Lex Mundi
World Ready

Guide to Doing Business

# Nicaragua

Prepared by Lex Mundi member firm,
Alvarado y Asociados

This guide is part of the Lex Mundi Guides to Doing Business series which provides general information about legal and business infrastructures in jurisdictions around the world. View the complete series at: www.lexmundi.com/GuidestoDoingBusiness.

Lex Mundi is the world's leading network of independent law firms with in-depth experience in 100+ countries. Through close collaboration, our member firms are able to offer their clients preferred access to more than 21,000 lawyers worldwide – a global resource of unmatched breadth and depth.

**Lex Mundi – the law firms that know your markets.**

## DOING BUSINESS IN NICARAGUA 2014

## *I. NICARAGUA AT A GLANCE*

Nicaragua is the largest country in Central America, bordered with both the Caribbean Sea (to the east) the Pacific Ocean (to the west), Costa Rica (to the south) and Honduras (to the north).

Official language in Nicaragua is Spanish, being also the most spoken language throughout the country; however, there are some other dialects spoken by the natives of the Nicaraguan Caribbean Coast like Miskito, Rama, and Sumo; as well as English (ethnic minorities), which also have official use in certain circumstances according to law[1].

Nicaraguan currency is the "Córdoba", and the official exchange rate for US dollars currently (January, 2014) fluctuates from 25.40 to 25.43 and for Euros, fluctuates from 33.27 to 33.31[2].

In Nicaragua there are neither cultural nor religious influences for running businesses, though most of the Nicaraguan people are religious and traditionalist. Running a business in Nicaragua basically demands a full compliance of all applicable laws and regulations and requires the business not to be in contradiction with public order.

## *II. GENERAL CONSIDERATIONS*

### A. Territory

Nicaragua, has a land of 130,373 square kilometers, making it the largest country in the Central American region, including about 800km of coastline in the Pacific Ocean and Caribbean Sea, 28 volcanic formations, 22,000 $km^2$ of natural reserves, more than 10,000$km^2$ of lakes, lagoons and rivers and 7 percent of the world´s biodiversity. The country's physical geography divides it into three major zones: Pacific plains, northern and central regions, and the Caribbean lowlands. Administratively, Nicaragua is divided into 15 departments and 2 autonomous regions with 153 municipalities.

### B. Government

Nicaragua, is a democratic-presidential republic made up of four branches of government (Executive Power, Legislative Power, Electoral Power and Judiciary Power) and the government system is ruled by the 1987 Political Constitution and amendments. The current President of the Republic is Mr. Daniel Ortega Saavedra, who was elected in November 2006 and reelected in November 2011.

[1] Art. 11 Political Constitution.
[2] According to publication of the Central Bank of Nicaragua for January, 2014.

Regarding the Nicaraguan legislative system, it is a single-chamber parliament composed of ninety-two representatives elected in the same election process to elect the President of the Republic. The parliament is called "National Assembly", and its primarily function is to create, approve, amend and derogate laws and parliamentary decrees. Representatives must run with a political party in order to be elected.

The country's judicial system, is well-organized, with specific divisions to solve disputes according to the subject matter of the case (civil, labor, criminal, etc.); being this a unitary legal system for all the country. It is also a system that allows alternative methods for disputes resolution (arbitration, mediation)[3], which helps the system to reduce the number of judicial cases. Of course, some matters cannot be solved by means of alternative methods (criminal matters, labor, etc.) and must mandatorily be resolved at court.

Depending on the case's subject matter, lawsuits may take a considerable time (civil cases, mainly), while others may find a faster resolution. It is a judicial system generally perceived as impartial, though there is a trend for some people to criticize the system as "not impartial" when served with resolutions against their interests, which is a common situation in all judicial systems.

Additionally, the country's judicial system allows enforcement of foreign judicial decisions, as long as the enforcement request complies with the Nicaraguan legislation requirements and proceedings previous to enforcement[4]. The enforcement of foreign judicial decisions also depends on the reciprocity of the country where the decision is issued; that is, that such country allows the enforcement of Nicaraguan judicial decisions as well. Enforcement of foreign arbitration awards are also allowed by the Nicaraguan system, so long as conditions and procedures required by Nicaraguan law are met and completed[5].

## C. Population

According to the National Institute of Information Development (INIDE, for its acronym in Spanish), the estimated national population for 2013 is 6.03 million people, 51 percent being female and 49 percent male. In Nicaragua, for 2013 the life expectancy was: 72.45 (Male: 70.32 years y Females: 74.68 years). As for the period of 2010-2015 the average annual growth rate of the national population is 1.22 percent and there is an approximate life expectancy of 74.5 years in general.[6]

[3] Art. 1 of the Arbitration and Mediation Law.

[4] Arts. 542 – 552 of the Nicaraguan Civil Procedure Code, establish some procedures to be carried out before the Nicaraguan Supreme Court of Justice when trying to enforce foreign judgments.

[5] Art. 63 of the Arbitration and Mediation Law. Nicaragua is also a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention of 1958).

[6] Estimates and Projections of National, Departmental and Municipal Population. 2007. (For years 2010-2015)

| Distribution of Population by age | |
|---|---|
| **Age** | **Percent** |
| 60 + | **7%** |
| 50 - 59 | **7%** |
| 40 - 49 | **9%** |
| 30 - 39 | **14%** |
| 20 - 29 | **19%** |
| 0 - 19 | **45%** |

Source: National Institute of Information Development, (INIDE for its acronym in Spanish) Estimates and Projections of National, Departmental and Municipal Population. 2007.

## D. Investment Climate

Nicaragua is a country where investments, both national and foreign, are warmly welcome. The Doing Business 2013 Report[7], published by the World Bank, provides a quantitative measure of the business climate in countries around the world. In this report Nicaragua, is ranked as number one in Central America, in terms of contract enforcement, insolvency resolution and investor protection.

The existence of public agencies, such as Nicaragua´s Official Investment and Export Promotion Agency, "ProNicaragua", is an important factor to promote investment opportunities in Nicaragua. This Agency stood out with the best results among all investments promotion agencies of the world in the 2012 Global Investment promotion Best Practices (GPIB), published by the World Bank, the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA).

It is also important to mention that the Ministry of Development, Industry and Trade (MIFIC), created in 2012 the Department of Business Environment as part of the Business Development Directorate, a body whose functions began in 2013 and is aimed to contribute to the country´s socioeconomic development and for the implementation of public policies that benefit and improve the framework applicable for business.

## E. Economy

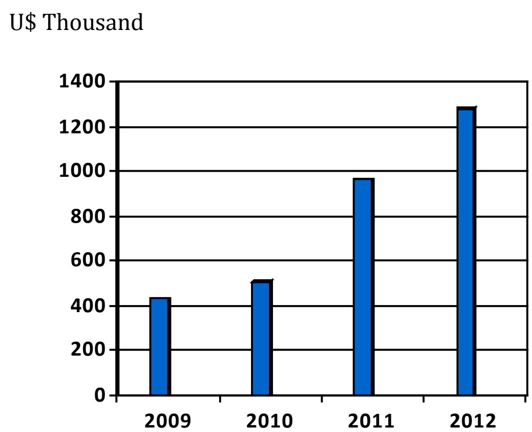
Nicaragua has experienced sustained economic growth in the past years as a result of disciplined management of its fiscal, financial, monetary and exchange politics.

- **Foreign Direct Investment**

During the year 2012 the Foreign Direct Investment (FDI) inflows reached US$1.284, which represents an increase of 33 percent over 2011. The main economic sectors leading 2012 FDI ciphers were industry, commerce and service, energy, mining and free trade zones, which covered 77 percent of the total. The development of these sectors has contributed significantly in increasing the productive capacity of the country and

[7] Doing Business 2013 Smarter Regulations for Small and Medium-Size Enterprises. 10th Edition. 2013 International Bank for Reconstruction and Development / The World Bank

boosting the economy.




Source: MIFIC, BCN (Nicaragua in Figures 2012)

In the FDI as a percentage of GPD index which provides an objective measure of FDI´s flows relative to the size of the economy of each country- Nicaragua has occupied the first position for the fifth year in a row, achieving a 12.2 percent in 2012, exceeding the regional average of 5 percent.

Although there is none official publication of ciphers for 2013, according to ProNicaragua about 15 companies of Central America, Mexico and Europe settled in Nicaragua during this year to invest $ 100 million dollars, which is generating about 5,000 new jobs. Executive Director indicated that 2013 closed with a record of US$ 1,500 million in Foreign Direct Investment, FDI, representing a growth of 20% over the previous year.

- **Gross Domestic Product**

According to ciphers of the agency ProNicaragua, our country achieved in 2012 a gross domestic product of US$ 10.508 million, which represent an increase of 5.2 percent, higher than the 4 percent average for Latin America and the Caribbean, and the highest in Central America in the last three years. At the same time, the GDP per capita was US$1.731, experiencing a growth of 5.8 percent. The five main sectors that were included in Nicaragua’s 2012 GDP were:

| Economic Activity | GDP 2012 |
|---|---|
| Free Zones (exports) | **22.1%** |
| Agriculture, forestry and fishing | **18.2%** |
| Manufacturing industries | **15.0%** |
| Trade, hotels and restaurants | **14.2%** |
| Transport and communications | **5.9%** |

*Source: Central Bank of Nicaragua (BCN for its acronym in Spanish) and National Free Zones Commission (CNZF for its acronym in Spanish)

According to official data published by the Central Bank of Nicaragua (BCN)[8], its gross revenues reached 1,102.3 billion during 2012 and net income of U.S. $ 810.0 million (10.5 and 7.7percent of GDP, respectively). The sectors that attracted investment the most were Energy and Mines, Communications and Industry.

