital.
- Identification of the shareholders by establishing their names and domicile, the number of shares held and par value of the shares indicating whether they are nominative or bearer shares and if the shares can be converted from one to another, the date and number of contributions made by the shareholders.
- The value of any loans and other assets contributed to the company.
- The accounting principles involved in the preparation of balance sheet and distribution of earnings.
- Any special rights of promoters.
- Number of individuals that will be on the board, the rights and obligations of the board members and specifically determining who will be empowered to sign for the company.
- Appointment of the statutory auditors (*comisarios*).
- Powers vested upon the stockholders' meeting, any conditions for valid decision making and voting rights.
- Actual date when the company will begin operations and company duration.

Additional and specific requirements must be considered whenever the nature of business falls into the category of a supervised sector (i.e. banking, insurance and capital markets) where authorizations and subsequent formalities must be complied with prior to the entity's incorporation.

### Limited Liability Company *(Sociedad de Responsabilidad Limitada)*

As stated above, the limited liability company is a private entity with capital that is represented by membership quotas and not shares unlike the corporation. The liability of the owner of the quota is limited to the aggregate amount subscribed. Under no circumstance may the quotas be represented by shares or marketable securities.

The incorporation of limited liability companies is subject to the same rules applicable to corporations. Any name may be used if it is available in the Mercantile Registry and the words *Sociedad de Responsabilidad Limitada* or its corresponding initials (S.R.L.) be added to the name.

Complementary equity may nonetheless be made (to provide for a larger working capital). The capital must be completely subscribed to and at least fifty percent (50%) thereof must be paid in if the payment is in cash, and one hundred percent (100%) if it is in kind.

The assignment of membership quotas must be made by notarized document and shall have no effect as regards to third parties until registered at the Commercial Registry.

The quota holders are jointly and severally liable for a term of five (5) years for the veracity of the value assigned to contributions in kind in the articles of incorporation. Each holder of a quota has one (1) vote for each quota owned.

The profits of the company are distributed among the holders of quotas at the end of the fiscal year per a resolution made by the Quota Holders' Meeting or the Board of Directors, whichever the case.

The management of this type of company is subject to the same rules as corporations. Administrators are jointly and severally liable both to the company and to third parties for violations of the law and the articles of incorporation, as well as any other infringement while in office.

### General Partnership *(Sociedad en Nombre Colectivo)*

In this type of legal entity, the partners have unlimited liability and are jointly and severally bound (they are generally bound by the acts of the others). Despite partner liability being unlimited, no action can be taken against the partners without firstly exhausting legal actions against the partnership, as the liability is of a subsidiary nature.

The requirements for the incorporation of a general partnership are governed by the same rules as those for corporations a limited liability companies, with the sole difference that the articles of incorporation are simple and only an excerpt of these must be registered and published. Likewise, the name used for these types of partnerships must be that of the partners.

### Simple Limited Partnership *(Sociedad en Comandita Simple)*

The limited partnership is characterized as a structure whose formation and operation involves two (2) categories of partners: partners with unlimited liability (*comanditantes*) and partners whose liability is limited to a contribution (*comanditarios*).

The limited partnership is considered to be a variety of the general partnership. The rules of the general partnership are applied to the joint and several partners. The representation of the partnership corresponds only to the limited partners. The liability of the limited partners is limited to their contribution, as mentioned above, except in the case that they interfere in the administration or that their names appear as part of the corporate name, in which case they are held jointly and severally liable.

### Other alternative approaches to doing business in Venezuela

An alternative approach for foreign companies to doing business in Venezuela may be by opening a branch in the country. As stated before, the Venezuelan Code of Commerce provides the possibility for foreign companies to open or establish branches in Venezuela. The branch is not a legal entity independent from its parent company. The corporate resolutions authorizing the establishment of the branch must indicate its assigned capital.

A business acquisition is another alternative approach to doing business in Venezuela for foreign individuals or companies. Acquisition in Venezuela usually takes place through the purchase of shares of a legal entity already incorporated and even engaged in prior business. The transfer of the shares must comply with the requirements and formalities that the Venezuelan Code of Commerce provides for in each type of legal entity.

The vehicles most used by foreign investors to perform activities in Venezuela are the S.A. and branch offices. Although less commonly used vehicles, the Simple Limited Partnership is an attractive vehicle, but its choice shall depend on the circumstances.

## 3. Labor Matters

**Overview**

In Venezuela, labor provisions are a matter of public policy and therefore any individual or legal entity with interest in contracting personnel for the start of business activities in the country will have to take into consideration the following circumstances:

- All companies and establishments, either public or private, existing or established within the territory of Venezuela, are subject to labor provisions.
- Rules favoring employees can neither be surrendered nor repudiated through private agreements between parties.
- Such norms apply to Venezuelan and foreign personnel, regardless of whether such personnel are hired abroad, provided the job is performed in Venezuela.
- At least ninety percent (90%) of both the employees and workers rendering service for an employer who hires ten (10) or more employees, must be of Venezuelan nationality.

Collective bargaining agreements and individual employment contracts may change or alter the conditions established by Law, provided that the norms resulting are more employee oriented. In the specific case of collective bargaining agreements, employers are required to negotiate them with the union representing the majority of their workers under its agency.

The provisions of the collective bargaining agreements then become binding clauses which form an integral part of the individual work contracts. An exception may be established in the case of executives; employees of trust; and employer representatives.

**Labor stability**

Labor stability is a right that most workers have in Venezuela. Pursuant to article 87 of the Organic Labor Law, the following individuals are covered by labor stability:

- Workers hired for an indefinite term as from the first month of service rendered.
- Workers hired for a fixed term, as long as the term of the contract has not expired.
- Workers hired for a specific work, until the totality of the tasks to be performed by the worker, for which they were expressly hired, have been completed.

This means that such workers cannot be discharged, nor their working conditions altered, without just cause, unless proper judicial proceedings are brought for such purpose.

It is important to note that management personnel are not covered by the stability provided for in this Law.

