

Country Guide

Guatemala

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GUIDE TO DOING BUSINESS IN GUATEMALA

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About the guide

This document seeks to provide clients and friends with essential information about basic legal requirements for business and investment in Guatemala. Among these, it illustrates some aspects and requirements as applied by certain national offices or institutions. Its content is not legal advice or professional opinion on the topics covered.

About the firm

The firm was founded over 50 years ago in Guatemala and specializes in all matters related to business.

The lawyers who make up the team at Mayora & Mayora S.C. bring together multiple technical disciplines and a wealth of experience, such as working in the public sector (the Superintendence of Banks, the Superintendence of the Tax Administration), lecturing on a national and an international level, leading local and international business and legal associations; and of course, the independent practice of the legal profession.

We cover various practice areas, such as corporate law, mergers and acquisitions, labor law, banking and finance, foreign investment and trade agreements, litigation and domestic and international arbitration, telecommunications, energy, infrastructure, mining, oil public and private biddings, and international structures for the adequate protection of investments, of corporate and /or of personal assets.

Among our team, we have lawyers trained to advise you in more than one language, including Spanish, English, French and German.

Our current process of regional expansion allows us to offer you our fully integrated services in the jurisdictions of Honduras and El Salvador as well.



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PART ONE

LOCAL AND FOREIGN BUSINESS ENTITIES

Guatemala's legal system creates an open environment for foreign investment. As a general rule, foreign investors may wholly own investment vehicles in Guatemala without any legal requirements concerning local partners, nor restrictions on the number or proportion of foreign shareholders. The few exceptions include open television (broadcast through channels given in concession by the state) or owning property next to the country's borders, where some restrictions apply.

Business in the country can be organized as a sole proprietorship, a partnership, company or corporation. Foreign corporations may also establish branches in the country.

1. LOCAL BUSINESS ENTITIES

Partnerships, companies and corporations are entities legally separate from their members. They are created through a contract between two or more persons or entities with a common commercial purpose. The Guatemalan Commerce Code provides six structures for legal entities, and sets requirements for their registration as well as their basic rules. These are mostly default rules that apply when the parties have not agreed different ones. The variety of business structures and the flexibility for creating legal entities provide for the different needs of investors.

The process of creating a business entity begins with the execution of a deed of incorporation before a Notary¹. It ends with the entity's registration by the Commercial Registry. Corporate status is maintained until the registration is cancelled, which normally occurs by will of its members, either by having established a fixed term from the beginning or by choosing to dissolve an entity whose term was originally indefinite.

¹ This document, called an *Escritura Constitutiva*, contains general provisions regarding the entity and by-laws. It is filed with the Commercial Registry and is public. Though frequently translated as such, it is not an exact equivalent to the "articles of incorporation" known in other jurisdictions.

a. Basic requirements for registration

A Stock Corporation (*Sociedad Anónima* or “SA”) is the most common form of business vehicle used by foreign investors in Guatemala. It requires at least two shareholders. The second shareholder is often an affiliate, subsidiary or officer of the investor.

It cannot be set up through agents, incorporators or third parties, so foreign investors will usually grant a power of attorney (POA) in order for an individual or firm residing in Guatemala to appear before a Notary for the execution of the deed.

Guatemala is part of the Apostille Convention, which eliminates the need to carry out the process of authenticating the POA coming from a country also part of the Convention. For non-party countries, the POA must be authenticated by a Guatemalan consul in the jurisdiction of origin and then by the Foreign Affairs Ministry in Guatemala. Afterwards, the POA is added to a Notary’s official registry, of which a certified copy is issued and registered at the Registry of Powers of Attorney as well as the Commercial Registry. This process of authentication and registration can take approximately ten business days, once the POA arrives in due form in Guatemala. To avoid delays with the registration process, a name search for the entity is previously carried out at the Commercial Registry.

The minimum amount of paid-in capital necessary to start any type of commercial entity is Q.200.00 (approximately US\$27.00)², which can be either cash or in-kind. Equity contributions are subject to legal regulation due to their importance for the entity, its creditors and other stakeholders. Cash must be deposited in a bank account in Guatemala, previously opened in the future entity’s name, only if the total amount is over Q.2,000.00 (approximately US\$267.00). In this case, the owners must provide a deposit slip or other evidence of the cash contribution before the Deed of Incorporation is issued. In practice, this account is also used to deposit sufficient funds to cover all the costs and fees involved in the creation and registration of the entity. If initial cash contributions are under Q.2,000.00, the cash may be simply given to an administrator for deposit until after the entity is registered. This option saves the extra cost of having to open a bank account for an entity which is not yet legally registered, since bank procedures in such cases tend to be more complex.

In-kind contributions can be made in any form of property which can be assessed in monetary value. Shareholders must agree upon this, based on the market value and other considerations. If appropriate, the contributed goods can also be detailed in an inventory. The shareholders are liable before third parties for wrongful valuation of in-kind contributions. When registered property is

² This amount of starting capital is explicitly established by law for Stock Corporations. For other types, there is no explicit provision, but it is common practice to the point of being necessary.

contributed, the transfer of ownership to the entity must be registered with the corresponding office.

In addition to the minimum paid-in capital (which must be paid at the outset), the law requires the Deed of Incorporation to include: determination of subscribed capital, by which the subscribing shareholder assumes the obligation to pay future equity contributions (at least 25% of the subscribed capital must be paid at the outset); determination of authorized capital, which is the maximum amount that may be issued in shares without requiring amendment to the Deed of Incorporation; place and date of incorporation; legal structure adopted; business or corporate name; commercial domicile; business activities; term (usually indefinite); corporate governance structure, directors and officers; signatures of the partners or shareholders; Notary's signature.

The amount of authorized capital also serves as the basis for calculating Commercial Registry fees. There is no registration fee if authorized capital is less than Q.499,999.99. If it is Q.500,000.00 or more, the fee is Q.8.50 per each thousand quetzals of authorized capital, up to a limit of Q.40,000.00. The exchange rate can be estimated to around Q.7.50 for US\$.1.00. So the fee would be US\$.1.13 per each thousand quetzals of authorized capital, up to a maximum of around US\$.5,334.00.

For the entity's governance and administration, the owners may choose to have either a single administrator or a Board of Directors. A Board is made up of a minimum of two directors, though usually there are at least three: a President, a Vice-President and a Secretary. It is not required that the board members be Guatemalan citizens. In a Limited Partnership and a Partnership by Shares some partners must have administrative power and others cannot have it.

The owners may appoint one or more board members as legal representatives. As such, these board members will be able to act on behalf of the entity and bind it to legal acts and liabilities. It is possible to establish substantive limitations, conditions, and/or special majorities as requirements to take certain corporate decisions, either on the directors, officers, or shareholders.

Once the Deed of Incorporation is executed, the Notary extends a certified copy which is filed before the Commercial Registry (www.registromercantil.gob.gt) for registration. If the forms and documents filed are in order, the Registry automatically grants registration, within five to seven business days after the filing. The entity is also assigned a taxpayer ID (*Número de Identificación Tributaria, NIT*) by the Tax Authority (*Superintendencia de Administración Tributaria, SAT*). From this moment onward, the entity may legally begin to operate.

The application for registration is afterwards published in the Commercial Registry's online bulletin, so that any potentially affected party may object to the registration. If and when such objections

occur, they are usually related to the corporate name being similar to a previous one. These are usually settled, so as not to incur further delays and expenses.