**- Exports**

For Nicaragua, 2012 represented a good year for foreign trade. The main exports of goods in Nicaragua for such year were gold, coffee, beef, raw gold, sugar and dairy products, which represent about 65 percent of the total value. In terms of export destinations, the main countries were the United States, Venezuela, Canada, El Salvador and Costa Rica.

| Exports | 2012 | Growth in relation to 2011 |
|---|---|---|
| Merchandise (FOB) | US$ 2,677.4 | 18% |
| Free Zones | US$ 2.327.1 | 15% |
| Total | US$ 5,004.5 | 17% |

*Source: Central Bank of Nicaragua (BCN for its acronym in Spanish) and National Free Zones Commission (CNZF for its acronym in Spanish)

| Product | Top 5 Export Products<br>Participation 2012 | Exports 2012 in US$ Millions |
|---|---|---|
| Coffee | 19.5% | 521.8 |
| Meat | 16.9% | 451.4 |
| Gold | 15.8% | 422.8 |
| Sugar | 7.3% | 194.9 |
| Dairy | 6.4% | 171.7 |

*Source: Central Bank of Nicaragua. Nicaragua in figures 2012.

## F. Infrastructure

The country's infrastructure is mainly composed by highways, some ports and airports. Most important ports, among others, are Corinto (Department of Chinandega), San Juan del Sur (Department of Rivas) and, Sandino (Department of León); which have lots of commercial and tourism activities (vessels, merchandise freight and cruise ships). The main airport is the International Airport "Augusto C. Sandino", located in Managua, the capital of Nicaragua; there are other airports located in the main cities of the Caribbean Coast (Puerto Cabezas, Bluefields and Corn Island), for internal transportation only. Two additional airports that will receive both domestic and international flights are under development: one in Ometepe Island and another in Punta Huete. In Nicaragua there are no railroad systems.

It is important to highlight that in mid-2013 began a law initiative called "Special Law for the Development of Infrastructure and Nicaraguan Transport, responsive to the Canal, Free Zones and Infrastructure Associates", which establishes a 50-year concession to the

[8] Annual Report 2012, Central Bank of Nicaragua

Chinese company HK Nicaragua Canal Development to build, develop and operate a canal in Nicaragua that articulates the Pacific Ocean to the Atlantic. This project includes the construction of the wet canal, a pipeline that will connect the two coasts, a dry canal for the construction of railways for cargo transport, two free zones, two deepwater ports and a new international airport. The project is estimated in US$40,000 million and its construction in 10 years, feasibility studies are ongoing.

### G. Diplomatic Relations

Nicaragua has diplomatic relations with most countries around the world, with embassies and consulates in several countries. Its relations are sustained on the base of respect, cooperation and mutual aid in order to achieve important goals not only for the country but for the region and the whole international community as well.

Also, through a wide range of agreements, our country has developed business relations with the world´s largest markets. Preferential agreements have become an important component of trade liberalization in Nicaragua; the country therefore continues to seek opportunities to ensure its successful integration into international trade and the global economy.

| Agreements | Countries |
|---|---|
| Free Trade Agreements | United States of America, Mexico, Panama, Dominican Republic, Chile and European Union. Additionally, free movement of capital, services and human resources among CA-4 countries. |
| Central American Common Market | Nicaragua, Guatemala, El Salvador, Honduras and Costa Rica. Additionally, free movement of capital, services and human resources among CA-4 countries |
| Preferential Access Agreements | European Union, Venezuela, Ecuador, Cuba, Bolivia, Colombia, Japan, Canada, Russia, Norway, Switzerland and Incorporation of Nicaragua to the Latin American Integration Association (ALADI). |
| Agreements under Negotiation | Canada and CARICOM |
| Solidarity Union Agreements (ALBA) | Venezuela, Ecuador, Bolivia, Cuba, Antigua &Barbuda, Dominica & St. Vicente and Grenadines. |
| Recent Agreements | ALADI (Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Mexico, Paraguay, Peru, Uruguay, Venezuela and Cuba). |

Source: Ministry of Development, Industry and Trade (MIFIC)

### H. Environmental Considerations

The Government in Nicaragua, for several years ago, has been addressing efforts towards the consolidation of a more efficient environmental control programs; including environmental protection laws and regulations, as well as stressing the role of institutions such as the Natural Resources and Environment Ministry (MARENA), in order to achieve a sustainable exploitation of the natural resources while protecting the Environment as well.

The main specific legal framework on environmental matters is found in Law No. 217 "Natural Resources and Environment General Law", its Amendments (Law No. 647) and its Regulations (Decree 9-96); which contains norms for the conservation, protection, improvement and restoration of the environment and natural resources, ensuring its rational and sustainable use[9].

Such legal framework adopts the constitutional principle that establishes the natural resources as national patrimony[10]; creating, therefore, the legal provisions aimed to protect this patrimony through institutions such as MARENA, which is the one empowered to issue environmental permits for projects that may involve the use of national resources[11], which is a requirement that must be fulfilled prior to starting activities related with the project.

In order to obtain the environmental permit, investors must prepare and conduct an environmental impact assessment and file it with MARENA for approval. It is also important to mention that natural resources may only be given to investors, foreign or nationals, by means of permits, licenses or concessions for a determined period, depending on the project and the natural resources involved[12]. Every activity in connection with natural resources and environment is executed under the control and regulations of MARENA and the specific authority for the specific natural resource affected, which are entitled to supervise the activities and to impose sanctions against those in breach of environmental laws and regulations.

Furthermore, the Nicaraguan Criminal Code has gathered in a specific chapter the Environmental and Natural Resources Crimes; punishing with prison and pecuniary sanctions the behavior of those committing criminal acts against the environment (such as, pollution of soil, subsoil, waters and atmosphere; breach to provisions contained in environmental impact assessments; illegal use of natural resources; among others.)[13]. A special unit of the District Prosecutor Office (Environmental Division) is currently in charge to investigate and prosecute this kind of crimes.

## *III. Legal Framework*

### A. Foreign Investment Promotion Law (Law 344)

[9] Art.1 of Law 217.
[10] Art. 102 of the Nicaraguan Constitution; and Art. 54 of Law 217.
[11] Art. 12 Law 647 additions to art. 25 of Law 217.
[12] Art. 54 of Law 217.
[13] Arts. 365 – 390 of the Criminal Code.

Foreign Investment Promotion Law recognizes for Foreign Investors the same rights as those granted for nationals, with the exception of national security and public healthcare matters[14]. Such law promotes investment and contributes to job creation and economic and social development in the country. In general, there are no limitations on foreign investment, it aims to create an appropriate legal framework with clear rules that guarantees equal treatment for domestic and foreign investors, which is also recognized in the Constitution of Nicaragua, freedom to invest, the enjoyment of transfers of fund abroad expeditiously, foreign currency convertibility through local banking system and property protection and security.

Regarding registration and reporting requirements, Art. 9 of the Foreign Investment Promotion Law establishes that foreign investments interested in using the benefits contained in such law, must be registered at the Foreign Investments Statistics Registry attached to the Commerce, Industry and Promotion Ministry.

## B. Intellectual Property Laws

In Nicaragua, intellectual property is regulated and protected through different laws, specifically for each legal regime. The General Registry for Intellectual Property (DGRPI for its acronym in Spanish) is the administrative body responsible for ensuring the use, protection, development and respect of the intellectual property system in our country.

Some of the laws related to this sector are: Law No. 312 “Copyright Law and Related Rights”, Decree No. 22-200 “Regulations to Law of Copyright Law and Related Rights”, Law No. 380 “Trademark and other Distinctive Signs Law”, as amended; Decree No. 83-2001 “Regulations to the Trademarks and Other Distinctive Signs Law” as amended; law No. 318 “Plant Varieties Protection Law”; Decree No. 37-2000 “Regulation to the Protection of New Plan Varieties Law”, Law No. 354 “Patents of Invention, Utility Models and Industrial Designs Law”; Decree No. 88-2001 “Regulation to the Patents of Invention, Utility Models and Industrial Designs Law”; Law No. 322 “Protection Act program- Carrying Satellite Signals Law”; Decree No. 44-2000 “Regulation to the Protection Program- Carrying Satellite Signals Law”; Law No. 361 “Protection of Layout-Designs of Integrated Circuits Law”; Decree No. 38-2001 “Regulation to the Protection of Layout- Designs of Integrated Circuits Law”.

All the above mentioned laws represent an effort to adapt Nicaraguan legislation to international standards, and have as its main objective to protect trademarks and other distinctive signs, as well as to implement updated regulations and controls providing greater legal protection to the owner of industrial property rights.