Venezuelan Labor Law also provides a bar against dismissal which applies to workers promoting a union; workers joining a union in formation; members of the board of directors of a union; company workers, during the discussion of a collective bargaining agreement; and workers involved in a collective conflict.

This means that they cannot be dismissed, transferred nor their working conditions deteriorated without the prior qualification of their dismissal.

**Salary and Wages**

The principal obligation of the employers to their workers is to pay them a wage (salary). Currently, Minimum Salary is the equivalent of one hundred and thirty dollars Bolívares (VEB 130,00) per month, which must be paid in Venezuelan legal currency (VEB). It should be borne in mind that the Executive is legally empowered to modify the amount of the minimum salary or to decree salary raises.

Pursuant to the criteria and definitions provided by Law, doctrine and case law, in Venezuela, any remuneration received by workers in exchange for the service rendered is deemed to form part of their salary. Certain non-remunerative payments known as social benefits are excluded from this definition, including:

- Lunchrooms, food and meal services, and daycare centers.
- Medical, pharmaceutical and dental expenses.
- Work clothes.
- School supplies or toys.
- Grants or training courses.
- Funeral expenses.

Considering that this list is not exhaustive, pursuant to Article 105 of the Organic Labor Law, the aforementioned social benefits are deemed not to form part of salary, unless otherwise indicated in the corresponding collective bargaining agreements.

Making this distinction between salary and non-salary items is essential, as the salary of the workers is the basis of calculation of numerous obligations for the employers.

Although salaries shall be paid in legal currency per article 123 of the Organic Labor Law, in recent years, Venezuelan case law has provided for the possibility for employers to pay salaries in foreign currency (e.g. USD).

**Work Shifts**

The Organic Labor Law sets forth several norms pertaining to the Work Shift. Among those most worthy of mention are the following:

- Working days shall not exceed five (5) days a week and employees shall be entitled to two (2) days off, continuous and paid, during each workweek.
- Day shift (between 5:00 a.m. and 7:00 p.m.); cannot exceed eight (8) hours per day nor forty (40) hours per week.
- Night shift (between 7:00 p.m. and 5:00 a.m.); cannot exceed seven (7) hours per day nor thirty-five (35) hours per week.
- Mixed shift includes both daytime and nighttime periods, considering that if the mixed shift spans more than four (4) nighttime hours it is considered a night shift. Mixed shifts cannot exceed seven and one-half (7½) hours per day, nor thirty-seven and one-half (37½) hours per week.

When the work is continuous and performed in shifts, its duration may exceed the daily and weekly limits, provided that the total hours worked by each worker in a period of eight (8) weeks does not exceed an average of forty-two (42) hours per week. The weeks that contemplate six (6) working days must be compensated with an additional day of enjoyment in the vacation period corresponding to that year, with payment of salary and without incidence in the vacation bonus.

The regular shift may be extended to render services during off hours, yet a permit must be obtained to do so from the Labor Inspector of the Circuit where the company is seated, and the actual duration of the work cannot be more than ten (10) hours per day. No worker may render services for over ten (10) hours of overtime per week, or more than one hundred (100) hours overtime per year.

Overtime is payable with a fifty percent (50%) surcharge, at least, over the salary agreed for the normal working day. When a worker renders service on a holiday, he/she shall be entitled to the salary corresponding to that day and in addition to the salary corresponding to the work performed, calculated with a surcharge of fifty percent (50%) the normal salary.

**Vacation and Leaves**

Under Venezuelan Labor Law, when a worker completes one (1) year of uninterrupted work for an employer, he/she will enjoy a paid vacation period of fifteen (15) working days. In subsequent years, he/she will also be entitled to an additional paid vacation day for each year of service, up to a maximum of fifteen (15) working days.

Vacations that are interrupted due to events not attributable to the employee will be reactivated when these circumstances cease.

During the vacation period, the employee shall be entitled to receive the food allowance, in accordance with the provisions of the law regulating the matter.

During the vacation period no procedure for dismissal, transfer or demotion may be attempted or initiated against the worker.

The service of a worker shall not be considered interrupted by his or her annual vacation, for the purpose of the payment of contributions, social security contributions or any other analogous contribution payable in his or her interest while rendering his or her services.

Employers will pay to the worker at the time of his or her vacation, in addition to the corresponding salary, a special bonus for its enjoyment equivalent to a minimum of fifteen (15) days of normal salary plus one (1) day for each year of service up to a total of thirty (30) days of normal salary. This vacation bonus is of a salary nature.

Finally, it is important to highlight that expatriates are subject to the provisions of Venezuelan labor legislation; hence, if a particular special consideration is granted to an expatriate, such special treatment shall be given as a manner that does not contravene the Venezuelan labor legislation.

A pregnant worker will enjoy special protection of immovability from the beginning of pregnancy and up to two (2) years after childbirth, in accordance with the provisions of the Organic Labor Law. The special protection of immobility shall also apply to the worker during the two (2) years following the family placement of children under three (3) years of age.

The pregnant worker is entitled to a rest period of six (6) weeks before the birth and twenty (20) weeks after, or for a longer period due to an illness, which according to medical opinion prevents her from working.

In these cases, she will keep her right to work and to the payment of her salary, in accordance with the provisions of the regulations governing Social Security.

## 4. Tax Matters

**Income Tax**

### Overview

Since 2001 Venezuela adopted worldwide income taxation. Pursuant to the Income Tax Law (*Ley de Impuesto sobre la Renta*) provisions, income (net accretions of wealth when realized pursuant to the tax law provisions) sourced in Venezuela is taxable regardless of whether the taxpayer is a Venezuelan resident taxpayer or an entity incorporated (set-up) in Venezuela or is a nonresident alien or company; at the same time, income from foreign sources obtained by taxpayers residing in Venezuela or attributable to permanent establishments (P.E.) of foreign entities in Venezuela is subject to taxation in Venezuela.