The registration procedure may also be carried out electronically, through the website minegocio.gt, which significantly reduces its duration. Online banking services may also be used when paying the Commercial Registry fees and other expenses. Expenses include the Commercial Registry and Notary's fees, Stamp Tax, publication of the application, among others.

Whether the process is made traditionally or electronically, the Tax Authority requires a legal representative of the entity (usually the general manager –CEO–, sole director or an authorized board member) to personally appear to be registered as such.

b. Merger and transformation

The Commerce Code establishes two ways of merging business entities: merger by creation, in which the merging entities cease to exist and a new one is created; and merger by absorption, in which one of the merging entities subsists and absorbs the other(s), which cease(s) to exist. In both cases, the merged corporations (except for the absorber) must undergo dissolution procedures prior to the merger, and the new entity acquires the rights and obligations of the ones dissolved.

There are currently no rules regarding merger control, although the merger or acquisition of a bank or financial institution must be approved by the banking regulator. There is a bill on Competition Law, including merger control, pending before Congress.

Mergers must be executed through a public deed before a Notary and filed with the Commercial Registry. They are also published in both the official government newspaper and a private one, giving creditors a legal term of two months to oppose the merger or acquisition.

De facto mergers –through acquisition of assets or voting control– are not restricted and are not expressly regulated as such. Each transaction for the sale of specific assets or voting stock follows the same rules, regardless of whether or not their economic effect is equivalent to that of a merger or acquisition.

The Commerce Code also allows entities to modify their legal structure (transformation), retaining the same legal personhood, rights and obligations. The transformation may result in a change to the system of corporate liability.

c. Dissolution and liquidation

A business entity ends its legal existence through dissolution. For this to happen, one or more of the causes specified by the law or in the Deed of Incorporation must occur. Dissolution may be partial or total.

Partial dissolution does not imply the extinction and liquidation of the entity, only the separation of one or more of its members, either by a shareholders' decision to exclude another, or one of them deciding a voluntary dissociation.

Total dissolution –unless originated by a merger or acquisition– implies liquidation of the entity. Liquidating an entity entails fulfilling all of its obligations, and distributing the remainder among the partners through quotas proportional to their respective equity capital, or in another previously agreed way. The entity undergoing liquidation maintains its legal existence throughout the term necessary for the procedures, which should be less than a year.

d. Legal structures

The Commerce Code regulates six different legal structures or types which businesses may adopt. Some of them emphasize the personal quality of its members, while others focus on the equity capital contributed by them. The types of legal structure most often used as business vehicles are the Stock Corporation (*Sociedad Anónima* or SA) and the Limited Liability Company. Also frequent is the use of a Local Branch, which is not one of the five legal structures for Guatemalan business entities, but rather an extension of a foreign entity authorized to operate in Guatemala.

Trusts are also available for almost any legal purpose, although the cost of organizing and running a trust might not be justified for smaller size transactions or operations. Only banks and credit institutions may legally act as trustees. The Commerce Code regulates a specific type of agreement suitable for joint ventures that will not result in the creation of a new entity (*contrato de participación*). However, since most joint ventures usually do result in a new business entity for its purpose, they adopt one of the structure types provided by law.

i. Stock Corporation (*Sociedad Anónima*)

This is the most common form of business vehicle used in Guatemala. It offers the most flexibility, allowing shares to be freely transferred (which is not the case with the participations in a limited liability company). The Stock Corporation grants full freedom to transmit the capacity of shareholder through the transfer of shares, but this may be limited in the Deed of Incorporation. All shares are issued in the name of their owner and represented in securities. Their transfer requires

both endorsement to the new owner and the annotation of the transfer in the company's registry of shares. As opposed to the American concept of a Business Corporation, the total amount of shares in a Guatemalan Stock Corporation may not be held by a single owner.

Its corporate name may be freely decided, except when the owners choose to include the name of a founding partner or the last names of two or more of them: in such case, it is mandatory to also include the corporation's main activity within the name. Capital is divided and represented by shares, with the shareholders' liability limited to the total amount of shares subscribed by them.

The corporation is ruled by majority vote. The corporate capital can be categorized into authorized, subscribed and paid-in capital. The authorized capital is the sum up to which the corporation can issue shares of stock without modifying its Deed of Incorporation. A Stock Corporation does not have to pay the full amount of authorized capital up front. The shareholders may choose to subscribe, totally or partially, the amount of authorized capital. Subscription means that the shares are issued, but only 25% of their value is required to be paid. The paid-in capital is the actual value of contributions made by the shareholders.

Shares are legally considered personal property, and as such may be pledged in guarantee, subject to usufruct or co-ownership, etc. The law also allows for the issuing of "Founder's Bonds", which grant the company's founders the right to collect dividends not greater than 10% of the annual net profit for a term not exceeding ten years. This restriction was established to avoid placing founding partners in a permanent privileged position.

Some special types of corporations are subject to specific requirements, procedures and/or authorizations in addition to those of a normal Stock Corporation. These mainly occur in areas such as investment, banking and finance, insurance, securities exchange, etc.

The corporation may function either through a single director (*Administrador Único*) or a Board of Directors. It may also appoint a general manager (*Gerente General*), as well as other managers in charge of specific areas of the business operations.

Board members can meet anywhere in the world, depending on the corporations's by-laws, and can have members and alternate members. Board members may participate in meetings either physically or through distance communications means such as telephone conference or videoconference, if provided for in the Deed of Incorporation. If expressly provided by the by-laws, directors may be represented by other directors at a board meeting.

The corporation's "*legal representation*" (agency by directors and officers) is usually held by the general manager, and/or by the single director or chairman of the board. Their actions within the ordinary

course of the company's business and the attributions expressly granted to them (both as defined in the Deed of Incorporation) will legally bind the corporation. Legal representation may be granted to other board members or officers, jointly or severally, or for specific business or administrative areas (labor matters, tax matters, financial transactions, and so on).

Generally, the directors set general policies under the rules and framework of the law and the corporation's by-laws, while the officers (including the general manager and other managers) handle the day-to-day business of the company to achieve the goals and objectives set by the board.

ii. General Partnership (*Sociedad Colectiva*)

This type of entity is made up of partners (*socios*) who are fully liable for the entity's actions and obligations. This liability arises if and when the partnership is unable to respond with its own assets. Administrative roles may be held by some or all of the partners, though not by a third party. The unlimited liability serves as a guarantee for creditors. The personal credit or standing of one or more partners may contribute to the success of the company's business.

What is known as a General Partnership in the United States of America is a business operated by co-owners where the partners have unlimited liability for their commercial obligations. For most American States it is not an entity separate from its members, but is taken as a sole entity for litigation and other purposes. It has some similarities to a *Sociedad Colectiva*, but would more accurately be equivalent (in Guatemalan terms) to co-ownership of a business enterprise.

iii. Limited Liability Company (*Sociedad de Responsabilidad Limitada*)

In Guatemala, the equity capital of this entity is divided into ownership interests, not represented in securities. Members may transfer their interests, but they must first offer the transfer to other members. Additionally, all members have to unanimously agree to the transfer, unless there is an express agreement otherwise in the Deed of Incorporation. The Deed of Incorporation must also be updated each time a change in membership occurs.

The members have limited liability up to the amount of their capital contributions, unless they expressly elect to be liable for more. The minimum amount of capital necessary to start an LLC is Q.5,000.00 (approximately US\$650.00).³ This capital must be paid in full before the Deed of Incorporation is issued. It may have a maximum of twenty (20) members. Votes are by person and not by percentage of ownership interest, unless expressly agreed otherwise.