The use of the intellectual property system is a tool that enables businesses to be more competitive and have better trading conditions:

[14] Art. 3 of the Foreign Investment Promotion Law.

| Tariffs | |
|---|---|
| Basic rate | US$ 100.00 |
| Additional Class | US$ 50.00 |
| Renewal | US$ 100.00 |
| Transfers | US$ 30/40 |
| Certificate | US$ 20.00 |

Source: Law N° 380 “Trademark and other Distinctive Signs Law”, as amended

*International treaties*

Nicaragua is signatory and member of different treaties and Conventions, among others:

1) General Inter-American Convention on Protection of Trademarks and Trade Names;
2) Universal Copyright Convention;
3) Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite;
4) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement);
5) Paris Convention for the Protection of Industrial Property;
6) Berne Convention for the Protection of Literary and Artistic Works;
7) Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations ;
8) Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of Their Phonograms;
9) International Convention for the Protection of New Varieties of Plants (UPOV Convention);
10) Patent Cooperation Treaty (PCT);
11) WIPO Copyright Treaty (WCT);
12) WIPO Performances and Phonograms Treaty (WPPT);
13) Lisbon Agreement for the Protection of Appellations of Origin and their International Registration;
14) Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure;
15) Trademark Law Treaty.

*Approvals by national investment boards*

To proceed with the registration of trademarks, Patents, Copyrights and others is not necessary to obtain the approval of any chamber of commerce or investments, the person (national or foreigner) interested in protecting their rights, will proceed before the national authorities in charge of the Registry and submit their applications as requested by the National Legislation.

*Notarization requirements*

The power of attorney needed for the registration procedure of Trademarks, Patents, Copyrights and other intellectual and/or industrial right, must be executed before a notary, and subsequently apostilled in the country where the document is being issued. For countries that are not parties to the La Hague Convention on the Apostille, the power of attorney should be legalized by the Consulate of Nicaragua where the document is issued, to be finally legalized by the Foreign Affairs Ministry in Nicaragua.

Furthermore, the transfer document, co-existence agreements, documents evidencing corporate merger or any other of this kind, should be filed before the national authorities for the registration or amendment of an industrial property right or intellectual right, and also requires notarization, apostille or legalization by the Nicaraguan consulate, as applicable. If this document is in other language other than Spanish, then it will also require an official translation into Spanish before Notary in Nicaragua.

*Exceptions or requirements in relation to particular products*

For the registration of trademarks in Class 5, the Intellectual Property Office will not accept the description of products in general as indicated in the Nice classification. Instead, it requires that the products to be protected be clearly specified, situation that is not provided by the National legislation, however it is applied as result of agreements with the authorities in charge of granting the corresponding sanitary permits for pharmaceutical products.

Generally, for the other classes there are no problems if the applicant indicating the products in general, based on the description provided in the Nomenclature.

On another matter, there are no provisions establishing thresholds for royalties; though royalties for Non Residents are subject to a rate of 10% of Withholding Tax.

Competition Promotion Law establishes in Art. 4 Subsection "a", that the exercise of Intellectual Property rights is not under competition provisions; unless the right holders incur in anticompetitive practices.

## C. Tax Incentives

Nicaragua offers a wide variety of incentives for important sectors (i.e., exports, manufacture, free trade zones, energy, tourism, agriculture, etc.). Upon a strong legal framework adequate to the current economic needs, Nicaragua has developed a platform of incentives that makes investors choose Nicaragua to carry out their business and expand the opportunities to create more and new productive businesses. The following are some of the economic sectors with their respective investment incentives.

**- Special Law on Exploration and Exploitation of Mines (Law 387)**

1. Companies may apply to the Temporary Admission System and other schemes to promote exports as established by the legislation for purposes of exemption or suspension of customs taxes.

2. Exemption of import tariffs on machinery, materials, instruments, tools and other effects related to the mining activity.

3. Exemption from taxes imposed on company property, within the perimeter of the mining concession.

4. Exemption from taxes or tax burden directly or indirectly applied on the minerals before extraction, on the right to extract them, on the extracted mineral, cartage, benefits, transportation or storage of the minerals, as well as its sale or export (though payment of some royalties may apply).

5. Zero percent (0%) for exports, applicable to exports in general.

**- Free Zones Incentives Law (Decree 46-91)**

Nicaragua offers tax incentives under the free zone regime for companies interested in establishing export-oriented operations of Textile and Apparel Industries, Manufacturing, Agribusiness and Contact Centers and BPO:

1. A permanent exemption from all import duties and taxes imposed on raw materials and other of materials required in the production process, machinery and equipment, spare parts and supplies; as well as taxes on equipment required for installation and operation of cafeterias, health services, medical care, leisure and any other good with the purpose of satisfying the needs of the company´s workers.

2. 100% exemption from payment of income tax (IR) generated by the company during the first ten years of operation and 60% from the eleventh year onwards;

3. Full exemption from excise, sales or selective consumption

4. A permanent exemption from all property transfer taxes in the event of shut-down;

5. Full exemption from export taxes on processed products within the regime

6. A permanent exemption from value added and consumption taxes;

7. Full exemption from municipal taxes;

8. A permanent exemption from all transportation taxes; and

9. A permanent exemption from all formation, merger, and transformation taxes, and the Stamp Tax.

- **Tourism Industry Incentives Law (Law 306)**

The incentives offered by this Law are considered the most generous and competitive in the region. It provides incentives and rewards for investment in housing services, food and beverage, tour operators, tour transport, airlines, among others. The incentives include:

Qualified tourism projects can receive the following tax benefits:

1. 80% to 100% income tax exemption (IR) for a period of ten years.
2. Real Property tax (IBI) exemption for 10 years.
3. Import tax and value-added tax exemption on the purchase of accessories, furniture, or equipment.

Tax exemptions related to project implementation:

1. Value-added tax on design/engineering and construction services.
2. Exoneration of import duties and taxes and value-added tax for the local purchase of construction materials and fixed building accessories.
3. Tax incentives can be extended if project undergoes extensive expansions.

In case of reinvestment, if at the end of the ten years incentive regime the investor decides to reinvest at least 35 percent of the original investment value approved, he can receive all the benefits for ten additional years.

- **Conservation, Promotion and Sustainable Development of the Forestry Sector Law (Law 462)**

For the sector of Forestry, this law and its regulations allow to benefit from different tax incentives which were extended by the Tax Concertation Law until December 31, 2023.

1. 50% of municipal taxes on sale of land.
2. 50% of profits.
3. Real Property taxes in the case of forest plantations and areas under forest management.

On the other hand, there are also the following incentives:

1. Companies investing in plantations may reduce 50% of the amount invested as costs.

2. Exemption from import duties for companies of secondary transformation and third transformation that import machinery, equipment and accessories excluding saw mills.
3. 100% percent deduction of income tax when land is destined to reforestation projects or forest plantations.

- **Renewable Energy Generation Law (Law 532)**

1. Exemption of customs duties on the importation of machinery, equipment, material and raw material necessary for all construction of stations, including sub transmission lines necessary for energy transportation from the generation facility to the National Interconnected System.

2. Exemption of the Value Added Tax (VAT) levied on machinery, equipment, material and raw material utilized during pre-investment stage, construction of structures, including the construction of the sub transmission lines necessary to transport energy to the National Interconnected System. For "isolated systems" with their own generation facilities, this exoneration covers pre investment, construction and all the investment made in distribution grids associated with the project (i.e. panels and solar batteries for solar energy).

3. Exemption of income tax (IR) for a maximum period of seven years from the entry into business or commercial operation of the project, except for geothermal projects, for which the exemption is for ten years. During this same period, the income derived from the sale of carbon dioxide bonds will also be exempted.

4. Exemption of all the Municipal Taxes on real estate, sales and registrations during the construction of a project, for a period of ten years to be applied in the following manner: exoneration of 75% during the first three years; 50% the five following years and, 25% for the last two years. Fixed investment in machinery, equipment, and hydroelectric dams will be exempted from all taxes and duties for a period of ten years.

5. Exemption of taxes on the exploitation of natural resources for a maximum period of five years after the beginning of operations.

6. Exemption of Stamps Tax incurred by the construction or operation of the project or expansion of a project for a period of ten years.

- **Temporary Admissions System (Law 382)**

This system 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. This merchandise must be re-exported after being subjected to a process of transformation, repair or alteration. The company must request a suspension of duties and tariffs to competent authorities.

To be eligible for this regime, companies must export directly or indirectly, at least 25% of its total sales and an export value can´t be less than US$ 50,000.

Regarding procedures and requirements, the following, among others, are the common documents that may be required:

1. Articles of Incorporation and Bylaws of the company / branch, registered at the Public Registry of Commerce.
2. POAs registered.
3. Taxpayer Identification Card.
4. Taxpayer Registration Certificate.
5. Environmental Impact Assessment (depending on the sector).
6. Environmental Permit (depending on the sector).
7. Concessions, licenses, permits, certificates (mining, forestry, energy, tourism, etc.).
8. Technical Information on the project.
9. Economic/financial information on the project.
10. Project's Drafts/plans.
11. Construction permits, licenses.

