



LATIN AMERICA & THE CARIBBEAN

A Legal Guide for Business Investment & Expansion

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INTRODUCTION

Home to a large consumer marketplace and some of the most varied and diversified economies in the world, the Latin American and Caribbean region provides a strong foundation for business expansion. The region's vast number of potential consumers and trade agreements provide opportunities for foreign investment at a time when many countries in this region are experiencing unprecedented growth.

Not surprisingly, success in today's globalized business environment requires knowledge of various practices and industries, along with a willingness to embrace cross-cultural commerce. As such, the prospects have never been better to acquire new and welcoming business partners in Latin America and the Caribbean.

This guide seeks to provide practical and useful insights into some of the universal issues that every potential foreign investor into the region should consider. Each segment is divided by country/market and covers the following 9 questions:

1. What role does the government of (Country) play in approving and regulating foreign direct investment?
2. Can foreign investors conduct business in (Country) without a local partner? If so, how does the (Country) government regulate commercial joint ventures between foreign investors and local firms (include information on common corporate structures)?
3. What laws influence the relationship between local agents and distributors and foreign companies?
4. How does the (Country) government regulate proposed merger and acquisition activities by foreign investors, and are there any areas of the economy where they are prohibited (e.g., natural resources, energy or telecommunications)?
5. How do labor statutes regulate the treatment of local employees and expatriate workers?
6. How do local banks and government regulators deal with the treatment and conversion of local currency, repatriation of funds overseas, letters of credit, and other basic financial transactions?
7. What types of taxes, duties, and levies should a foreign investment in (Country) expect to encounter?
8. How comprehensive are the intellectual property laws of (Country), and do the local courts and tribunals enforce these laws regardless of the nationality of the parties?
9. If a commercial dispute arises, will local courts or will international arbitration offer a more beneficial forum for dispute resolution to foreign investors?
10. What advice can you provide for how best to negotiate or conduct business in (Country)?

ABOUT MERITAS

Meritas' global alliance of independent, market-leading law firms provides legal services to companies looking to effectively capture opportunities and solve issues anywhere in the world. Companies benefit from local knowledge, collective strength and new efficiencies when they work with Meritas law firms. The personal attention and care they experience is part of Meritas' industry-first commitment to the highest quality of service and putting client priorities above all else.

Founded in 1990, Meritas has member firms in 243 markets worldwide with more than 8,760 dedicated, collaborative lawyers. To locate a Meritas resource for a specific need or in a certain market, visit <http://www.meritas.org> or call +1 612-339-8680.

Argentina

FIRM

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Allende & Brea was founded in 1957 and is one of Argentina's most prestigious full-service law firms. The firm has experts in all relevant areas of law and in various industry sectors, enabling it to assist a wide range of clients.

Allende & Brea's offices are based in Buenos Aires, where it has a team of over 80 lawyers. The firm provides comprehensive legal advice to many foreign entities and individuals regarding their investments in Argentina. Such advice includes helping clients to either set up a corporate and tax structure or to acquire an existing business in Argentina and continues during the life of the clients' investment in the country.

Throughout its history and up to the present time, Allende & Brea has advised many large and medium-sized foreign investors in some of the most complex local and international acquisitions, financings, and restructuring transactions, and has helped many companies to establish and oversee their investments in Argentina.

1. **What role does the government of the Argentina play in approving and regulating foreign direct investment?**

Argentina's government has issued general regulations regarding foreign investment and has, in general, allowed the market and investment opportunities to self-regulate. There are no agencies that directly control or regulate foreign investment.

The legal regime for foreign investment is governed by the Foreign Investment Act ("Ley de Inversiones Extranjeras") (Law 21,382) as per its amended wording in force from 1993. For the purpose of this law, there is no distinction between national and foreign investors, irrespective of the type of business they become involved in. Foreign investors have the same rights and obligations as local ones under the parameters stated by the Argentine Constitution regarding the development of lawful economic activities in Argentina. There are no limitations on the participating percentage of foreign ownership in a local entity, regardless of the type of vehicle chosen.

Argentina has also executed a number of Bilateral Investment Treaties (BITs) with third countries, is a member of the Multilateral Investment Guarantee Agency (MIGA) and the International Centre for the Settlement of Investment Disputes (ICSID), and is eligible to receive support from the U.S. International Development Finance Corporation (DFC), which further strengthen the protections for foreign investors.

Despite the general rule of equality set forth by the Foreign Investment Act, there are certain specific regulations that establish restrictions on investment by foreign individuals or entities in Argentina. The most relevant of these restrictions are explained in point 4 below.