³ This amount of starting capital is not explicitly in the Code, however it is common practice to the point of being necessary.

This company structure may be useful for people who wish to simplify their organization and limit the partners' responsibility. The Guatemalan *Sociedad de Responsabilidad Limitada* is very similar to the American Limited Liability Company.

iv. Limited Partnership (*Sociedad en Comandita Simple*)

This entity has two types of partners, each with different liabilities and responsibilities. The first type is called a general partner (*socio comanditado*). General partners are fully liable for the entity's actions and obligations, and must hold the entity's administrative roles. The second type is called a limited partner (*socio comanditario*). Limited partners enjoy limited liability up to the amount they contributed to the entity. However, if a limited partner exercises any administrative role, they automatically assume liability in the same manner as a general partner. The equity capital must be fully paid-in before executing the Deed of Incorporation.

v. Partnership by Shares (*Sociedad en Comandita por Acciones*)

It also has two types of partners with different systems of liability, as in the Limited Partnership. The main feature is that its capital is divided into shares and represented by securities. Only the limited shareholders may exercise voting rights. Also, the capital may be partially paid when executing the Deed of Incorporation. The rules of the Stock Corporation apply to the functioning and operations of the Partnership by Shares.

The Guatemalan *Sociedad en Comandita por Acciones* is similar to the American Limited Partnership, which also has two kinds of partners with either limited or unlimited liability.

vi. Startup corporation (*Sociedad de Emprendimiento*)

An amendment to the Commerce Code (2018) created a new type of corporate structure aimed at favoring startups in micro or small businesses, in order to promote entrepreneurship, competitiveness and innovation.

Among its most relevant aspects is that they may be formed by a single shareholder or more, have an expedited registration process, as well as temporary tax benefits.

e. Irregular and *de facto* business operations

In the Guatemalan Commerce Code, corporations, companies or partnerships are considered irregular when they have not been duly registered at the Commercial Registry, and *de facto* when the Deed of Incorporation and other mandatory formalities have not been executed or fulfilled.

In both cases, the purported owners or partners are jointly and unlimitedly liable for any obligation acquired with a third party in the name or interest of the would-be entity.

f. The business enterprise

In Guatemalan Law, the business enterprise is considered a commercial asset, an object of property, though in informal language it is commonly confused with commercial entities.

It is legally defined as the ensemble of labor, material elements and incorporeal values, coordinated to offer goods or services to the public in a systematic way and with profit-seeking purposes. It is reputed as personal property. Among such elements, the law includes commercial establishments, clientele, commercial goodwill, trade name, trademarks, equipment and machinery, workforce contracts, merchandise, etc.

2. FOREIGN BUSINESS ENTITIES

The Guatemalan Constitution recognizes and protects the right to private property, for both Guatemalan and foreign investors. There is a specific Foreign Investment Act guaranteeing, among other things, equal treatment and enjoyment of constitutional rights to both foreign and local investors. It also guarantees the right to take part in any legal economic activity within the country, to submit to foreign countries any profit generated in Guatemala, and to transfer capital out of the country's territory.

Guatemala is a country open to foreign investment. There are no restrictions regarding the use given to income obtained within the country, except applicable taxes to specific activities. Any business legally established in a foreign country can invest in Guatemala either through the creation or acquisition of a Guatemalan commercial entity, or by opening a branch.

a. Registration at the Commercial Registry

Foreign corporations or companies can register in Guatemala and operate through branches. A local branch is an extension of a foreign entity in Guatemala. As a result, the ownership and control of the foreign entity's headquarters are also those of the branch. This means that there is no transferability of ownership or control for the branch itself, only for the headquarters. Unlike the LLC and Stock Corporation, a branch is liable for entity assets located in Guatemala and in any other part of the world, especially those located in the country of its headquarters.

The headquarters must declare that it will submit itself to Guatemalan courts and that Guatemalan laws will apply to all claims arising from the branch's operations. It must also provide an affidavit stating that it will comply with Guatemalan laws in the event of closing the branch. The headquarters must appoint a Guatemalan lawyer as its attorney-in-fact, who should be physically present in Guatemala most of the time.

In order to operate in Guatemala, the branch requires both an assigned capital designated for its operations and to post bond for a minimum of US\$.50,000.00. The bond must be in effect during the entire period of time that the branch operates in Guatemala.

A branch will always be liable for corporate taxes on its profits in Guatemala. However, if the headquarters provides some type of service in favor of the branch, the owners do not have to pay income taxes on those payments in Guatemala. Any other transfer of money from the branch to the headquarters will be considered a dividend, for which corporate and income tax applies in Guatemala. The tax laws of the headquarters' home country should always be considered when determining whether to create a branch or a separate Guatemalan entity.

The Guatemalan Commerce Code states the following requirements for a legally constituted corporation in a foreign country to establish itself in the country or to have branches in it –not subsidiaries:

All required documents must be filed for registration with the Commercial Registry. For this, they must first be: certified and authorized by the corresponding authority of their country of origin; apostilled or legalized by the Guatemalan Consulate or Embassy in that country; translated into Spanish by a certified legal translator; notarized by a Guatemalan Notary.

Once this documentation is in order, the Commercial Registry orders a publication in the official government newspaper. If there is no opposition within the following eight days, the Commercial Registry verifies the capital assigned to the branch, and makes the definitive registration issuing the corresponding certificates. Any important change that occurs to the foreign corporation in its country of origin, such as dissolution or bankruptcy, must be notified to the Commercial Registry.

The foreign corporation must obtain authorization before suspending operations in Guatemala or winding up the branch. This permit is extended by the Commercial Registry upon filing of certain documents proving that no third parties will be affected.

b. Registration at the Tax Authority

Foreign corporations authorized to operate in Guatemala are subject to local taxes. Income tax, for instance, is calculated in the same manner for local and foreign entities. Once the foreign entity is registered at the Commercial Registry, the Tax Administration assigns to it a Taxpayer Identification Number (*Número de Identificación Tributaria*, NIT). The NIT must be used in all tax returns, invoices and other taxation documents. In the case of investment through creation of a Guatemalan commercial entity, the NIT is assigned at the moment of provisional registration at the Commercial Registry.

c. Temporary operations

If the foreign business seeks to operate in Guatemala for less than two years, it must obtain a special authorization from the Commercial Registry. In such case, the amount of the bond guarantee will be set by the Commercial Registry at no less than US\$.50,000.00. It must also name an attorney-in-fact to represent it in the country.

d. Operations not requiring authorization

Foreign business entities are able to perform the following operations without need for authorization or registration:

- Be a part of any judicial or administrative proceedings in the country.
- Open or maintain bank accounts in any local bank.
- Buy from or sell to independent trade agents legally established in the country.
- Manage orders through legally established agents in Guatemala, if and when they remain subject to confirmation or acceptance outside the country.
- Grant loans or open credit in favor of persons established in the country.
- Issue, endorse, protest, collect or hold securities and credit instruments in the country or issued in it.
- Acquire any kind of property, if they are not part of a business enterprise nor of the kind it usually trades with.

3. BANKING AND SECURITIES EXCHANGE

a. Banking system

Guatemala has enacted specific statutes to govern financial organizations and activities, such as commercial banking, investment banking and insurance, and public offering and exchange of securities.

The country has a Central Banking System, whose main purpose (defined by the Constitution) is to oversee activities related to currency, interest and exchange rates. The State has exclusive power to issue and regulate currency, to formulate and execute policies intended to foster credit and exchange conditions favorable to the national economy, to supervise the circulation of currency and the public debt. The Bank of Guatemala is governed by the Monetary Board (*Junta Monetaria*).