The abovementioned documents are requested and obtained at the corresponding authority involved (Tax Authority, Public Registry, Natural Resources and Environmental Regime, Tourism Ministry, Transport and Infrastructure Ministry, Energy and Mining Ministry, Forest and Agricultural Ministry, etc.); and procedures may take from 2 to 6 weeks, approximately.

Goods qualifying under this regime are:

- Intermediate goods and raw materials and any merchandise incorporated to the final export product.
- Capital goods directly involved in the production process.
- Material and equipment that will be integral and indispensable part of the facilities required for the production process.

## *IV. FINANCIAL FACILITIES*

### A. Banking/Financial Facilities

Banks, non-banking financial institutions, foreign bank branches, financial groups and, representation offices for banks and foreign financial institutions, are the main kind of financial institutions in Nicaragua. Given that the financial system is a regulated one in the country, the aforementioned institutions must be previously approved and authorized by the Superintendent Office for Banks and Financial Institutions ("SIBOIF", which is the regulator governmental agency for banks, financial institutions and other finance-related entities), in order for them to render stock market intermediation and financial services with resources coming from the public[15].

There is no explicit requirement for investors to maintain a bank account in the country; however, there are some requirements for opening a bank account in Nicaragua which may change according to each private bank policies. The following are some of the general or common requirements for opening a bank account:

**Individuals:** Personal interview, request for opening a bank account, client's profile format, reference letters. Foreigners: Passport and Nicaraguan Residence Card.

**Legal entities:** Request letter for opening a bank account, Tax Identification Number, Request Format for opening a bank account, reference letters, articles of incorporation and bylaws, Board of Directors resolution deciding the opening of the bank account, client's profile format, POA or Board of Directors resolution designating the legal representative (individual, Nicaraguan or foreign with his/her legal residency in Nicaragua) for the bank account, registration as a commercial entity before the Public Registry of Commerce, signatories´ IDs and data. Foreign entities: Some banks do not allow foreign entities (with no legal presence in Nicaragua, i.e., branches, subsidiaries) to open bank accounts; there are other banks, however, requiring all corporate documents duly legalized up to the Nicaraguan consulate or apostilled, as applicable, which are basically the same documents detailed for Nicaraguan legal entities, accepting the opening of the account. If documents are in other language than Spanish, they must be translated into Spanish before a Nicaraguan Public Notary in order to be legally valid in Nicaragua. The Legal Representative for the bank account must be a Nicaraguan or a foreign person with his/her legal residency in Nicaragua.

Restrictions for using the bank account are mainly based on nationality and amount matters. An investor must designate a Nicaraguan person as the legal representative for the bank account or, designate a foreign individual with his/her Nicaraguan Residency Card in force and effect, which means that he/she is residing in Nicaragua. Additionally, all signatories must be expressly authorized by the investor (the account holder) and notified to the bank authorities. Every movement or transfer involving US$10,000.00 or more must be notified by the bank to SIBOIF, which may imply information requests addressed to know the nature, causes or explanation for such transfer or movement. Furthermore, investors may receive bank loans as long as they meet the conditions and fulfill the requirements each private bank may have (i.e., loan guarantees, legal representative, etc.).

The banking system in Nicaragua is a regulated sector which exists and functions according to the Banking General Law and under the supervision and control of the Superintendent Office for Banks and Financial Institutions. A bank established and organized in Nicaragua must be constituted as a corporation, which articles of incorporation and bylaws must be previously approved by the Superintendent Office and

---

[15] Art. 1 of the General Law for Banks, Non-Banking Financial Institutions and Financial Groups ("Banking General Law" Law 561)

then registered at the Public Registry of Commerce. Branches of foreign banks are also allowed in Nicaragua, being necessary for them, among other matters and procedures, to file their articles of incorporation and bylaws (which must expressly authorize the bank for opening branches abroad), certificate of good standing, balance sheet and profits and losses statement for the last five years, all before the Superintendent Office for approval.

Nicaragua has a regulated stock market system, with the supervision necessary to grow this market. Law No. 587 "Capital Market Law", was enacted in the year 2006 to regulate stock markets, individual and legal entities directly or indirectly related thereto, as well as the acts or contracts in connection with such markets and securities negotiated therein[16]. Amongst other matters regulated by Law No. 587, there are the general provisions governing two kinds of stock markets, the primary market and the secondary market. Public offers in the primary market are reserved for serial securities issues authorized by the SIBOIF[17]. Secondary markets are organized in stock exchanges, prior SIBOIF´s approval, where the issues of securities registered with SIBOIF may be publicly offered and negotiated, though these stock exchanges may also negotiate with non-registered securities as long as they clearly separate and identify registered securities from non-registered ones, being the latter not subject to public offer[18]. Stock exchanges must previously be approved and authorized by SIBOIF.

## *V. EXCHANGE CONTROLS*

### A. Business transactions with nationals, residents or non-residents

In general, nationals are legally defined as (i) those born in Nicaragua, (ii) those whose mother or father are Nicaraguan, or (iii) foreign individuals that have previously renounced to their nationality and have fulfilled the legal requisites to request and obtain the Nicaraguan nationality. Central American persons may request the Nicaraguan nationality without renouncing to their original nationality[19].

On the other hand, residents are foreign individuals that have their legal residency, temporary or permanent, in Nicaragua; while non-residents are those who have entered to the country for a limited period, visiting the country for specific purposes without establishing their legal residency in Nicaragua.

There are some limitations or restrictions when conducting a business with non-residents in Nicaragua; being important to mention that a non-resident is not legally allowed to perform economically compensated activities in Nicaragua, unless having the corresponding work permit issued by the Nicaraguan Immigration Authority[20] and, there are some institutions (public authorities, banks, etc.) that do not recognize non-residents

[16] Art. 1 of the Capital Markets Law.
[17] Art. 9 Ibid.
[18] Art. 30 Ibid.
[19] Arts. 16, 17 and 19 of the Nicaraguan Political Constitution.
[20] Arts. 16 and 17 of the Immigration and Foreign Status Law, and arts. 43, 44 and 45 of its Regulations.

as legal representatives for companies, but only Nicaraguan residents –or Nicaraguan cititzens- for purposes of legal representation.

Additionally, given that companies in Nicaragua are registered as employers before the Social Security System, reporting employees is a requirement and, therefore, residents employees are also reported to such system. Moreover, within the documents to be filed before the Immigration Authority when requesting the legal residency for work purposes, the contract must be filed as well; such contract must contain a special provision indicating that it will enter into force and effect only when the Residence Card is issued by the Immigration Authority.

### B. Investment Controls

From a general perspective, there are no restrictions on direct or indirect investments in the country. However, there are a few restrictions on the control bodies of the company as well as on the stock's percentage for foreign investors, depending on the business sector.

There are no general requirements for investors to make declarations on the nature of their investments. However, for specific businesses there is the need to request prior authorizations before the corresponding authorities and, once authorized, filing periodically reports is required (regulated sectors, such as free trade zones, banking and financial institutions, telecommunications, maritime and air transportation, energy and mining, etc.).

### C. Money transfer

According to Law No. 732 "Central Bank Organic Law" ("Law 732"), the Central Bank is in charge of determining and executing the monetary and exchange policies, in co-ordination with the Government´s economic policy in order to contribute with the economic development of the country.

The official currency in Nicaragua is the "Córdoba" ("C$"). According to Law 732 prices, taxes, rates, wages, salaries, contracts and obligations of any kind which should be paid, collected or executed in Nicaragua should be expressed and liquidated in Córdobas. However, the same Law 732 sets forth a number of exceptions to the above, among which there are those obligations in which a reference to a foreign currency may be converted to Córdobas by means of applying a determined or determinable exchange rate at the time of payment. In practice, parties use the official exchange rate in connection with the US dollar as published by the Central Bank of Nicaragua.

Money transfer into or out of the country is subject to reporting restrictions when such transfer is equal or superior to US$10,000.00. Such reporting requirement is aimed to determine the source and destiny of the money, as part of the legal mechanisms implemented to prevent money laundering activities; reports are to be made before Customs Authority (if cash) or before the bank involved (if a wire transaction), in this case the bank will report it to SIBOIF. Hard currency may be taken out of the country following the same reporting restrictions depending on the amounts involved.

Remittance of profits abroad is taxed depending on the profits source in Nicaragua and as long as such profits are not under any special tax exemptions. For instance, according to the Concertation Tax Law, in force and effect from January 2013, dividends paid to shareholders of companies are subject to a withholding tax of 10%[21]. Such withholding taxes must be duly reported and paid to the Nicaraguan Tax Authority.

## *VI. IMPORT/EXPORT REGULATIONS*

### A. Custom's regulations

Nicaragua is member of different agreements related with customs, tariffs and trade; among others, the most important are the General Agreement on Tariffs and Trade (GATT), Dominican Republic and Central American Free Trade Agreement (DR-CAFTA), Central American Uniform Customs Code (known as CAUCA, in Spanish) and its Regulations and, Central American Tariffs System (known as SAC, in Spanish). Nicaragua is not a member of EEC; however during the last two years it has been actively participating with the other Central American countries in meetings and negotiations with the European Community, aimed to approve a regional agreement on trade.