With regards to foreign source income the law recognizes a primary right to tax in the country of source and therefore allows for crediting foreign taxes (FTC) paid by the taxpayer in producing foreign source income. The FTC system does not cover for indirect credits (i.e. credits for taxes paid by affiliates located overseas), but rather requires foreign taxes to be effectively paid and does not allow for carry-over or carry-backwards of FTC, and it does not allow for the use of overall foreign losses to reduce domestic source income.

The system is coupled with an anti-deferral regime for income attributable to investment vehicles controlled by Venezuelan resident taxpayers and located in low tax jurisdictions (as per a “blacklist” issued by the Tax Authorities).

### Income Tax Rate

The general statutory corporate income tax bracket applicable to Venezuelan sourced income as well as overseas income obtained by a Venezuelan resident taxpayer or a P.E. in Venezuela of a non-resident taxpayer has three (3) marginal rates, being the minimum marginal rate 15% and the top marginal rate 34%. Taxpayers engaged in upstream oil activities are subject to a schedular tax rate of 50%.

### Taxable Base

All revenues are subject to income tax unless otherwise excluded by law from the taxable base. Excluded Items of Income are subtracted from Gross Income, i.e., the sum of All Items of Income realized by the taxpayer. The result is the Gross Taxable Income from which Costs and Expenses are deducted. The after-deductions result is the Net Taxable Income to which the statutory corporate tax bracket is applied. In addition, the result of the application of the Adjustment per Inflation System may result in income or losses to be added to or subtracted from the taxable base.

### Deductions

As a general rule all costs and expenses are deductible provided that they are related, proportional and necessary to the income producing activity. Any costs or expenses related to Excluded and/or Exempted Items of Income are not deductible. Some costs and expenses are limited or disallowed, depending on the facts and circumstances of each case, e.g., related party charges, commissions, among others. All Other Taxes and Contributions, Customs Tariffs and Duties are deductible for income tax purposes.

### Depreciation

Tangible fixed assets' depreciation is deductible. Depreciation terms vary depending on the nature of the asset, and the same are not provided by Law nor Regulations but referred to Venezuelan Generally Accepted Accounting Principles (GAAP); common practice is twenty (20) years for real estate, ten (10) years for many other tangible fixed assets, except for motor vehicles and computers for which a term varying from three (3) to five (5) years is commonly applied.

Globally used methods are generally accepted in Venezuela for tax purposes, e.g., straight-line method and Unit of Production method (UOP). Depletion is recognized for mining and hydrocarbon assets and investments, and other methods such as declining balance method or inverted digits method, inter alia, may be applied with the consent of the Tax Authority.

### Transfer Pricing

Venezuela has OECD like transfer pricing rules applicable to all transactions between a Venezuelan party (i.e. a Venezuelan resident taxpayer or company or a P.E. of a foreign company in Venezuela) and a foreign related party. In fact, the 1995 OECD Directives on transfer pricing are called in for application in a supplementary manner as provided by the Law and the Regulations (as they may be adjusted over time, and hence presumably as the said directives were amended in 2010). Transfer pricing provisions do not apply to transactions between two parties who are Venezuelan resident taxpayers.

Under the Venezuelan transfer pricing rules, the Venezuelan party must keep and file supporting documentation with the tax authorities, as well as it must perform a transfer pricing study showing that its prices or profit margins on the transactions are within the comparable arm's-length prices or profit margins ranges for its activity and similar transactions, on a yearly basis. Parties in low tax jurisdictions are deemed as related parties for these purposes. The Venezuelan transfer pricing regime provides for several situations where two (2) parties are deemed related. The catalog is complex, and its application should require a more detailed analysis on case-by-case basis.

Venezuelan provisions allow for corresponding adjustments when a transfer pricing adjustment is made by a tax treaty partner, and the law allows since 2001 for the execution of Advance Pricing Agreements (APA) with the Tax Authority; to the best of our knowledge not a single APA has been executed to date.

### Inflation Adjustments

Since 1991 Venezuela has an inflation adjustment system applicable to all non-monetary assets and liabilities and to the taxpayer's net worth. The yearly adjustment is determined by applying the inflation index (Venezuelan Consumer Price Index "CPI") to the cost basis of the non-monetary assets and the result is a greater cost basis entered against a taxable income for the taxpayer. On the other hand, the non-monetary liabilities and the net-worth of the taxpayer are similarly adjusted and the corresponding increase is entered against an increase in expenses. The difference between the taxable income and the expenses originated in the yearly inflation adjustments should result either in a net item of taxable income or a net loss for inflation (this loss is deductible).

Effective for fiscal years beginning on March 2007 onwards, the API system is to recognize adjustments in value (i.e. exchange gain or loss) at the close of the fiscal year for assets and liabilities denominated in foreign currency –as a necessary balance since the same are to be treated as monetary assets and liabilities under the law-.

### Tax-Free Reorganizations

There is only one (1) type of tax-free reorganization authorized by Venezuelan law, i.e. a statutory tax-free merger where the tax attributes of the target company are transferable to the surviving or resulting corporation. Statutory mergers are considered exempt from other taxes such as VAT (only if there is no increase in capital) or registered capital tax (stamp duty).

While other reorganization transactions are not expressly authorized under Venezuelan tax law and regulations, some advantages may be achieved from contributions to capital and distributions of capital of Venezuelan corporations since neither the law nor the regulations require for the same to be carried out at fair market value. In such sense, deferral may be achieved by transferring (contributing or distributing) assets at their tax cost (basis), which basis will be carried over (not stepped up) in the hands of transferee.

### Payment and Filing

For any given taxable year, the corresponding income tax return and tax liability must be filed and paid on the dates set out by the Tax Authority during the immediately following year, commonly corresponding with a term of three (3) months following the closing of the fiscal year of the relevant taxpayer (e.g., the filing corresponding to fiscal year 2023 of a taxpayer closing on December 31$^{st}$, 2023, could take place up until the last day of March 2024, or the first half of April for Special Taxpayers).