Private banking is regulated by the Banks and Financial Groups Act of 2002. This statute generally seeks to enable stability of the financial system, allowing consolidated supervision of financial groups, favoring risk management and setting rules to manage problematic situations of banks which could affect the general population.

b. Securities exchange system

The Securities Exchange and Trade Market Act of 1996 seeks to provide an organized and specialized market in which to carry out securities transactions through professional intermediaries. It sets the legal basis for a stock market (both through a supervised exchange and off-exchange trading), public and private offerings, investors and traders, etc. It also creates public Registry in charge of recording securities offerings and transactions, as well as related information.

Stock exchanges are subject to specific requirements prior to executing their Deed of Incorporation, which must be authorized by the Registry along with additional internal by-laws. Professional intermediaries (trading and investment agents) do not require special authorization before being created as business entities; however, their Deed of Incorporation (either from the outset or through amendment) must prohibit other intermediaries from being shareholders or indirect participants in their equity capital, and must register at the Securities Exchange Registry in order to operate as traders.

PART TWO

THE GUATEMALAN TAX SYSTEM

The Guatemalan tax system encompasses direct and indirect taxes, on both a national and a local level. The Tax Administration (*Superintendencia de Administración Tributaria*) on the national level has a certain degree of independence from the central government. The taxing power belongs to the national Congress, leaving very limited power to the municipal governments. The territorial principle dominates the tax system (consequently, foreign sourced income is not taxed) and, although some double taxation treaties have been negotiated, none have yet been ratified. A new set of narrower tax incentives was implemented in order to comply with World Trade Organization (WTO) standards agreed to by Guatemala.

The Guatemalan Constitution details, more than other constitutions in the region, the principles and limitations applicable to the taxing power and to taxes themselves. The system provides for ample judicial review. The general principles and procedures of the Guatemalan tax system are governed by the Tax Code, Law 6-91 of Congress. It establishes all substantive and procedural aspects of Guatemalan tax law, which are overseen by the Tax Administration.

1. TAXATION PRINCIPLES

The Guatemalan Constitution ordains the following taxation principles:

a. Legality

The Constitution grants the power to create taxes to the Guatemalan Congress, exclusively. It is thus the only government power capable of enacting ordinary and extraordinary taxes, excise taxes and special contributions, in accordance with the government's needs and the principles of fairness and justice, as well as to determine the following:

- a) The taxable event.
- b) The exemptions.
- c) Individual and joint tax liability.
- d) Tax base and rate.
- e) Deductible costs and expenses, discounts, reductions and surcharges.

- f) Infringements or violations, and corresponding fines and other penalties.

Also, any and all regulations that contradict or distort legal provisions related to the above elements shall be declared null and void. The Executive Branch can only issue regulations to provide for administrative procedures for the collection of taxes.

b. Ability to pay

As provided in article 243 of the Constitution, the taxing power is limited by the “ability to pay” principle and the notion that the tax system must be fair and just. This article also prohibits confiscatory taxes and double or multiple domestic taxation.

2. INCOME TAX

Residents and non-residents are subject to income tax only on their Guatemalan-sourced income.

According to the Income Tax Act, the notion of taxpayer extends to all resident or non-resident individuals and corporations, partnerships, trusts, *de facto* corporations, joint venture arrangements, permanent establishments and, in general, any business firm or establishment deriving Guatemalan-sourced income.

a. Taxable income

Guatemalan Law considers three main categories of taxable income: a) Business Income; b) Payroll and Other Compensation; and c) Income from Capital.

- a) Business income from any for profit activity, such as services, commercial and industrial businesses, financial services, insurance, agriculture and farming, mining, international trade, and transportation.
- b) Payroll and Other Compensation, such as ordinary salaries, bonuses, and commissions.
- c) Passive Income from Capital Investments and the Sale and Disposition of Fixed Assets, such as rent and leasing of property, interest, royalties, profit distributions, capital gains, and prizes.

b. Corporate Tax

A business vehicle must pay income tax in Guatemala on Guatemalan-sourced income, regardless of its nationality or residence. However, the tax regimes applicable to residents differ from that applicable to non-residents. While tax-resident vehicles are taxed according to the nature of their

income (whether derived from their main business activity or from capital investments, etc.), non-tax resident vehicles are subject to withholding taxes, the rates of which vary according to several categories of income (interest, dividends, remuneration for services, royalties on IP, etc.). Tax-resident businesses are not liable to pay tax on worldwide income.

Residence depends, broadly, on:

- a) Physical presence in Guatemala for more than 183 days in a year.
- b) Carrying on business activities in Guatemala on a habitual basis.
- c) Having the company's main business interests or administrative headquarters in Guatemala.
- d) Becoming organized under the laws of Guatemala and establishing its tax residence in Guatemala.

Non-residents are subject to tax in Guatemala only on Guatemalan-sourced income. This includes income derived from the provision of services, capital investments, labor, royalties on intangible assets, and capital gains, among others.

Corporate business vehicles are by default subject to a 25% tax rate on net income. There is an alternative regime available to all taxpayers where gross income is taxed at 7%. For those taxpayers with an effective tax rate of 7% or more, this may be the best choice as there is no need to determine applicable deductions or their amount. The default and main method of payment of income taxes consists of a quarterly interim payment calculated on end-of-quarter results or, alternatively, on the basis of an estimated income equal to eight percent of the total ordinary income (i.e., income derived from the core business activities of the taxpayer, excluding exempt income) to be liquidated at the end of the fiscal year when compared to the final results. The alternative method, calculated on gross income, consists of either a withholding applicable to every amount paid to the taxpayer or a direct monthly payment by the taxpayer of 7% on gross income.

c. Taxes on Employment

Employees are taxed on Guatemalan-sourced income. Tax-resident employees are liable to pay income taxes at 5% or 7%, depending on the amount of the taxable income. Employees with income above the equivalent of US\$37,975 are taxed at a rate of 7%; other employees are taxed at a rate of 5%. The only deductions allowed include:

- a) Cost of living allowance at about US\$6,076 per year.
- b) Social security contributions and contributions to pension funds.
- c) Life insurance premiums, which do not provide for a rescue value.

Social security contributions amount to a total of 17%, of which 12.67% must be contributed by the employer and 4.83% must be contributed by the employee.

A 15% withholding tax rate applies to salary and other payments to non-tax resident employees under the general category of remuneration for employees' services. The employer must withhold the tax on credit or payment for the services and pay it on behalf of the employee to the Tax Administration within the next ten working days of withholding. No filing requirements apply to non-tax resident employees.

The employer must calculate the monthly withholding to be made through the year, but a final payment is made at the end of the fiscal year, if more or less than the required tax would have been withheld. Employers must withhold and pay on behalf of their employees the applicable income tax and social security contributions, including employer's social security contributions.

d. Passive Income

Dividends distributed to shareholders, whether resident or non-resident, are taxed at a rate of 5% and withheld by the paying company.

Dividends received from foreign companies, that do not operate in nor are resident of Guatemala, are considered to be foreign source income and therefore not subject to taxation in the country. Dividends are not deductible.

As a general rule, the payment of interest is subject to 10% tax withholding, whether paid to residents or to non-residents, with some exemptions, such as:

- a) Government bonds.
- b) Insured mortgage backed securities, for the development of low income housing projects.
- c) For foreign financing, interest on loans granted by fully licensed banks or financial institutions to Guatemalan companies (though it is recommended that a ruling is sought from the Tax Administration).