Additionally, Central American integration rules require for its members to apply the same import duties. However, there have been exceptions for many years, and one of the integration treaties, the Agreement on the Central American Tariff and Customs Regime (*Convenio sobre el Régimen Arancelario y Aduanero Centroamericano*), ratified in 1985, allows countries to modify import duties unilaterally in certain cases. That provision has been broadly interpreted and used by the Central American governments, including Nicaragua, which has used this unilateral modification authority in relation to the computation of import charges on various types of goods.

The Nicaraguan Customs Authority is the one in charge of valuing goods, through a well organized inspection and valuation system. The interested parties, however, are also authorized to file their own goods valuation by means of their private customs agents using an official informatics system, subject to further control from the Customs Authority. Such valuations are carried out by applying the corresponding tariffs established in the applicable agreements or documents according to the nature of the goods and their origin.

### B. Exports

Depending on the goods to be exported, there would be specifically requirements or restrictions on exports; origin certificates, permits from the involved authorities (health ministry, forest and agriculture ministry, energy and mines ministry, etc.) along with all

[21] Art. 82 Concertation Tax Law.

the legal documentation identifying the exporter (individual or legal entity) and goods, are some of the requirements the authorities may ask for the exporters to fulfill.

Exporters must be registered with the Exports Center (known as CETREX, in Spanish), filling out the corresponding paperwork according to the exporter's legal and fiscal regime (free trade zones, corporations, cooperative associations, etc.); in some cases, special licenses are also required to export goods that may be under a special control regime (milk products, controlled pharmaceutical products and some others that may be under control for a determined period), paying fees (according to the exports amounts involved) for CETREX's paperwork and procedures.

## C. Foreign trade regulations

There are some foreign trade regulations which would be applicable depending on the goods imported/exported and their origin. If the products are covered by the DR-CAFTA, for instance, then specific regulations contained therein may apply when importing or exporting such goods to or from Nicaragua, from or to the United States of America. Origin Certificates and Licenses, Permits or Authorizations from the country's respective authorities are required for the importer/exporter to file before the Customs Authority and CETREX in order to be subject to DR-CAFTA's benefits. The same would be applicable for goods under other trade agreements.

## D. Imports

Importers must be registered with the Customs Authority's registration system in order to carry out their imports activities[22]. Additionally, according to the Import Tariff Act of 1986 (*El Derecho Arancelario a la Importación (DAI)*), goods are subject to import tariffs and duties, which range between 0% and 15%. The SAC classification, along with any applicable trade agreements, determines the applicable ad valorem tariff rate in accordance with the type of goods. The value added tax, specific consumption tax, and other applicable taxes are also collected upon importation. Nicaragua has enacted several temporary importation regimes to encourage value-added manufacturing activities that use foreign-sourced inputs.

Barriers on importation also depend on the type of goods to be imported. In this sense, merchandise statements for imports must contain, besides other requirements, licenses, permits, certificates as well as other documents referred to the fulfillment of those non-duties restrictions and regulations the merchandise may be subject to before it is finally imported to the country[23].

## E. Manufacturing requirements

Products manufactured in the country may contain components found or produced in Nicaragua or abroad; keeping in mind that in order to be subject to fiscal benefits applicable for special regimes, it is required for the goods to be produced in Nicaragua

[22] Arts. 19 and 20 of the Regulations to CAUCA.
[23] Art. 321 Ibid.

(such as exemption from export and re-export duties on goods produced in free trade zones).

Importation of component parts must be conducted through a specific customs regime[24]. If component parts are definitively imported to Nicaragua in order to be independently commercialized (i.e., not being incorporated to a final product), then the corresponding customs regime would be that of a *definitive importation*, being charged with the corresponding import duties for the specific type of goods imported (component parts). It is important to consider, however, that if the importer is a company established under a special fiscal regime to carry out its activities (free trade zone for manufacturing purposes), then it would be required for such importer to incorporate the component parts into the final product the company is authorized to produce in the country.

### F. Product Labeling

There are some labeling requirements to be observed depending on the products involved; that is, there is no a general rule to be applied indistinctively on all kind of products.

Most common labeling rules are the ones contained in the Nicaraguan Technical Norm No. 03 021 – 08, first revision, on pre-packed or pre-canned food for human consumption; which establishes as minimum labeling requirements, among others, the following: food name, ingredients list, net content and strained or drained weight, name and address of the importer, packer, distributor, exporter or seller, country of origin, sanitary registry, expiration date, etc.

Regarding the language, the aforementioned Norm stipulates that when the labels are not in Spanish, then an additional label in Spanish must be attached. On the expiration date, the Norm disposes that correlative numbers may be used, writing (in letters) the months for countries that may be induced to error by using numbers solely, like Nicaragua.

Another example may be found in Law No. 842 “Law for the Defense of Rights of Consumers and Users” (“Law 842”), which requires the inclusion of certain specific language for products entailing danger for human consumption.

## *VII. STRUCTURES FOR DOING BUSINESS*

### A. Governmental participation

Private investments generally do not require government participation neither on the ownership nor in the operation of the entity. However, in some public bids involving natural resources granted by concessions, permits, licenses or authorizations to investors,

[24] Art. 91 CAUCA and Art. 357 of the Regulations to CAUCA.

part of the bid's terms and conditions have included a special provision requiring for the investor to provide the government with a specific percentage of the investment involved. There is no any pre-established or regulated percentage or fee for these purposes, being established, instead, by the government for the specific project.

Investor's liabilities for partners, investors or others, depend on factors such as whether there are or no any previous agreements defining the project, liabilities, specific responsibilities, etc. Under Nicaraguan law liabilities may arise out of labor matters (employer/employee relations, including social security rights), civil matters (contracts, compensations to partners or other investors for damages and losses, civil liability for harm caused to third parties, etc.), administrative matters (permits, concessions, licenses, supervision and control exercised by the government depending on the project's nature), criminal matters (crimes or felonies committed through the execution of the project or investment) and tax matters (filing of tax returns, withholding taxes for the Tax Authority, payments, audits, etc). Under the current Nicaraguan Criminal Code, representatives and directors of companies may be personally responsible for any crime committed through the entity.

**B. Joint Ventures**

Nicaraguan law does not provide a special legal regime for JVs; therefore, JVs are under the general category Nicaraguan law has established for contracts, being deemed for all legal purposes as contract celebrated within the parties involved.

Upon the aforementioned, JVs contracts are not legally subject to registration before any public registry; although, in practice, some of these public institutions have allowed JVs registration, without creating a right or legal status that is not previously provided by law.

Consequently, as in any other private contract, parties may execute a JV contract establishing the terms and conditions they deem appropriate (i.e., manager, directors, fees, responsibilities, liabilities, accountability before third parties and government –such as tax authority-, duration, termination, etc.), being the parties involved legally obliged to observe and respect each of the obligations contained in the JV contract, taking into account that the parties involved in such contract could be individually responsible before third parties and government claims, since a JV does not create a joint legal personality for the parties involved in it.

If the JV is established outside Nicaragua and is conducting its business (i.e., rendering services) from outside Nicaragua, then no Nicaraguan party would be required to be a member of the JV, since compliance with governmental obligations (withholding tax on JV's invoices) would be up to entities or individuals receiving the services in Nicaragua. However, if the JV is intended to be established in Nicaragua in order to carry out business inside Nicaragua, then a Nicaraguan party would be needed to have legal presence in the country before the government offices (tax, customs, municipalities, authorities for the specific business' sector, etc.).

There are no restrictions on capitalization, as long as it does not go beyond the control and capital limits established for some specific sectors, nor beyond the private conditions that might be set forth among the parties.

**C. Business Entities**

- *Limited and General Partnerships:*

There is a kind of legal entity in Nicaragua called in Spanish "Sociedad Colectiva"[25] (Collective Company, in English, hereinafter the "Company"), which is the one selected by investors interested in running their businesses under either Liability Limited Partnerships or Companies, for being this Collective Company the one with more similar characteristics.

The Company has independent legal existence and provides limited liability to capital contributions of its owners. The organizers must execute the organization deed before a Nicaraguan public notary and have it recorded with the Public Commercial Registry and publish notice of its organization in the Official Gazette.[26] Registration process may take from three to six weeks; and fees involved depend on the capital stock established when incorporating the company (ranges from US$50.00 to US$1,500.00, approximately, official registration fees).

The Company must be formed by a minimum of two partners, whether individuals or legal entities, with no nationality requirements, and may receive contributions from any number of additional partners. These companies have neither minimum capital stock nor minimum paid-in requirements. The name of the company must include either the names of all partners or the name of at least one partner along with the words "*y compañía*" ("and Company"). In order to limit the partners' liability, the company's name must end with the word "*limitada*" (limited); otherwise, partners are severe and jointly responsible for all the obligations incurred by the company.

The administration of the Company corresponds to each and all of the partners, unless it has been expressly delegated to one or some specific partners. If it was not delegated, then it is legally understood that partners have reciprocally conferred each other the power to administrate the Company, being all of them severe and jointly responsible without the need of further approval. However, if the administration powers were delegated to one or more partners, then the other ones are not allowed to intervene in the Company's administration.