There are special filing and payment schedules issued by the tax authorities for corporations and individuals classified as Special Taxpayers (*Contribuyentes Especiales*). All Special Taxpayers must file their return no later than on the day indicated according to their last digit of the Tax Information Number as expressed in the calendar published by the Tax Authorities in their website www.seniat.gov.ve.

Filing and payment dates are ordinarily similar year after year. The Tax Authority is pressing hard for all taxpayers to file their return and pay their taxes electronically; at this date all Special Taxpayers and public employees are obliged to file their income tax returns electronically.

### Penalties and Interest on Unpaid Tax or Late Payment

Unpaid taxes are subject to late interest that should be assessed at the official rate fixed monthly by the corresponding regulations. Late payment interest rate is one hundred and twenty percent (120%) of banking rate posted by the government.

Penalties apply for non-filing or inaccurate filing, which may range from twenty-five percent (25%) up to two hundred percent (200%) of the corresponding tax liability (which amount is adjusted per inflation based on Tax Units (T.U.), depending on the facts and circumstances in each case.

**Value Added Tax (VAT)**

### Tax Rate

VAT's general rate is twelve percent (12%). A surtax of ten percent (10%) applies to luxury consumption goods as defined under the VAT law.

In Venezuela there are exempted and exonerated goods. The VAT law provides for exemptions on most basic services and basic consumption goods (like unprocessed food and beverages), but the list has largely increased with exonerations on imports and local sales of goods and services. Since the exempted and exonerated goods and services are extensive the same should be checked in detail on a case-by-case basis. A zero-rate regime applicable to domestic sales of crude oil was incorporated in the VAT law, and the Supreme Tribunal of Justice has ruled that sales and services to Free Trade Zones should receive zero rating treatment.

There are also some VAT exemptions for specific public entities of the national or local territorial level, which may or may not be relevant depending on which is the public entity that will act as contracting entity in any given project.

### Taxable Transactions

The transactions subject to VAT are the sale and importation of movable tangible property; and services rendered in Venezuela.

In some cases, services rendered outside Venezuela are deemed as subject to VAT because of their nature and for being the beneficiary a party located in Venezuela, e.g., consulting, advising and auditing services. In these cases, the VAT does not affect the foreign party as the Venezuelan party must cover and withhold one hundred percent (100%) of the VAT and transfer to the tax authorities the withheld amounts.

The sale of movable tangible property that is a fixed asset for the seller is not subject to VAT.

### Taxable Base

As a general rule, the taxable base is the price or value of the consideration paid for the goods or services, which should correspond to their Fair Market Value (FMV).

There are cases where certain items must be either included or excluded from the taxable base and/or cases with either mandatory or optional taxable bases, which should be analyzed on a case-by-case basis.

### Creditable VAT

As a general rule the VAT taxpayer has a right to credit against payable VAT all VAT paid to his/her providers for tangible movable property bought or imported and for services hired. i.e., to compute the VAT quota, it is allowed to deduct from output VAT all input VAT, and any excess input VAT for a given month may be carried over to future months with no limitation.

The VAT paid in the acquisition of goods that will become fixed assets for the buyer is creditable against VAT regardless of whether the asset is capitalized for income tax purposes.

There are limitations in crediting input VAT paid on costs and expenses, when incurred in a VAT exempted or VAT zero-rated activity, the same need to be reviewed on a case-by-case basis.

### Payment and Filing

VAT has a monthly taxable period. Therefore, the tax must be computed, and a VAT return filed monthly. The VAT return must be filed and paid in full on the filing dates scheduled by the tax authorities for these purposes, which are usually within the first two (2) weeks following the corresponding monthly period's end. In the case of Special Taxpayers, the filing and payment dates are scheduled by the Tax Authority depending on the last digit of the taxpayer's Tax Information Number.

### VAT Withholding for Special Taxpayers

Based on the VAT law authorization for the Tax Authority to provide for VAT withholding, the Venezuelan Tax Authority has established a broad VAT withholding regime. Under the regulations, those taxpayers defined by the Tax Authority as Special Taxpayers (*Sujetos Pasivos Especiales*) are required to withhold on their acquisition of taxable goods and services from VAT taxpayers.

Tax to be withheld is commonly seventy percent (70%) of the input VAT for purchaser of goods or services, but under some circumstances it may be the full amount (100%) of VAT charged by the provider of goods or services. The VAT taxpayer may credit the VAT so withheld against its VAT quota, i.e., the excess –if any– of output VAT over input VAT, and outstanding amounts of VAT withheld for a monthly term may be transferred for their recovery in later periods (months), with no limitation in time; alternatively, any excess VAT withholding not credited during the following three (3) monthly periods may be recovered by filing before the Tax Authority for setting off said amounts against any national taxes or assigning the same to third parties.

**Dividends Tax / Branch Profits Tax**

Since the amendment of the law in 1999 (and effective from 2001) both dividend and "deemed dividend" taxes where reinstated under Venezuelan income tax. The applicable rate is a flat thirty-four percent (34%), which is ultimately to be applied on the excess of financial (accounting) income over net taxable income. i.e. the Venezuelan dividend tax is clearly not a classical system dividend tax, nor it is an imputation system dividend tax, it performs as an equalization tax.

Dividend tax arises on dividends paid by Venezuelan companies (corporations, such as the *Sociedad Anónima*, or LLC, such as the *Sociedad de Responsabilidad Limitada*), and the same only arises on the excess –if any– of financial (accounting) earnings and profits of a Venezuelan corporation over net taxable income subject to income tax and is a single tier dividend tax. i.e., dividends paid based on already taxed dividends are not subject to dividend taxation. Allocation rules help identify earnings and profits to which the dividends will be attributed to, i.e., first to net taxable income, then to dividends received, then to any excess of financial income over net taxable income. Then with regards to timing, the allocation rules refer to a LIFO in earnings and profits, recognizing first the distribution of E&P of later years.

The amount of said dividend tax on dividends paid to overseas entities may be further reduced or removed on the basis of tax treaty provisions (Cf. tax treaties chart above).