However, if a resident regularly charges interest, the income will be subject to corporate income tax.

IP royalties paid to non-residents are subject to a 15% withholding tax.

3. ALTERNATIVE FLAT INCOME TAX

A minimum tax creditable to income tax, called *Impuesto de Solidaridad* (ISO) is levied on commercial or agricultural activities with a gross margin of more than 4% of their gross revenue.

The tax base is the greater amount of either 25% of the net asset value or 25% of the gross revenue, and when the net asset value exceeds four times the gross revenue, the tax base will be 25% of the gross revenue.

The ISO is due on a quarterly basis.

4. VALUE ADDED TAX

The Value Added Tax (*Impuesto al Valor Agregado* IVA) applies to the supply of goods, services and imports, at a rate of 12%. The VAT tax return is filed and paid on a monthly basis.

a. Taxable and exempt transactions

The law provides for the following taxable events:

- a) The selling or in-kind exchange of personal property, of real property (for the first sale only) and/or rights constituted over them.
- b) Provision of services within Guatemalan territory.
- c) Imports of goods.
- d) The leasing of movable property (chattels) and real estate.
- e) Judicially or otherwise mandated in-kind payments. .
- f) Inventory discharges by a taxpayer or by the owner, partner, director or employee of a company for personal use and consumption.
- g) Destruction or loss of inventory, except for perishable goods or in the case of force majeure or criminal events.
- h) Gifts of movable property and real estate.

Among the general exemptions are the following:

- a) Temporary imports.
- b) Exports of goods and services.
- c) Transfer of ownership of movables and real estate resulting from mergers, acquisitions, contributions to corporations and other entities, and inheritance.

- d) Services provided by supervised financial institutions, reinsurance and counterguarantee operations.
- e) The issue or transfer of negotiable instruments and of any kind of shares, except negotiable invoices.
- f) The creation of trusts and the reversion of the trust assets to the grantor.
- g) Contributions and donations made to non-profits.
- h) Retail sales of raw food and vegetables in municipal markets.
- i) Services provided by non-profits.
- j) The sale of assets of financial institutions subject to bankruptcy proceedings.

The following entities are exempt from VAT in general:

- a) Public and private education institutions.
- b) Universities.
- c) The official Guatemalan sports and Olympic authorities.
- d) Guatemalan Social Security.
- e) Diplomatic and consular missions.
- f) International organizations that were granted tax exemptions by agreement.

b. Assessment

With respect to sales and services, the taxable amount is the price excluding any discounts granted in accordance with trade practices, and including amounts charged separately to the acquiring party also including taxes other than VAT.

With respect to imports, the taxable amount is the CIF value plus customs duties and other related charges.

With respect to the leasing of movable or immovable property, the taxable amount is equal to the rent plus any financing charge. With respect to withdrawals of movable goods from a business firm, the taxable amount is the acquisition price or the production cost of the goods.

c. Value Added Tax credit

VAT Credit is the sum of the tax charged to the taxpayer on imports and/or purchases of local goods and services (which need to be directly related to his/her production, distribution and/or sale process). This is determined on a monthly basis.

VAT Debit is the sum of the tax charged by the taxpayer in his/her transactions subject to VAT in the same period.

The difference between the total VAT Credit and Debit is the amount of tax to be paid for the corresponding month.

d. Value Added Tax refund

Exporters have the right to request a tax refund for the VAT Tax Credit in their favor. The refund is made on a monthly, quarterly or semi-annual basis depending on the applicable tax regime.

The refundable Tax Credit originates from the tax charged on the invoices for purchased goods and services destined to the exporter's commercial activity.

5. STAMP TAX

Stamp tax is levied at the general rate of 3% on transactional documents specified in the law not subject to VAT, as well as documents executed abroad to be enforced in Guatemala. Apart from the general charge, there are some specific rates applicable to specified documents, subject to some exemptions as provided for in the Stamp Tax Act.

6. IMPORT DUTIES, TRADE AGREEMENTS AND CUSTOMS SYSTEM

Guatemala is part of the Central American Integration System, which is based on a series of treaties that regulate, among others, international trade among the member states and between the member states and non-member states. The full members of the system are Guatemala, El Salvador, Honduras, Nicaragua, Costa Rica, Panama, Belize, and the Dominican Republic.

There is a Central American Uniform Customs Code and a common customs product nomenclature across the region. Both have been developed to comply with basic World Trade Organization rules and policies. Trade among the member states is now basically free of any import duties, except for a few products that have a sensitive character for the economy of the member states.

In addition, there are several free trade agreements, in particular between:

- a) The Central American states (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua), the Dominican Republic and the United States (CAFTA).
- b) The Central American states and Mexico.
- c) The Central American states and the EU.

- d) The Central American states and Chile.
- e) Guatemala, El Salvador, Honduras and Colombia.
- f) Guatemala and Taiwan.

All of these agreements create a fairly open international trade environment with only a few products subject to import duties, which will gradually be reduced.

There are no export duties, but there are products, such as sugar, which are subject to export quotas.

7. EXCISE TAXES

Guatemalan law levies taxes on the distribution of specific consumer goods: crude oil, fuels and other derivatives; alcoholic beverages; non-alcoholic beverages of various kinds; and cement.

There is also a specific tax on the manufacture and import of tobacco products.

PART THREE

LEGISLATION AND OTHER ASPECTS RELEVANT TO FOREIGN INVESTMENT

1. LABOR LAW

The Labor Code is the main source of labor law. Other rules can be found in:

- a) The Constitution.
- b) Specific statutes, which have either amended the Labor Code or created new obligations.
- c) International treaties ratified by Guatemala.
- d) Collective Bargaining Agreements.

The application of labour laws does not necessarily depend on the parties' preference or will as expressed in any services agreement, but will depend on the facts of the situation. A labour judge is likely to find an individual service contract is subject to labour laws where there is any agreement, memorandum, accounting documents or any other evidence establishing facts such as employment hierarchy and direction, working time, disciplinary measures, and so on.

The parties can only agree to override provisions of the Constitution, Labour Code, Treaties or collective agreements, if such contractual provisions improve upon the rights and conditions set forth by these other sources for the employee. Rights and conditions can also be improved by custom or practice at the labour place.

The same rules apply to national, resident, and/or foreign employees working in Guatemala.

Frequently, when foreign companies wish to reproduce the employment policies that apply in their original jurisdiction, employee benefits are considered to be in addition to, rather than in replacement of, benefits already established by applicable Guatemalan law. It is not legally possible to relinquish or renounce any benefit already established by law, convention or custom in Guatemala.

The following are among the most important aspects of Guatemalan labor law:

a) Contract and implied terms

Employment contracts must be executed in writing, and a copy must be sent to the Ministry of Labor. The burden of proof of the written agreement lies on the employer and, if no written contract can be produced as evidence before a labour judge, the employment conditions argued by the employee will be taken as fact.

The contract may be based on a standard form provided by the Ministry of Labor and all of the legally established employee benefits are deemed to be automatically included. If a different format is used or if no written contract is signed, the minimum legal terms and conditions apply by default, unless custom or practice in the workplace or an applicable collective agreement includes any term which would improve the employment conditions for the employee.