Tax consequences for investors basically imply the registration of the company before the Tax and Municipal Authorities; filing the corresponding bi-monthly and monthly tax returns for payment of Income Tax, Definitive Minimum Payment and Value Added Tax, among others. There are no restrictions on capitalization other than those

---

[25] Arts. 133 – 191 of the Nicaraguan Code of Commerce.
[26] Although required by law, in practice many LLCs do not publish this notice. In most cases they are not actively pursued by authorities on this matter.

that might be set forth by the partners in the incorporation deed or afterwards through a legally adopted decision.

*-Partnerships Limited by shares*

Are those formed by one or more general jointly responsible partners of the social obligations, and by limited shareholders whose liability is limited to the amount of their shares.

*- Corporation*

It is formed by partners´ initial contribution for equity. In this type of entity , the participation of a partner is made by subscribed and paid shares, which represent the equity of the Corporation. The administration is commissioned to a Board of Directors which may be revoked. Shareholders are jointly responsible up to the amount of capital represented by theirs shares.

Almost all the companies settled in Nicaragua operate under this type of legal structure because it offers the following advantages: Limited Liability, Simplified Administration of Shares, Simplicity and Flexibility of the laws that regulate its creation and operation; easy liquidation process.

## D. Sole Proprietorships

Sole Proprietorships are not allowed under the Nicaraguan legal system. Nicaraguan law requires at least two persons, either individual or legal entities, to form a company or a corporation. However, one person may exercise commercial activities on his/her own by registering him/herself at the Public Registry of Commerce, and further obtaining his/her corresponding Taxpayer Number and complying with all tax, national and municipal, obligations; being allowed to use a commercial name, different from his/her natural name.

## E. Subsidiaries/Branches/Representative Offices

Subsidiaries and branches are allowed in the country[27]. Procedures require that the foreign company's articles of incorporation and bylaws, amendments included, as well as its Board of Directors´ or Shareholders´ resolution deciding to open a branch in Nicaragua, must be apostilled (under the La Hague Convention on the Apostille) or, for those countries not being members of the Apostille Convention, legalized up to the nearest Nicaraguan consulate, then authenticated at the Foreign Affairs Ministry in Nicaragua and, afterwards, all documents must be inserted into a Nicaraguan Public Notary's Protocol which Deed will be further recorded with the Public Registry of Commerce. Any document issued in other language than Spanish, should be formally translated into Spanish before Notary in Nicaragua.

[27] Arts. 337 – 340 of the Nicaraguan Code of Commerce.

Timing depends on how long the apostille / legalization process takes abroad, which also depends on where the foreign company is established (could take from one to four weeks); then, insertion into a Notary's Protocol and registration with the Commercial Registry could take from three to six weeks. Official registration fees may range from US$50.00 to US$1,500.00, approximately.

A Nicaraguan individual or a foreign with his/her legal domicile in Nicaragua must be granted with a Full POA (*Poder Generalísimo*, in Spanish), who will be representing the branch office in Nicaragua.

Investors would be liable for all obligations contracted by the branch, whether civil, labor, tax, administrative or commercial, before third parties and before governmental authorities through the branch.

Tax consequences for investors imply the registration of the company before the Tax and Municipal Authorities; filing the corresponding bi-monthly and monthly tax returns for payment of Income Tax, Definitive Minimum Payment and Value Added Tax, among others, there are no substantial differences from local companies' tax obligations.

There are no restrictions on capitalization other than those that might be set forth by the Shareholders´ or Board of Directors´ resolution deciding the opening of the branch, or afterwards through a legally adopted decision.

On another matter, there are no specific regulations on Representative Offices for foreign commercial companies; therefore if a Representative Office would like to operate in the country, it could do so by incorporating using any of the legal entities established in the Nicaraguan Code of Commerce (corporation, limited liability company, etc.), being subject to all legal obligations as any other Nicaraguan company.

There are, however, some special regulations for representative offices of foreign banks and financial institutions, being required the previous approval of SIBOIF before establishing them in Nicaragua[28]. Additionally, such representative offices (for banks and financial institutions), must file with SIBOIF information regarding its internal operative structure, as well as information related to credit and investment operations, and deposit accounts kept with banks or financial institutions in the country, among others[29].

It is important to clarify that Representative Offices for foreign banks or financial institutions are allowed only to place funds in the country, whether credits or investments, acting as well as information centers for their clients. They are not permitted to receive funds from the public in the country.

## F. Trust and other fiduciary entities

[28] Art. 14 of the Banking General Law.

[29] Art. 3 of the Norm on the Minimum Information Required for Representative Offices of Foreign Banks and Financial Institutions (Resolution No. CD-SIBOIF-448-1-OCT24-2006).

The General Banking Law stipulates that banks are allowed to act as trustees for trusts established in virtue of *special laws*, as long as in such operations the banks neither assume the obligation to pay fixed or determined yields nor to integrally return the capital received in trust[30].

Recently, Law No. 741 "Law on the Trust Contract" was approved by the Nicaraguan Parliament and is currently in force in Nicaragua. Law 741 establishes the requirements needed to legally create a trust fund in Nicaragua and the obligations of each of the parties in the trust. It specially regulates the transfer of assets from the trustor to trustee, as well as the transfer of assets from the trust fund to the trust beneficiaries. Additionally, SIBOIF has issued Resolution No. CD-SIBOIF-677-2-MAY16-2011 regulating trust fund operations performed by authorized financial institutions.

## *VIII. TERMINATION OF BUSINESS*

### A. Termination

Termination of a business in Nicaragua requires both the liquidation as well as the dissolution of the company created for running the business.

The liquidation is oriented to pay all obligations the company have with creditors, whether in cash, bank transfers, goods (real estate or movable assets), as well as the obligations existing within the same company (salaries, labor benefits, social security obligations, etc.); and, only when all of the aforementioned obligations have been satisfied, then dividends (if any), assets and goods of the company may be distributed among the shareholders or sold as it may be decided by the Liquidator Board, which must be designated to handle all the liquidation process.

According to Nicaraguan law, labor obligations must be satisfied previously to any other obligations the company may have (including creditors); being worth mentioning that a termination of business notice must be filed before the Labor Ministry, intervening to make sure the employees receive all payments and labor benefits according to law. The liquidation and dissolution of the company must be decided by the percentage of shares established in the Articles of Incorporation and By-laws of the company; otherwise, that is if nothing was stipulated in this respect, then the Code of Commerce requires the favorable vote of at least 75% of the stock[31].

Once liquidated, a public deed of Liquidation and Dissolution of the Company must be issued by a Nicaraguan Public Notary and recorded with the Public Registry of Commerce. Afterwards, notification proceedings to government authorities the company was related to during its existence are carried out (Tax, Municipality, Customs and the

[30] Subsection 8 of Art. 54 of the Banking General Law.
[31] Art. 262 Subsection 1 of the Nicaraguan Code of Commerce.

specific ones depending on the nature of the business, e.g., Health Ministry, Environmental Ministry, etc.).

All obligations with public authorities must be settled and closed, being necessary to pay all taxes, fees, duties, rates and so forth pending at the moment the company decided to terminate the business.

Regarding tax matters, VAT, Income Tax, Consumption Specific Tax (if applicable), must be entirely paid to the Tax Authority, giving them the Accounting Books duly updated until the termination of business for their following custody. Original tax certificates must be delivered as well to the Tax Authority for their custody (Taxpayer Registration Certificate, Indirect Tax Collector –VAT-, Taxpayer Identification Card). Municipal Income Tax must also be fully paid before the Municipal Tax Collector Office.

**B. Insolvency/Bankruptcy**

If an investor falls in insolvency/bankruptcy, then the investor must meet the requirements and carry out procedures established in the Nicaraguan Code of Commerce.

The investor that has stopped payments of its regular obligations and, if its last balance sheet shows liabilities higher than assets, is obligated to declare its bankruptcy status within the following ten days after the suspension of payments[32].

The state of bankruptcy declared by court, separates the investor from the administration of all the assets that may be subject to embargo in order to be managed by the creditors' representatives as appointed by such creditors. The investor is not allowed to leave the place of trial unless authorized by creditors and appointing a sufficient POA to represent him.

Basically, bankruptcy gives place to the liquidation of all obligations of the company (attending tax and labor obligations first), and then satisfying obligations with creditors. Payment may be done with movable assets, real estate property, etc.

However, if it is the case of a fraudulent bankruptcy, the investor may also be criminally prosecuted, pursuant to Arts. 258 to 262 of the Nicaraguan Criminal Code, which punishes fraudulent bankruptcy with 2 to 6 years in prison.

On another matter, the investor under the state of bankruptcy (not fraudulent bankruptcy) may enter into any agreement with creditors in order to find a way out to the problem. Therefore, under the terms and conditions of such agreements or covenants, the investor may try the business restructure in order to satisfy its obligations with creditors; provided that the execution of this kind of agreements suspends the bankruptcy lawsuit before Court. The breach of the agreement, nevertheless, may result in the continuity of the lawsuit.

[32] Art. 1067 Ibid.