While the tax is a tax on the shareholder, the same is withheld at source at company level, and the rate remains the same, i.e. thirty-four percent (34%) regardless of whether the shareholder is a Venezuelan resident taxpayer or an overseas individual or entity.

On the other hand, a dividend tax also applies on out-bound investments, such tax applies on dividends paid from overseas corporations to Venezuelan resident taxpayers or Venezuelan P.E. of foreign entities. The applicable rate is thirty-four percent (34%) on the gross dividend amount and any taxes paid on said dividends may be credited under the Venezuelan FTC system.

A tax on "deemed dividends" (or branch remittance tax) applies also to amounts which may be remitted overseas by branches or P.E. of foreign entities in Venezuela, at a flat thirty-fourt percent (34%) rate.

While the statutory provisions refer to the shareholders in the overseas entity as the taxpayers, the tax is applied regardless of whether dividends are paid by the overseas entity home office or even regardless of whether earnings are remitted overseas by the branch or P.E. In fact, the tax applies on any earnings subject to remittance provided the same are not reinvested in fixed assets in Venezuela (such reinvestment to be certified by an independent auditor) for a term of at least five (5) years (after which said amounts could be remitted tax free).

The "deemed dividend" tax is applied on the excess –if any- of financial (accounting) earnings and profits of the Venezuelan branch or P.E. over its net taxable income subject to income tax.

As with the dividends tax, the amount of said deemed dividend tax on dividends paid to shareholders of overseas entities with a branch in Venezuela may be further reduced (say, for Canada or USA) or removed based on tax treaty provisions (most other tax treaties).

**Cross-border Payments**

### Withholding Taxes

When Venezuelan sourced income is remitted abroad to a beneficiary that is a non-resident alien individual or entity, the payment is commonly subject to a withholding tax, which is commonly deemed a final payment of tax in Venezuela for payee (based on the relevant facts and circumstances a return may also have to be filed with the closing of the fiscal year).

### Dividends

If the corresponding profits were taxed at the corporate level, then no income tax withholding applies, otherwise a thirty-four percent (34%) income tax withholding may apply (ultimately to be applied on any excess of financial income over net taxable income. i.e. the Venezuelan dividend tax is an equalization tax.), unless otherwise reduced or removed under a tax treaty.

### Royalties

The domestic income tax definition of royalties is neither directly tied to the nature of the goods transferred (e.g. intellectual property, such as copyright rights, patented rights or trademarks) nor to the rights afforded with the transfer, but rather to the form of payment. Royalties are defined under the Venezuelan income tax law as the amount paid for the use or enjoyment of patents, trademarks, copyright rights and other procedures, fixed in relation to a unit of production or sale, whatever the denomination of the transfer under the relevant contract.

In this latter case (royalties), net income is a notional ninety percent (90%) –far more burdensome than the above– of the invoiced amount and the general tax brackets apply, with a commonly applicable top marginal rate of thirty-four percent (34%). Therefore, royalty payments are subject withholding tax up to an effective thirty-point sixty percent (30.60%).

As it should be clear, the term royalties used in our domestic tax laws is clearly not consistent with the understanding of such term in the international arena (e.g. OECD Model Tax Convention on Income and Capital, and even the U.N. Model Double Taxation Convention between the Developed and Developing Countries), and it is defined by the way payment is structured. In such sense, under Venezuelan domestic tax law, royalties may include transfers otherwise characterized as technological assistance or technological services, but at the same time it expands beyond covering trademarks.

### Technical Services, Technical Assistance and Consulting Services

Technical assistance is defined under the Venezuelan domestic income tax law as the supply of instructions, writings, recordings, movies and other similar technical instruments, destined to the elaboration of a work or product to be sold or the rendering of a specific service for the same sale purposes.

Furthermore, when referring to technical assistance the law provides that it may include the transfer of technical knowledge, engineering services (including execution and supervision of the assembly, installation and startup of machinery, equipment and production plants; the calibration, inspection, repair and maintenance of machinery and equipment; and to carry out tests and trial, including quality control), project R&D (including elaboration and performance of pilot programs; laboratory research and experiments; exploitation services and technical planning or programming of production units), advisory and consultation services (on overseas procurement, representation; advisory and instructions supplied by technicians, and the supply of technical services for the administration and management of corporations in any of the activities or operations thereof) and the supply of production procedures or formulas, data, information and technical specifications, diagrams, plans and technical instructions, and the supply of elements of basic and detailed engineering.

On the other hand, technological services cover the concession for use and exploitation of invention patents, models, industrial drawings and designs, improvements or perfection to the same, formulas, revalidation or instructions and all technical elements subject to patenting. As it is clear from the law, the focus is placed on the characteristic of patentability of the intellectual property so transferred.

Net income is a notional thirty percent (30%) of the invoiced amount in the case of technological assistance, while a fifty percent (50%) of the invoiced amount in the case of technological services. In either case the general tax brackets apply, with a commonly applicable top marginal rate of thirty-four percent (34%). Hence, technical services and technical assistance payments are therefore subject to withholding for income taxes up to ten-point two percent (10.2 %) for technical assistance, and seventeen percent (17%) for technology services.

### Other Services

If rendered from abroad and not considered technical services or technical assistance, then withholding tax up to an effective thirty-point sixty percent (30.60%) should apply, unless otherwise provided by special rules.

**Other Taxes and Contributions**

### Net Worth Tax

All special taxpayers with a net worth exceeding from one hundred and fifty million Tax Units (150,000,000 T.U.) by September 30 of each year are subject to the payment of the Net Worth Tax. The tax base is the total value of assets and rights held, being this value determined pursuant to the rules established in this law and excluding liabilities and the value of charges and encumbrances vested upon such assets, as well as upon assets and rights exempted or exonerated.

For the purposes of determining the value attributable to the taxpayer's assets, the Law sets forth certain standards based on the type of asset involved, thereby prevailing the rules on the market value of the assets on the date when the tax return is filed.