Some implied terms include:

- a. 12 monthly salaries per year, plus a mid-year and a Christmas bonus. The bonuses are equivalent to one monthly salary that the employer pays in the middle and at the end of the year.
- b. 301 working days a year, not including public holidays.
- c. Ordinary and extraordinary working hours (44 hours a week for the ordinary working hours of effective daytime work; nightly or mixed working hours may vary).
- d. Productivity bonus, which should be agreed between companies and employees, in accordance with the systems of productivity and efficiency that they establish, and which should be paid to the employees with the monthly salary.
- e. The right to a severance pay in case of dismissal without just cause.
- f. Where applicable, maternity leave.

b) Wages

Wages can be agreed as follows:

- a) By time unit (monthly, biweekly, weekly, daily or per hour).
- b) By work unit (by piece, task, by the lump, or by fixed price).
- c) By participation in utilities, sales or charges made by the employer; in such cases, the employee should not assume the risks of the employer's losses.

The minimum wage is set yearly through Presidential Decree, based on the recommendations of the Ministry of Labor (*Ministerio de Trabajo y Previsión Social*) and the National Wages Commission

(*Comisión Nacional del Salario*), as provided by Guatemalan Labor Law. It is usually set at a different rate between agricultural and non-agricultural activities.

c) Working hours

Ordinary work shifts can be agreed by the parties within the following parameters:

- a. **Day shift:** Work carried out in a day between six in the morning (*6:00am*) and six in the evening (*6:00pm*). It cannot exceed eight daily hours or forty-four hours in a seven day working week, equivalent to forty-eight hours for salary effects.
- b. **Night shift:** Work carried out between six in the evening (*6:00pm*) of one day to six in the morning (*6:00am*) of the next day. It cannot exceed six hours a day or thirty-six hours in a seven day working week.
- c. **Mixed shift:** Work carried out in a period of time that includes hours from both the day shift and the night shift. It cannot exceed seven hours a day or forty-two hours in a seven day working week.

All of the work carried out beyond the parameters of an ordinary shift constitutes **overtime** and must be paid as such, at a premium of 1.5 times the employee's regular rate must be paid for each hour.

The total time of both ordinary shifts and overtime cannot exceed twelve hours in a day.

The following persons are not subject to the limitations of work shifts:

- a. The representatives of the employer (e.g. General Managers, CEOs, etc.).
- b. Employees working without immediate superior supervision;
- c. Employees working as security guards or in surveillance, where their sole presence is required;
- d. Employees working outside of the company's facilities;
- e. Employees whose work cannot be done in shifts because of its own nature.

Nonetheless, in all of these cases, the employees cannot be required to work more than twelve hours a day; if they do, the employer must pay them overtime.

Guatemala recently adopted ILO Convention 175 on part-time work, and passed an administrative regulation for its application. A part-time worker has the right to minimum wage determined on an hourly basis, and is entitled to all labor benefits calculated in a proportionate manner. It is expected

that the constitutionality of these measures will be questioned by workers' unions, either generally or case by case.

d) Paid vacation

The Constitution provides a fifteen working days' vacation period per worked year, as a minimum nontransferable right of all employees. Vacations are not exchangeable for money, except when the employee has not received the vacation time he is entitled to.

Employees cannot accrue vacation periods year by year with the purpose of receiving a longer vacation period afterwards. If an employee terminates his work contract, he can ask for payment of all vacation periods he didn't receive in the last five years.

Labor law provides that all employees must receive the complete, uninterrupted vacation period, meaning that the employer cannot ask an employee to suspend it.

e) Christmas, Annual, and Productivity Incentive Bonuses

These three bonuses are established by law. As such, they are minimum obligations that do not exclude additional bonuses that may be freely agreed upon by the parties or granted by the employer.

Employers must pay their employees a Christmas Bonus on the second week of December of each year, equivalent to a month's salary, calculated on the average ordinary salaries earned by the employee during the period ranging from December 1 of the previous year through November 30 of the current one. If the employee did not work for the entire period, the bonus must be paid proportionately to the time worked.

Employers must pay an Annual Bonus (commonly referred to as *Bono 14*) equal to a month's salary, on the second week of July of each year.

Employers must pay employees a monthly Productivity Incentive Bonus of a minimum of Q.250.00 (approximately US\$.33.00).

f) Salary Deductions and Employee Tax

Tax-resident employees are liable to pay income taxes at 5% or 7%, depending on the amount of the taxable income. Employees with income above the equivalent of US\$37,975 are taxed at a rate of 7%; other employees are taxed at a rate of 5%. The only deductions allowed include:

- a) Cost of living allowance at about US\$6,076 per year.
- b) Social security contributions and contributions to pension funds.
- c) Life insurance premiums, which do not provide for a rescue value.

Social security contributions amount to a total of 17%, of which 12.67% must be contributed by the employer and 4.83% must be contributed by the employee.

A 15% withholding tax rate applies to salary and other payments to non-tax resident employees under the general category of remuneration for employees' services. The employer must withhold the tax on credit or payment for the services and pay it on behalf of the employee to the Tax Administration within the next ten working days of withholding. No filing requirements apply to non-tax resident employees.

The employer must calculate the monthly withholding to be made through the year, but a final payment is made at the end of the fiscal year, if more or less than the required tax would have been withheld. Employers must withhold and pay on behalf of their employees the applicable income tax and social security contributions, including employer's social security contributions.

g) Foreign Employees

Foreign employees need work permits to work legally in Guatemala in addition to residence visas (temporary or permanent). To obtain a work permit the main condition is that the employer declare not only that the employee will be hired on the granting of the work permit, but also that the employer agrees to guarantee that the employee's legal obligations in Guatemala are fulfilled. In practice, this guarantee is rarely enforced.

The employer who sponsors the foreign employee applies for the work permit to the Ministry of Labor, and to the Immigration authority for the temporary residence visa. If the required documentation is in order, the temporary residence visa is obtained in approximately four months (starting from the date when the request for temporary residence was made) and the work permit is obtained in approximately six to eight weeks.

Foreign workers who obtain permanent or temporary residence must obtain authorization from the Ministry of Labor to be employed in the country. Any foreign hire must be approved by the Ministry of Labor on the basis that the skills or expertise of the foreign employee are not available locally. At any time, a company cannot employ more than 10% of their workforce as foreigners (excluding foreign managers).

For more detailed information on foreign workers from the perspective of Guatemalan Immigration Law, please refer to the section on Immigration further ahead.

h) Additional benefits required by law

- a. **Employees' Recreation Institute** (*Instituto de Recreación de los Trabajadores*) (IRTRA): The employer must make a monthly contribution to IRTRA of 1% of the total of salaries paid to his employees.
- b. **Technical Training Institute** (*Instituto Técnico de Capacitación*) (INTECAP): The employer must make a monthly contribution to INTECAP of 1% of the total of salaries paid to his employees.

i) Termination

Employees can be terminated at will, and with or without notice. However, if no just cause for termination exists then a severance pay is due which amounts to roughly one monthly salary for each year of work at the company. There are a few exceptions to this rule, notably during maternity leave (or on notice of pregnancy), when termination is not legally possible except with prior judicial authorization.

In the case of a dismissal without just cause, the employee can take the matter to a labor judge and claim the payment of the employee's severance pay (plus litigation costs). One important procedural element is that the employee is not required to prove that his or her dismissal was not justified, but rather the employer has the burden of proving that the dismissal was justified.

Justified dismissal, or just cause, consists of termination on the failure of the employee to fulfil his obligations or on committing any illegal or unbecoming acts against the employer or his fellow employees. Even in the case of justified dismissal, the employee may bring the matter before a labour judge to require legal proof of the just cause.

2. CURRENCY

The official currency of Guatemala is the quetzal (Q) ([click here](#) to view charts and data of recent exchange rates and averages between Q and US\$). The quetzal is legal tender for the payment of any monetary obligation, except when parties have agreed otherwise.