## *IX. LABOR LEGISLATION*

Employment and labor laws are an important part of Nicaragua's legal structure. Basic labor rights have enjoyed constitutional status since 1987, and include minimum conditions of liberty and dignity for all workers, equal pay for equal work, an 8-hour workday and 48-hour workweek as a maximum, a minimum wage, double pay for overtime, a Christmas Bonus given on 12 continuing working months (consisting on a full month salary), and severance payment and the right to reinstatement for "unjustified" dismissal. The Labor Code (1996) follows the principle of minimum standards that can only be negotiated in the direction of improvements for the employee. The Labor Code also addresses collective bargaining rights, including the right to unionize and the right to strike pursuant to a mandatory conciliation process.

The Labor Code defines an employment relationship as one in which the employee receives money in exchange for services and is subject to direction and control from the employer. Employment agreements need not be in writing, but oral agreements are typically interpreted in favor of the employee. Even in the case of written agreements, the minimum standards of employment in the Labor Code cannot be reduced.

Under Nicaraguan law, there are two types of labor contracts: (i) Definite Contract, and; (ii) Indefinite Contract. Definite Contracts are referred to labor hiring for a specific period of time or duration, while Indefinite Contracts do not set forth such specific duration. There are some differences derived from dealing with Definite or Indefinite Contracts, especially in regard to termination of labor relationships and rights thereafter, which will be commented in the "Termination of employment" section hereby.

Employers must issue their Internal Work Regulations and submit it to the Ministry of Labor for approval. Nicaraguan employees are generally accustomed to working under Internal Work Regulations, and expect it to cover the following areas, which are provided by law, but may be improved upon (but not diminished or contradicted) by the employer:

**Work Schedule**. Standard daytime (6AM to 8PM) working hours: 8 or 9 hours per day, 48 hours per week; night shift (7 hrs/day, 42 hrs/wk). These provisions do not apply to employees who set their own work-schedule, such as salespersons and upper-level management. At least a 30-minute lunch break is part of the paid day's work and at least one day of rest per week.

**Overtime.** Payable as double-time on daily basis, with the workday not to exceed 12 hours and workweek not to exceed 57 hours.

**Holidays**. Eight mandatory paid holidays: January 1, Thursday and Friday of Holy Week, May 1, July 19, (August 1 and 10 – Managua only), September 14 and 15 and December 8 and 25. Work on these holidays is voluntary and must be paid at double-time rates. Holidays that fall on a Sunday are taken on the Monday following the date.

**Wages/Payment.** The minimum wage in Nicaragua depends on the industry or economic sector, and is reviewed every six months by the Labor Ministry in meetings held with both employers and employees representatives. Current minimum wages vary from US$75.00 to US$175.00, approx., depending on the economic sector involved.

**Paid Vacations**. Employees have a right to fifteen days of uninterrupted paid vacation for each six months worked. The Employer may determine when vacations are taken. Only half of the vacation time earned each year may be compensated with money, except in the event of termination. Employees may not allow vacations to accumulate for use in subsequent years.

**Trial period**. The law permits a one-month trial period. If the employee is dismissed without cause during this time, no benefits accrue.

**Social Security and employee income tax withholding.** Nicaragua has a mandatory social security system that provides all citizens with medical care, disability payments, and retirement benefits. The employer acts as a collector of percentage deductions made to the employee's salary (6.25%). In addition, the employer, according to a recent Presidential Decree which some sectors have declared as illegal (although not yet challenged through any legal recourse), must contribute with 17% of payroll for Social Security (prior to the Decree 39-2013, it was a contribution of 16%, for 2015, the employer contribution will be 18%, in 2016 it will increase to 18.5% and will stabilize at 19% in 2017). The employer is also responsible for withholding the employee's estimated income tax; however, according to a recent amendment to the Nicaraguan Tax Law, an employee earning no more than US$4,081, approximately, per year, would have a 0% tax rate[33].

**Health Leave.** Unless otherwise agreed, the Social Security system pays all health leave. Social Security pays 60% of salary from the fourth day of hospitalized or non-hospitalized sick leave (unless it's an on-the-job injury, in which case payment begins on the day after the injury). Maternity leave is paid by Social Security at 60% of salary for three months (one month before birth and two months after).

**Thirteenth Month Bonus.** The law requires payment of a Thirteenth Month Bonus (*decimotercer mes*) equal to the most recent monthly salary received, payable no later than December 10. In the event of termination before the Thirteenth Month Bonus is paid, the employer must pay within 10 days the amount accrued at the time of termination. If the employer does not pay it, the law obligates to pay compensation of one day salary for each day of delay.

**Termination of employment.** Nicaraguan employment law does not recognize the concept of at-will employment common in the United States. To avoid severance payments, generally speaking, an employer should only dismiss an employee if the employer has "justified cause" as defined by the Labor Code. In Determined Time

[33] Art. 23 Concertation Tax Law.

Contracts, although no severance pay should apply, if an employee is dismissed without justified cause, there would be the risk of having the employer paying all pending labor benefits. Employees terminated for "justified cause" are due only accrued vacation time and Thirteenth Month Bonus, and any current wages. The following constitute "justified causes" for termination:

i) Physical or moral acts or libel committed against the employer or against a fellow worker at any time;
ii) Criminal acts or property damage related to the workplace;
iii) Acts that endanger security and working conditions in the workplace;
iv) Release of the employer's confidential information;
v) Unjustified absence for 2 consecutive days or 3 or more days during any month; or
vi) Disobeying rightful instructions or orders from the employer.

To terminate for any of these causes, the employer must request authorization from the Labor Ministry within thirty days from the employee behavior, this arise an administrative procedure that is regulated by the Administrative Labor Oral Procedure currently in force in our country. Failure to obtain authorization will forfeit the "justified cause" for termination and render any termination unjustified. The employee may also terminate employment with a 15-days prior notice to employer in order to be entitled to severance pay from employee. In the event of dismissal without "justified cause", then the employer must give severance payment proportional to the total time worked by the employee and in accordance with the provisions set forth in the Labor Code for this matter.

**Severance Pay.** If the employer dismisses an employee without "justified cause" or if the employee resigns giving 15-prior notice to employer, the employee will be entitled to severance pay of one month's salary for each of the first three years worked and 20 days' salary for each year worked over three, calculated based on average salary over the last 6 months. Severance pay may be no less than one month's salary and no more than five months' salary. This is applicable to Definite Contracts.

**Accumulated Vacation Pay and Bonus.** Independent of cause, the employee is entitled to payment for unused vacation time and pro rata Thirteenth Month Bonus upon termination.

**Foreign employees.** Headcount for all companies operating in Nicaragua must be at least 90% Nicaraguan. No percentage of payroll requirements apply. The Ministry of Labor may allow variations based on technical requirements. In order for a foreign to work in Nicaragua, it is necessary to previously obtain the corresponding Nicaraguan Residency Card or Labor Permit allowing the foreign person to legally work in the country. Such Residency Card or Labor Permit is requested to and obtained from the Nicaraguan Immigration Authority (*Dirección General de Migración y Extranjería*), though the Labor Ministry may also be involved in the process for Labor Permits.

**Workplace Discrimination.** The Nicaraguan constitution guarantees employees the right to work in an environment free from discrimination based on ethnicity, sex or religious beliefs.

**Safety Standards.** There is the General Law for Work Hygiene and Safety (Law No. 618), which establishes the obligation for companies to issue their Internal Regulations on Work Hygiene and Safety.

Such law demands for employers, as minimum requirements, to adopt preventive measures aimed to guarantee the hygiene and safety of employees; designate a person trained on occupational health to attend activities of promotion, prevention and protection against labor risks; guarantee to employees periodic occupational health exams; avoid risks; assess unavoidable risks; attack the risks in their origins and; adapt the work to the person, among others.

There is also the obligation to create the Mixed Commissions for Work Hygiene and Safety. Such commissions are integrated by the employer's representatives and those representing the workers unions and, their Constitution Minute must be notified, as well as any amendment, to the General Direction for Work Hygiene and Safety. Breach of Law 618 is punished with pecuniary and administrative sanctions.

**Unions.** Unions are recognized under the Labor Code, and their Articles of Incorporation must be registered in the Unions Registration Book at the Labor Ministry. Workers unions must be constituted with a minimum number of 20 members, while employers unions require at least 5 members. Most recognized unions are those pertaining to the construction (there are even mandatory bargaining collective agreements for this sector), health and garment sectors, though there are some other sectors (i.e., agricultural and livestock, etc.) with a minor presence of unions. It is no necessary for unions to be affiliated to a political party; though in practice some of the most notorious unions are expressly identified with left-wing parties.

## *X FISCAL SYSTEM*

In December 12, 2012, Nicaraguan National Assembly approved Law No. 822 "Tax Concertation Law", published in December 17th 2012 in the Gazette No. 241 enforceable as of January 1, 2013 establishing material changes to the current income tax framework for both corporations and individuals. In addition to Nicaraguan nationals and residents, the changes impacted foreign corporations and individuals with business and investments in Nicaragua.

Additionally, Decree No. 01-2013 "Regulations to Tax Concertation Law" dated January 15, 2013 and published on January 22 was issued by the Nicaraguan Government in order to regulate Law No. 822. Both, Law No. 822 and Decree No. 01-2013 are the main fiscal regulations in Nicaragua.