The tax rate applicable to the net worth's value determined may be modified by the Government, ranging from zero-point twenty-five percent (0.25%) and one-point fifty percent (1.50%). The net worth tax rate has been currently set on zero-point twenty-five percent (0.25%).

### Tax on Large Financial Transactions

The Law of the Tax on Large Financial Transactions establishes a tax for special taxpayers by reason of the sums debited from banks and other financial institutions in the country, and for the payment of debts without the financial system taking part in the transaction, as a result of the payment or another form of extinguishing obligations. In the case of debt extinguishment without the financial system taking part in the transaction, the law provides that "debt payment entails offsetting, novation and debt write-off".

This tax also applies to individuals or entities who have not been designated as Special Taxpayers when they make foreign currency payments with the intermediation of national financial institutions or foreign currency payments to Special Taxpayers without the intermediation of these institutions. For these purposes, the financial institutions and the Special Taxpayers have been designated as withholding agents.

The current general tax rate is two percent (2%) and the special rate applicable to debits in foreign currency accounts held in national financial institutions or foreign currency payments to Special Taxpayers without the intermediation of these institutions has been set at three percent (3%).

### Real Property Taxes

There are municipal (local territorial level) taxes on urban real estate. The rate for these taxes is set in municipal ordinances adopted by each locality, therefore they vary. Real estate tax usually ranges from zero-point one percent (0.1%) to zero-point five percent (0.5%).

The taxable base in the case of real estate is the cadastral value of the property. These taxes are usually paid, and a return filed yearly.

Incentives in these taxes are ruled by the ordinance of the municipality in which the property is located. Therefore, the availability of incentives must be checked on a case-by-case basis.

### Local Activities Tax

This is also a municipal tax applicable to all industrial, commercial and service activities (excluding professional services) performed in the territory of said municipality. The taxable base is the turnover (gross proceeds) received by the taxpayer and arising from the activity performed in said locality. The tax rates vary from locality to locality and range from zero-point five percent (0.5%) to five percent (5%).

This tax is usually paid, and a return filed yearly, and some basic rules regarding the same have been recently sanctioned by the Venezuelan National Assembly to avoid or reduce multiple taxation. In this sense, apart from tax base apportionment among different municipalities where an activity is carried out, and the formal recognition of the permanent establishment as a condition for the tax to arise, the law (*Ley Orgánica del Poder Público Municipal*) allows for the National power to establish a cap rate for certain activities. For example, electric utility services, such as power plant and transmission are capped at two percent (2%), radio broadcasting at zero-point five percent (0.5%) and telecommunications activities at one percent (1%).

Incentives in these taxes are ruled by the ordinance of the municipality in which the activity is performed and taxed. Therefore, the availability of incentives must be checked on a case-by-case basis.

### Stamp Tax

This is a documentary tax applicable to all written agreements with effects in Venezuela or for a Venezuelan party which taxing power is vested on the States and the Metropolitan District (of Caracas).

The tax rate varies based on the acts and transactions. It is worth mentioning that under an interim arrangement some stamp taxes are charged by the National Government, such as the payment of a stamp tax of one percent (1%) over the registered capital of a company on its incorporation or subsequently when the same is expanded with further contributions.

The taxable base may be the full amount of the consideration agreed in the document, unless otherwise indicated by law, in which it performs as a tax, or the same may perform as a duty which is calculated on a given amount of Tax Units per transaction.

### Registration Tax

The registration of acts and documents with the civil law registry office or the commercial registry office, is subject to this registration tax. The tax rate ranges between zero-point five percent (0.5%) and one percent (1%) depending on the type of act or document. The taxable base is the amount of the price or consideration shown in the document. Very few documents that are subject to registration are exempted from this tax, but if the document is subject to registration tax it is automatically exempted from the above-commented stamp tax.

### Social Security Pensions Tax

Just recently, Venezuela's National Assembly issued the Law for the Protection of Social Security Pensions against the imperialist blockade (*Ley de Protección de las Pensiones de la Seguridad Social frente al Bloqueo Antiimperialista*), published in Official Gazette No. 6,806 Extraordinary dated May 8th, 2024, through which a new social security pensions tax –dubbed contribution– was established.

For the purposes of this Law, social security pensions are understood to be the monetary benefits for old age, disability, invalidity and survival provided for in the special law regulating social security.

This new tax is applicable to legal entities, as well as any other partnerships, including irregular or de facto, of a private nature, domiciled or not in Venezuela, which carry out economic activities in the national territory.

However, enterprises duly registered before the National Registry of Enterprises (RNE) are exonerated for one (1) year from the payment of the tax provided for in the referred Law.

The amount of the new tax provided for in this Law will be up to fifteen percent (15%) of the total payments made by the taxpayer to the workers as salary and non-wage bonuses. In no case shall the basis for calculating the payments made to each worker be less than the minimum indexed integral income defined by the National Executive.

The President of the Republic shall establish annually the corresponding percentage of the special contribution, within the limits set forth in this Law, according to the type or class of economic activity. Currently, the President has set the amount of this new tax at nine percent (9%) of the total payments made by the contributor to the workers.

Legal entities, as well as any other partnerships, including irregular or de facto, of a private nature, that do not file the declaration of this tax or file it outside the term established by the Tax Administration, shall be sanctioned with a fine of one thousand (1,000) times the official exchange rate of the currency of highest value, published by the Central Bank of Venezuela.

The omission or delay in the payment of the special contribution, as well as the commission of any criminal offense, will be sanctioned in accordance with the Organic Tax Code.

### Science and Technology Contribution

A contribution on science and technology is provided for in the recent amendment to the Organic Law of Science and Technology (*Ley Orgánica de Ciencia y Tecnología*), which applies to entities defined in the law as Large Ventures (*Grandes Empresas*), that is, those companies with a turnover of one hundred thousand Tax Units (100,000 T.U.) or more.

The contribution is a two percent (2%) on turnover (gross proceeds) for entities engaged in the manufacturing or commercialization of alcohol and spirits, as well as that of tobacco and tobacco products; gambling activities are subjected to a similar rate.