Guatemalan law allows the freedom to have, use and negotiate foreign currency in any way, including foreign currency deposits or accounts, and the trading of gold bullion.

3. FOREIGN INVESTMENT PROTECTION

Guatemala has a Foreign Investment Protection Act. Its main principle is that of equal treatment for local and foreign investors. The Act, therefore, also repeals in general all previous regulations opposed to such principle. It guarantees the right to participate in any legal economic activity in the country, the right to transfer or take out from Guatemala any currency and profits generated in the country, among other things.

It applies to some special incentives for investment that are available, such as incentives for the draw-back industry (which involves lowering tariffs on the import of raw materials, machinery, etc., for the purpose of exporting products manufactured from those materials outside Central America) and forestry projects.

However, the Act does not apply to limitations set forth in the Constitution, to certain economic activities that are regulated by specific statutes, and any treatment of foreign investment which may derive from obligations contained in international trade deals regarding customs, common markets or free trade areas.

4. INTELLECTUAL PROPERTY

Intellectual Property is recognized by Guatemalan Law as a constitutional right and through several international agreements of which the country is a part. The main national statutes related to IP are the Copyright and Related Rights Act (*Ley de Derecho de Autor y Derechos Conexos*), and the Industrial Property Act (*Ley de Propiedad Industrial*).

a. Copyright and related rights

Copyright (*derechos de autor*) concerns the moral and economic rights to be recognized as author of a work, protect the work's integrity, publish it and profit from its uses. These rights originate from the creation of the work and the attribution to it of the name or the known pseudonym of the author.

Works are defined very broadly and range from traditional written works to audio-visual works, choreography, conferences, illustrations, architecture, and in general any creative work.

Although registration is not required for the protection of an author's rights, there is an Intellectual Property Registry which gives a formal determination that the copyright legally exists.

Several legal actions and remedies are available to the copyright holder, including injunctive relief to cease infringements. Additionally, Guatemala grants protection under copyright and related rights treaties, including:

- a. WIPO Berne Convention for the Protection of Literary and Artistic Works 1971.
- b. WIPO Copyright Treaty 1996 (WCT).
- c. UN Universal Copyright Convention.
- d. WIPO Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations 1961.
- e. WIPO Convention for the Protection of Producers of Phonograms Against Unauthorised Duplication of Their Phonograms 1971.
- f. WIPO Performances and Phonograms Treaty 1996 (WPPT).
- g. Convention Establishing the World Intellectual Property Organization 1979.
- h. Inter-American Convention on the Rights of the Author in Literary, Scientific and Artistic Works.
- i. WTO Agreement on Trade-Related Aspects of Intellectual Property Rights 1994 (TRIPS).

Moral rights are recognised in perpetuity. Copyright protection of economic rights is granted for a term of 75 years from the death of the author. If the copyrighted work has more than one author, the term of protection is 75 years from the death of the last one. Computer programs and collective works are protected for a term of 75 years from the date of “first publication” (as defined by law). Audio-visual works are protected for 75 years from the first “public exhibition” of the work.

b. Industrial property

Trademarks

Trademarks comprise a broad variety of words, symbols, signs or combinations of these, including scents and sounds, which have or acquire a distinctive character as to the origin of the products or services it identifies. Trademarks can also consist of national or geographical denominations, so long as they don't risk confusing consumers as to the origin of a product or service.

Trade marks can be registered with the Intellectual Property Registry. The relevant procedures are established by law and described on the Registry's website. Unregistered trademarks are not protected, except where they are protected by treaty or are well-known trademarks under Article 6bis of the Paris Convention.

The owner of the registered trade mark can bring actions in order to seek injunctive relief to cease infringement, nullify trademarks that infringe pre-existing trademarks or trademarks subject to treaty protection (such as well-known trade marks), among other things.

In addition, actions can also be brought in the context of unfair competition, where trademarks are infringed through references, imitation, or the like.

Trademarks are granted for a period of ten years and are renewable for further unlimited periods of ten years each.

Patents

A patent is a title which recognises the rights of inventors to their inventions. To be granted a patent, the invention must have novelty, inventive step and be capable of industrial application.

Articles referring to the protection of plant varieties through patents were repealed from the Industrial Property Law in 2014. Congress is expected to enact a new law for the protection of plant varieties, as Guatemala is a member of the International Union for the Protection of New Varieties of Plants (UPOV).

Patents must be registered with the Intellectual Property Registry, whose website provides guidance on the applicable procedure (<https://www.rpi.gob.gt>). This office is also in charge of implementing the system established by the Patent Cooperation Treaty (PCT).

Patents can be enforced by those named in the patent title or certificate, or by their registered assignees or successors, where applicable. A number of actions can be taken to enforce a patent, including actions seeking injunctive relief from infringement, nullity of another patent that has been granted in partial or complete infringement of an earlier patent, among others.

Additionally, Guatemala is a part of the following major international treaties on patents, which provide additional protection:

- a. WIPO Paris Convention for the Protection of Industrial Property 1883.
- b. Patent Cooperation Treaty 1970.
- c. Convention establishing the World Intellectual Property Organization 1979.
- d. WTO Agreement on Trade-Related Aspects of Intellectual Property Rights 1994 (TRIPS).
- e. Convention on Biological Diversity 1992.
- f. Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure 1977.

Patents are granted for a term of 20 years from the patent application's filing date.

Registered designs

Utility models and industrial drawings and designs are broadly defined to comprise the plans and/or depictions of industrial and/or artisanal products. They are subject (with the necessary changes) to the same rules that apply to patent registration and enforcement.

Industrial designs must be registered with the Intellectual Property Registry. Registered industrial designs and drawings can be enforced in practically the same way as patents.

Industrial designs and drawings are protected for a term of ten years and renewable only once for an additional term of five years.

Unregistered designs

Unregistered industrial designs are also legally protected on disclosure, that is, the first time the industrial design is made public by any means and in any place by the designer, the owner or by any third party that may have legally acquired the design.

Generally, the enforcement of unregistered industrial designs is the same as for patents.

Unregistered industrial designs are granted a protection of three years from the date of disclosure.

c. Criminal offenses

The Guatemalan Penal Code defines a series of crimes related to Intellectual Property, with possible prison terms ranging from one to six years and fines between Q.50,000.00 and Q.750,000.00 (approximately US\$.6,600.00 to US\$100,000.00).

5. CONSUMER PROTECTION

The Consumer Protection Act of 2003 grants a minimum of compulsory rights and guarantees in favor of consumers, and establishes administrative penalties and procedures. It applies to all agreements between suppliers and consumers in Guatemala. Goods or services provided under a specific statute or regulation, such as public services and utilities, will only be subject to this law in default of an applicable rule of their specific statute.

Every supplier must comply with a series of general obligations for the protection of consumers' lives, health and safety, provide clear and reliable information regarding the goods and services provided, repair or refund consumers for the quality of the goods provided, among other obligations.

The government agency in charge of overseeing compliance is the *Dirección de Atención y Asistencia al Consumidor* (DIACO), a part of the Ministry of Economy. It can impose sanctions, such as fines, for violations to the Consumer Protection Act and other regulations.

6. IMMIGRATION

The Immigration Code of 2016 grants foreigners the right to obtain Guatemalan nationality; to settle in the country with their family or with the intent to form or reunite their family; to work, have property and investments in the country; to be educated within the national systems of education and higher learning; to equal treatment and non-discrimination based on sex, sexual orientation, color, language, religion or convictions, political opinion, ethnic or social origin, nationality, age, economic situation, property, civil state, birth or any other personal trait.