### A. Fiscal year

The fiscal year for all taxpayers is from January 1 to December 31 of each year. Consequently and in accordance with Article 300 of the Law No. 822, each tax payer must settle a balance sheet at December 31of the concerning fiscal year, submitting and paying the Income Tax Return (IR) no later than on March 31 of the immediate following fiscal year.

### B. Classification of Income

The new conceptualization of income tax includes
1. Labor income / Personal Taxes
2. Income from economic activities, and
3. Capital income, capital gains and capital losses.

- ***Labor income / Personal Taxes***

The taxable base of work labor income is the net income, which is the result of deducting from gross non-exempt or taxable income, the deductions allowed by the Tax Concertation Law. The taxable base of allowances is the gross amount received. The taxable base of nonresidents work income is the gross income. Income perceived in kind will be valued at the standard market price of the good or service received in kind.

Law No. 822 establishes a new method to calculate the amount of income tax to pay for work income based on the following progressive rate:

| Annual Income | | Tax Base | Applicable percentage rate | Over |
|---|---|---|---|---|
| **From C$** | **To C$** | **C$** | **%** | **C$** |
| 0.01 | **100,000.00** | **0.00** | **0.0%** | **0.00** |
| 100,000.01 | **200,000.00** | **0.00** | **15.0%** | **100,000.00** |
| 200,000.01 | **350,000.00** | **15,000.00** | **20.0%** | **200,000.00** |
| 350,000.01 | **500,000.00** | **45.000.00** | **25.0%** | **350,000.00** |
| 500,000.01 | **or more** | **82,500.00** | **30.0%** | **500,000.00** |

Source: Tax Concertation Law.

- ***Income from economic activities***

The taxable base is the net income. Taxpayers have to pay an aliquot equivalent to 30% of the net income from economic activities. From 2016, this aliquot will be reduced by one percent per year for the next five years.

It is important to highlight that the Tax Concertation law establishes a parallel system with a differentiated aliquots for taxpayers with annual gross income less than or equal to twelve million Cordobas (C$ 12,000,000.00). Net income for such taxpayers will be determined as the difference between incomes and cash outflows; therefore, the total value of any acquired asset that is subject to depreciation will be deducted from income when the acquisition occurs.

| **Annual Net Income** | | **Applicable Percentage of the net income (%)** |
|---|---|---|
| **From C$** | **To C$** | |
| 0.01 | **100,000.00** | **10%** |
| 100,000.01 | **200,000.00** | **15%** |
| 200,000.01 | **350,000.00** | **20%** |
| 350,000.01 | **500,000.00** | **25%** |
| 500,000.01 | **or more** | **30%** |

- **Capital Income and earnings and loss of capital**

Law considers as a capital income the income earned or received in cash or kind from the exploitation of assets or transfer of rights, which is to say, comes from wealth itself, rather than any specific production or direct work. Earnings and loss of capital are changes in the value of the assets of the taxpayer as a result of sale of goods, or assignment or transfer of rights. Furthermore, income from gambling, betting, donations, heritages and bequest, and any other similar income.

| Value in Córdobas | | Applicable Percentage |
|---|---|---|
| **From C$** | **To C$** | |
| 0.01 | **50,000.00** | **1.00%** |
| 50,000.01 | **100,000.00** | **2.00%** |
| 100,000.01 | **200,000.00** | **3.00%** |
| 200,000.01 | **Or more** | **4.00%** |

| Concept | Tax rate |
|---|---|
| **Income for activities** | |
| Transaction with tax Haven | **17 %** |
| Insurance and reassurance | **1.5 %** |
| Insurance prime and bond, guarantee | **3 %** |
| Maritime vessel and aircraft | **3 %** |
| International telephonic communications | **3 %** |
| Other income | **15 %** |
| Agricultural transactions, rice and ride milk | **1 %** |
| Primary agricultural goods | **1.5%** |
| Other goods | **2 %** |
| Investments funds | **5%** |

| Concept | Tax Rate |
|---|---|
| **Capital income, capital gain and capital losses** | |
| Trust | **5%** |
| Others capital income for resident and non-resident | **10%** |
| Alienation of immovable properties, from US$1 to US$ 50,000.00 | **1%** |
| Alienation of immovable properties, from US$ 50,000.01 to US$ 100,000.00 | **2%** |
| Alienation of immovable properties, from US$ 100,000.01 to US$ 200,000.00 | **3%** |
| Alienation of immovable properties, from US$ 200,000.01 to over | **4%** |
| Transaction in stock market | **0.25%** |
| Investment Funds | **5%** |

Source: Tax Concertation Law (Law N° 822)

### C. Resident

An individual shall be considered as a tax resident of Nicaragua if the individual is present in Nicaragua for a period or periods totaling in the aggregate at least 180 days in the fiscal year concerned. Additionally, a legal entity will be deemed as a resident, if its principal office or operations are in the country, unless such entity proves that its residency or tax domicile is in other country.

Law establishes that nonresident legally entities are subject to a withholding rate of 15%. However, if the non-resident belongs to a State consider as a Tax Haven the withholding shall be 17%. Non-residents individuals are subject to a 20% withholding rate.

### D. Tax Haven

According to Law No. 822 it will be consider as a Tax Haven a country or territory where the income tax is levied at a low rate or not at all as the Nicaraguan Income Tax. The Ministry of

Treasure (Ministerio de Hacienda y Crédito Público) is authorized, through a special regulation or Decree, to define or to appoint a country as a Tax Haven. As of now, Nicaragua will need to enter into treaties to avoid double taxation, and to prevent tax evasion.

### E. Permanent establishment

Permanent establishment are subject to a monthly payment of 1% for Income Tax Advance. According to the Law of Tributary Concertation, the term permanent establishment indicates the place in which a non-resident carries wholly or partly of its economic activity, and includes, among other:
a. The head office of management or administration;
b. Branches;
c. Or representative offices;
d. Factories;
e. The workshops;
f. A mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
g. Construction, installation, supervision activities when such activity exceed six months;
h. The continue performance of professional services or activities for a period or periods exceeding six months.

### F. Stamp Tax

This tax levies different documents an operations based in a tables from C$1 to C$10,000.

### G. Transfer Pricing Rules

The Law establishes the Transfer Pricing rules, including the general comments and suggestions of the OECD. However, Transfer Pricing rules will be enforceable starting on January 1, 2016. Some of the most important characteristics are as follows.

- **Methods** Includes all five OECD methods, namely:

(i) Uncontrolled Comparable Price;
(ii) Resale Price;
(iii) Cost plus;
(iv) Profit Split method; and
(v) Transactional Net Margin Method.

- **Voluntary Studies:**

Transfer price studies conducted by taxpayers are voluntary, however, the requirement to keep all supporting documents relative to the methods used remains unchanged.

- **Adjustments made by the Taxing Authority:**

Under the new provisions, the Tax Authority may introduce any adjustments deemed necessary when taxpayers are not able to produce evidence that operations were made at regular market prices, values or profits.

- **Advance Agreements (APAs):**

The Law also allows taxpayers to enter into advance price agreements (APAs) with the Tax Authority for a specified period of time in which the Tax Authority will not challenge the values involved in the taxpayer's operations carried out under this agreement.

- **Tax-Free Capital Contributions of Property (Ambiguity)**

Even though, article 37 of the Law establishes that either cash or capital contributions, as well as contributions of properties (assets) are exempted from income tax; however, the way the article is written might lead to an ambiguous interpretation because in a subsequent article (Art. 75) it is unclear whether or not the contributions of properties (real state/fixed assets) can be deemed as a capital gain. Furthermore, article 82 of Law No. 822 establishes the taxable basis for the capital gain on the transfer of properties considering as taxable basis the difference between the transfer value and acquisition cost.

## *XI. IMMIGRATION REGULATION*

In Nicaragua, Law 761 "Immigration and Foreign Status General Law", approved on March 31, 2011 and published in The Gazette No. 125 and 126 on 6 and 7 July 2011, along with its Regulations, are intended to regulate the entry and stay of foreign nationals to the territory of the Republic of Nicaragua

The following are the most relevant aspects:

- Foreigners enjoy the same rights and individual and social guarantees recognized for Nicaraguans in the Constitution (excepting political rights).

- Free movement of foreigners among the republics of el Salvador, Guatemala, Honduras and Nicaragua, under the Law of the central American Single Visa.

- Amongst others, there are the following migratory categories and special permits of permanence: 1. Diplomats 2. Guests 2. Residents and 4. Nonresidents.

- For residency status, generally speaking, some of the applicable requirements are: Original Passport valid for six month minimum; two passport size photos: Birth Certificate or Naturalization, if the case, Certificate of Health; Criminal record certificate; Employment contract or marriage Certificate (if the spouse applies to the Nicaraguan residence). Some other specific requirements may apply depending on the specific immigration category.

* * * * *

Respectfully submitted,

**February 2014**

Important disclaimer: The material in this Memorandum is of the nature of general comment only. It is not offered as advice on any particular matter and should not be taken as such. The firm and the contributing authors expressly disclaim all liability to any person in respect of anything and in respect of the consequences of anything done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this Memorandum. No client or other reader should act or refrain from acting on the basis of any matter contained in this Memorandum without taking specific professional advice on the particular facts and circumstances in issue.