Hydrocarbon activities as well as mining activities, when carried out by private parties are taxed at one percent (1%) on turnover, while when said activities are carried out by entities which capital is considered public capital (i.e. wholly or partially State owned, but controlled by the State) then the same are taxed at zero-point five percent (0.5%) on turnover; any other industrial or commercial activities, i.e. activities in general are subject to the latter zero-point five percent (0.5%) rate on turnover.

As part of an amendment of the law late in 2010 said contribution does necessarily encompass a payment to the special science and technology fund (FONACIT) for fiscal years beginning on or after January 1$^{st}$, 2011, i.e. payment would be due in 2012, while the contribution for 2010 is to be applied based on the former law, i.e. either payment to FONACIT or evidence of allocation of such amounts to particular activities resulting in the development of science and technology in Venezuela.

Regulations were issued in November 2011 under which: (i) it was identified that turnover excludes exempted/exonerated gross income under other laws (presumably refers to income tax), (ii) that the tax basis will be turnover for the immediately prior fiscal year, and (iii) filing and payment must be made during the second quarter after the close of the fiscal year.

### Anti-Drug Enforcement Contribution

A contribution for purposes of illegal drug enforcement and education is provided for, which is computed as a one percent (1%) on net earnings of the relevant taxpayer engaged in commercial, industrial or services activities, but for those taxpayers engaged in manufacturing spirits and liquor and those manufacturing cigarettes and tobacco a contribution is two percent (2%) on their net earnings applies.

The tax basis are net earnings (accounting income before taxes) as per Venezuelan GAAP, as it stems from the regulations (*Providencias* 006-2011 and 007-2011 of March and May 2011).

The anti-drugs enforcement law (*Ley Orgánica de Drogas*) covers in its articles 32 and 34 the relevant contributions, which are to be paid in to the special fund created for those purposes (*Fondo Nacional Anti-Drogas* or "FONA"), but the same is to be used in projects identified in the law, which may include reinvestment up to forty percent (40%) in approved activities or projects within payor and payor employees (Providencia 0001-2011).

### Sports Law Contribution

A contribution for purposes of funding a special Fund (*Fondo Nacional para el Desarrollo del Deporte, la Actividad Física y la Educación Física*) was established in the Sports Law (*Ley Orgánica de Deporte, Actividad Física y Educación Física*) passed on August 2011.

The contribution under the Sports Law arises upon the exercise in Venezuela of any commercial, industrial or service activity by any person (individual, companies, partnerships, inter alia) resulting in net earnings each year for more than twenty thousand Tax Units (20,000 T.U.) and the same is computed as a one percent (1%) on net earnings of the relevant taxpayer.

The tax basis are net earnings (accounting income before taxes) as per Venezuelan GAAP, as identified in Regulation #1 to the law, and the contribution may be paid in cash in full or part of the same, may be used in projects identified in the law and approved by the National Sports Institute (*Instituto Nacional del Deporte*) which may include reinvestment up to fifty percent (50%) in approved activities or projects within payor.

### Special Petroleum Windfalls Contribution

On February 20th, 2014, the Venezuelan National Assembly passed an amendment windfall profits tax –dubbed contribution–. Such tax is divided into two (2) different contributions, a so-called contribution for extraordinary prices and a contribution for exorbitant prices, and the same apply to exporters and transporters of crude oil (including upgraded crude oil) and products (it does not apply to gas hydrocarbons or its byproducts), as well as on internal transfers of oil and products by Mixed Enterprises (*Empresas Mixtas*) to PDVSA and its affiliates.

The contribution on extraordinary prices is triggered when the average monthly price of the Venezuelan basket of crude oil exceeds the price estimate provided for in Venezuela's annual budget law. The rate is twenty percent (20%) and when triggered the contribution is computed as twenty percent (20%) over the monthly average price in excess of the price estimate provided for in Venezuela's annual budget law. The contribution is assessed by the Ministry of Petroleum and Mines to be paid monthly, in foreign currency.

The contribution on exorbitant prices is triggered when the average monthly price of the Venezuelan basket of crude oil exceeds or is equivalent to eighty dollars of the United States of America per barrel of crude oil (USD 80/bbl). The contribution is applied in three (3) different brackets with rates being eighty percent (80%), ninety percent (90%) and ninety five percent (95%). This contribution is also assessed by the Ministry of Petroleum and Mines monthly, and payable in foreign currency.

The eighty percent (80%) rate applies over the monthly average price more than eighty dollars of the United States of America per barrel of crude oil (USD 80/bbl) but under one hundred dollars of the United States of America per barrel of crude oil (USD 100/bbl); the ninety percent (90%) rate applies over the monthly average price in excess of one hundred dollars of the United States of America per barrel of crude oil (USD 100/bbl) but under one hundred and ten dollars of the United States of America per barrel of crude oil (USD 110/bbl); and the ninety five percent (95%) rate applies over the monthly average price equivalent to or in excess of one hundred and ten dollars of the United States of America (USD 110/bbl).

The law provides for certain tax holidays, and it also establishes as a cap for the payment of royalties, severance tax and export registrar tax (all of them contributions and royalties under the Organic Law of Hydrocarbons) the amount of seventy dollars of the United States of America per barrel of crude oil (USD 70/bbl).

### Social Security Contributions

This contribution is paid by both employer and employees. Employers must contribute to the Social Security Agency (*Instituto Venezolano del Seguro Social* or "IVSS"). These contributions are different from the Social Security Pensions Tax indicated above and vary depending on the risk of the companies' activities and are calculated based on the normal salary of each worker or employee, up to a limit of five (5) minimum monthly salaries.

The employer contributes between nine percent (9%) and eleven percent (11%) of the portion of the worker's salary that does not exceed the cited minimum salary limit, depending on the risk of the company, and the worker contributes four percent (4%) of the same portion of salary.

Filing and payment is done monthly.