The Code contains more detailed rules aimed at the protection of immigrants in areas such as the rights of immigrant workers and their families, victims of human trafficking, refugees, political asylum and humanitarian aid, etc.

Foreign investors may apply for a temporary residence of no more than five years.

Any foreigner who carries out paid activities within Guatemala is considered a “migratory worker” under one of the following categories:

- a. **Cross-border and itinerant workers:** workers who reside in a neighboring State to which they return at the end of their workday or at least once a week.
- b. **Seasonal workers:** workers whose activity depends on the conditions of a season of the year or that by its very nature is only carried out during a specific time of year.
- c. **Specialized consulting, advising or technical workers:** workers who carry out their activity for a period of no more than 365 days, being required by the employer specifically as a specialized consultant, advisor or technician, and who do not require a permanent residence.
- d. **Self-employed workers:** technically not employees in the sense of Labor Law, but for immigration purposes the Code names under this category any “workers” who carry out commercial or industrial activities on their own or with their families, being legally authorized to do so within the country.

Apart from these categories of “migratory workers”, all foreigners authorized to remain in Guatemala as employees under applicability of Labor Law are referred to more specifically as “migrant workers”, and may apply for a temporary residence of one to five years. After five years of being temporary residents, they may become permanent residents. Cross-border and itinerant workers are considered under a special migratory status. Refugees and persons granted political asylum may also be legally employed in Guatemala.

7. MINING

The Constitution establishes that the subsoil (sub-surface) with all its organic and inorganic substances (including minerals and hydrocarbons in their natural state) is owned by the State of Guatemala, and that all minerals, hydrocarbons and other nonrenewable resources can be rationally and technically explored, exploited and commercialized.

The Mining Act of 1997 regulates all mining activity in the country. Anyone wishing to undertake mining activities must obtain a license from the Ministry of Energy and Mining. The license grants rights for recognition, exploration and exploitation in a specific area, following the execution of an Agreement between the licensee and the Guatemalan government. Its term is 25 years, extendable for another period of up to 25 years. Mining licensees must pay the government a 1% royalty fee, based on the volume of commercialized mineral product and its price on local or international commodities exchanges⁴.

The exploration and production of petroleum (oil) and hydrocarbons are regulated separately from mining activities, by the Hydrocarbons Act of 1983. The Ministry of Energy and Mining also oversees these matters. Before undertaking any exploration or production activity in the intended area, the interested party needs to execute a Petroleum Exploration and Production Contract with the Guatemalan government. Through this agreement, the government grants the authorization to carry out the activities; however, the authorized operator does not acquire any property right or concession over the land, surface, subsoil nor any natural resource discovered in the area. The operator pays the government a royalty fee, determined by the Ministry of Energy and Mining.

Guatemala has ratified Convention 169 of the International Labor Organization (ILO) on the rights of indigenous and tribal peoples. It establishes that governments must consult these peoples before undertaking or permitting any exploration or exploitation of mineral or sub-surface resources. The peoples should participate in the benefits of such activities and be compensated for any damages

⁴ Attempts have been made to increase the royalty fee, either through law or voluntary agreement. However, an increase to 10% was declared unconstitutional on the basis that it could not be contained in a legislative act approving the government budget, since its nature was not that of a permanent law. (Case numbers 1, 6, 7, 44, 68, 71, 101, 118 and 167 of 2015, all heard and resolved jointly by the Constitutional Court).

resulting from them. There is currently no specific regulation in the country to carry out these consultations, which has led to conflict and lack of legal certitude for the mining business. As of the time of writing this document, the government has informed that it is in the process of formulating a regulation proposal to bring legal clarity and stability to mining activities within this context.

8. ENVIRONMENTAL PROTECTION

The Environmental Protection Act of 1986 provides the basic rules and obligations for the protection and improvement of Guatemala's natural environment. The government agency in charge of overseeing and applying this statute and all related regulations is the Ministry of Environment and Natural Resources.

Guatemalan law prohibits bringing into the country contaminating products and materials that are banned in their country of origin, as well as multiple substances, residues, radioactive materials and waste that can infect, contaminate or degrade the environment.

An Environmental Impact Assessment (EIA) must be approved by the Ministry before any construction, industrial project or any other activity that could harm, pollute or disturb the environment. Once the EIA is approved, the Ministry issues an Environmental License, authorizing the start of construction or operations. The EIA is done by a specialized technician approved by the environmental authority. If this requirement is not fulfilled, the law establishes fines between Q.5,000.00 and Q.100,000.00 (approximately US\$625.00 and US\$12,500.00) and the closing of the business or project until the fines are paid.

Any person may report any act or omission that generates pollution, detriment or loss of natural resources, or affects levels of quality of life.

9. DUTY FREE ZONES

The Duty Free Zones Act of 1989 defines them as the portions of land, planned and designed, subject to a special customs regime. Its intention is for businesses to establish themselves with the purpose of engaging in production or commercialization of goods for exportation or re-exportation, as well as for offering services related to international commerce.

Duty Free Zones can be public or private; they can be created in any part of the country, subject to authorization by the Ministry of Economy. They require a legal entity for its administration, and are guarded and controlled by the customs authority.

Consumers are considered Industrial when they produce or ensemble goods for exportation outside the national customs territory, re-exportation, or research and technical development. Service Consumers are the ones that offer services related to international commerce; and Commercial Consumers engage in the commercialization of merchandise destined to be exported outside the national customs territory, as well as re-exportation without changing the products' characteristics or altering their origin. Consumers authorized to operate in Duty Free Zones have the following tax benefits:

- a. Exemption from taxes, tariff rights and charges applicable to imports to a Duty Free Zone of machinery, equipment, tools, raw materials and, in general, all merchandise used in the production of goods and execution of services.
- b. Total exemption from Income Tax caused by rents derived exclusively from activities as Industrial Consumer or Duty Free Zone services (for 12 years in the case of Industrial and Service Consumers and 5 years for Commercial Consumers). Foreign Industrial or Service Consumers operating in Guatemala won't receive this exoneration if, in their country of origin, fiscal credit is granted by Income Tax paid in Guatemala.
- c. Exemption from Value Added Tax on the transfer of merchandise within and among Duty Free Zones.

Exports from a Duty Free Zone to any Central American area is subject to tariffs as products coming from a country outside of Central America. Temporary exportation from a Duty Free Zone to Central American territory and vice versa is allowed for the purpose of perfecting, transforming, creating or repairing merchandise, for a maximum of 6 months.

Certain products and activities cannot be produced, commercialized nor carried out within a Duty Free Zone, such as oil and its derivatives, natural gas, fishing and breeding of sea life, hotels and leisure centers, forestry, cane sugar and its derivatives or substitutes, coffee, cardamom, cotton, banana, sesame seed, rubber in its natural state, farming of livestock, mining extraction, explosives and radioactive materials, cigarettes and other tobacco products, among others.

10. EXPORT AND DRAWBACK PROMOTION

The Promotion and Development of Export and Drawback Activity Act of 1989 also grants incentives for the manufacture of merchandise for export to countries outside of Central America. It does not apply to several categories of food, animal and natural products. Its main use has occurred within the textile and clothing industry.

There are various means through which tax benefits may be obtained under this statute, such as exemption from import tariffs on raw material, exemption from income tax on profits derived from

exports, etc. To apply for a benefit, the interested party must petition the Ministry of Economy, enclosing a technical and economic study with the legally established requirements.

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