### Education and Apprenticeship Contributions

Commercial or industrial employers with five (5) or more workers must contribute two percent (2%) of the total wages and remunerations of any kind (excluding mandatory profit sharing under Labor law and labor contracts) to the National Institute of Cooperative Education (INCE).

Workers contribute zero-point five percent (0.5%) of their annual profit sharing, which employers must withhold.

### Labor Risks Indemnity Contribution

This contribution is established in the Organic Law of Prevention, Working Conditions and Labor Environment (*Ley Orgánica de Prevención, Condiciones y Medio Ambiente del Trabajo* or "LOPCYMAT") and is payable exclusively by the employer. The same varies between zero-point seventy-five percent (0.75%) and ten percent (10%) (depending on the risks associated with the activity) of the worker or employee salary (with a minimum of a single minimum monthly salary -as provided in Regulations issued by the Government- and a maximum of ten (10) minimum monthly salaries and is computed and paid monthly.

### Unemployment Contribution

This contribution is paid by both employer and employees as provided in the Organic Law of the Social Security System (*Ley Orgánica del Sistema de Seguridad Social*). The contribution to the Employment Benefit System (*Régimen Prestacional de Empleo*) is a two-point five percent (2.5%) of the normal salary of each worker or employee, with a minimum of a single minimum monthly salary (as provided in Regulations issued by the Government) and a maximum of ten (10) minimum monthly salaries. The employer contributes two percent (2%) of the same while the worker contributes the remaining zero-point five percent (0.5%).

Filing and payment is done monthly.

### Housing and Habitat Contribution

This contribution is also provided in the Organic Law of the Social Security System (*Ley Orgánica del Sistema de Seguridad Social*) and is to be paid by both employer and employees. The contribution to the Housing and Habitat Benefit System (*Régimen Prestacional de Vivienda y Habitat*) is a three percent (3%) of the normal salary of each worker or employee, with a minimum of a single minimum monthly salary and a maximum of ten (10) minimum monthly salaries. The employer contributes two percent (2%) of the same while the worker contributes the remaining one percent (1%) via withholding tax.

Filing and payment is done monthly.

## Customs Regime

### Custom Duties

As pointed out above, importation of goods is subject to import VAT at a general rate of nine percent (9%), unless otherwise exempted or exonerated. In addition to import VAT, imports are also subject to custom duties that range between five percent (5%) and thirty-five percent (35%), also depending on the type goods being imported.

### Taxable Base

Custom duties are computed on the CIF value of the goods, while import VAT is computed on the CIF value plus the corresponding custom duties.

### Transfer Pricing

Custom valuation rules in place in Venezuela are those of the General Agreement on Tariffs and Trade (GATT) (1994) valuation code, which are similar to the current World Trade Organization (WTO) valuation rules. For valuation purposes, the Andean Pact valuation rules in Decisions 378 and 379 are still applied even though Venezuela is not a party to the Andean Community. These rules are substantially similar to the first mentioned rules.

### Filing and Payment

An import return must be filed to begin the process of nationalization of the goods. As a general rule in the ordinary importation regime, custom duties and import VAT must be paid within the five (5) days following the assessment and liquidation of custom tariffs and duties, when the payment slip is issued by the relevant Customs Office.

### Selected Custom Duties Regimes Available

Importation of goods and equipment can be performed through a variety of customs regimes different to the ordinary importation regime. Each of these special custom duties regimes has a different customs duty and import VAT treatment.

For goods and equipment sold, the custom regime applicable will be ordinary importation. For leased equipment (or equipment and goods contributed as equity to a corporation or branch) the custom regimes applicable are either the ordinary or temporary regimes but with a non-reimbursable import license. Here are some of the most relevant importation regimes available.

### Ordinary Import Regime

It applies to all goods that will remain permanently in Venezuelan territory without any use or jurisdictional restrictions. Full payment of custom duties and import VAT is required upon nationalization.

### Short-term Temporary Importation

This regime applies to specific goods that will be used for a specific activity that will take no longer than twelve (12) months, although a further year extension can be authorized. Therefore, the permanence in the country of the goods is limited to that of twenty-four (24) month maximum period. At the end of the temporary importation the goods must be exported, or the importer must apply for a long-term importation regime, otherwise, the goods will be forfeited or a fine will be imposed.

### Short-term Temporary Importation for Active Transformation

This regime applies to specific goods that will be used as supply or raw materials for their processing, manufacturing or transformation in a product to be exported, within a given term, commonly not extending beyond twelve (12) months, although a further year extension can be authorized. At the end of the temporary importation the goods –as transformed or incorporated in new goods manufactured- must be exported or the importer must apply for a long-term importation regime, otherwise the goods will be forfeited or a fine will be imposed.

### Draw-Back Regime

The draw-back regime consists of the reimbursement of customs duties levied on goods used in the production process of goods to be exported. The beneficiaries are: (i) exporters who have paid the import tax directly; and (ii) exporters who have purchased finished goods for export, incorporating into them inputs, raw materials, parts or spare parts that have been cleared through customs through the ordinary import regime.

### Free Trade Zone Regimes

Venezuela has some convenient Free Trade Zone regimes that should be carefully explored by importers and other parties with business interest or permanent operations in Venezuela, such as the Paraguaná, Mérida, as well as Nueva Esparta and Santa Elena de Guairén. These regimes have proven to be useful in not few specific situations and in addition there are some VAT and income tax benefits attached to them that should be reviewed on a case-by-case basis.

**International Tax Treaties**

Up to date Venezuela has in place and has negotiated closely to thirty (30) double taxation avoidance treaties, and even-though little or no official information is easily available the following is a list as to the status of such tax treaties:

- Tax Treaties in place: Austria, Barbados, Belgium, Belarus, Brazil, Canada, China, Cuba, Czech Republic, Denmark, France, Germany, Indonesia, Iran, Italy, Korea, Kuwait, Malaysia, Netherlands, Norway, Portugal, Qatar, Russia, Spain, Sweden, Switzerland, Trinidad and Tobago, Turkey, United Arab Emirates, United Kingdom, United States of America and Vietnam.

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