2. **Can foreign investors conduct business in Argentina without a local partner? If so, how does the Argentina government regulate commercial joint ventures between foreign investors and local firms (include information on common corporate structures)?**

Foreign investors can conduct business in Argentina without the need for a local partner. In order to operate in Argentina on a permanent basis, foreign investors must incorporate a branch or a wholly or partially owned subsidiary.

The subsidiary may operate under any of the several types of corporate entities available. The most common are:

- The stock corporation (*Sociedad Anónima* or “S.A.”); and
- The general partnership (*Sociedad de Responsabilidad Limitada* or “S.R.L.”), similar to an LLC, in which members cannot exceed 50 partners, and it has the advantage that its operations are subject to fewer formalities.

The decision between a branch or a subsidiary usually stems from the fact that the liabilities of the branch are fully attributable to the head office, while both *Sociedad Anónima* and *Sociedad de Responsabilidad Limitada* limit partners’ liability to their capital contribution.

Further, the decision on whether to create a *Sociedad Anónima* or a *Sociedad de Responsabilidad Limitada* may be influenced by other considerations such as tax matters; for instance, in certain jurisdictions a *Sociedad de Responsabilidad Limitada* may be considered as a “pass-through” entity and therefore offer certain tax advantages.

As of 2015, single-shareholder stock corporations (*Sociedad Anónima Unipersonal* or “S.A.U.”) are allowed as a subtype of a stock corporation. “S.A.U.s” are subject to more formalities than a general partnership (“S.R.L.”) and a standard stock corporation (“S.A.”), and to additional scrutiny by the Office of Companies. However, the use of this type of entity has slowly become more frequent among foreign investors.

Foreign investors, through their local vehicles, can also participate in joint ventures or similar associations (e.g., “*agrupaciones de colaboración*” or “*uniones transitorias*”).

Furthermore, foreign entities wishing to hold an interest in an Argentine entity must register with the Office of Companies as foreign shareholders. Also, foreign shareholders—whether entities or individuals—must register with the Federal Tax Authority and obtain a tax ID (“*Clave de Identificación*”).

3. What laws influence the relationship between local agents and distributors and foreign companies?

The Argentine Commercial and Civil Code contains provisions governing the relationship between local agents and distributors, on the one hand, and the principals or manufacturers-owners of the goods, on the other hand. Such provisions apply to agency and distribution agreements irrespective of whether the principals or manufacturers-owners of the goods are individuals or local or foreign companies.

AGENCY AGREEMENTS

The Argentine Commercial and Civil Code defines an agency agreement as an agreement (which must be executed in writing) between an agent and a principal, whereby the agent promotes business for and on behalf of the principal in a stable, continuous, and independent way, without there being any employment relationship. An agent does not assume any risk of the transactions and does not act in the representation of the principal. The Argentine Commercial and Civil Code further establishes that the agent does not represent the principal for the conclusion and execution of agreements.

The agent will have the exclusive right to promote the principal's business within a specific territory or for a group of people as stated by the agreement. Moreover, the Argentine Commercial and Civil Code states that the agent is allowed to provide its services to a large number of principals, with the prohibition of accepting transactions of the same sector, or transactions that are in direct competition with the principal's business. However, the principal may authorize the agent to act as an agent to other principals in direct competition.

Unless it is previously agreed, compensation shall consist of a commission paid to the agent by the principal, which varies according to the volume or the value of transactions carried out by the agent.

Agency agreements are understood to be for an indefinite period of time, unless otherwise agreed, and may be terminated unilaterally at will. However, the termination must be preceded by prior notice of one month for every year of validity of the agreement. If the agent caused a significant increase in the principal's transactions that can continue on time, the agent has the right to receive compensation (which cannot exceed the amount equivalent to one year's payments) even after the agreement is terminated. Such compensation, however, is not applicable when the principal terminates the agreement due to breaches by the agent or when the agreement is unilaterally terminated by the agent.

Finally, the agent is prohibited from appointing subagents, unless expressly authorized by the agent, who, in such case, will be jointly and severally liable for the actions carried out by the subagent.

CONCESSION AGREEMENTS (rules also applicable to Distribution Agreements, as appropriate)

The Argentine Commercial and Civil Code does not provide for specific rules applicable to distribution agreements. However, it states that the rules governing concession agreements shall apply to distribution agreements as appropriate. A concession agreement exists every time a concessionaire that acts on its own name vis-à-vis third parties compels

itself, in exchange for a payment, to provide its business structure in order to market goods and services provided by the grantor.

Unless otherwise agreed, the concession is exclusive to both parties. Thus, in principle, the grantor is not able to authorize another concession in the same area, while the concessionaire is not allowed to develop activities outside the established limits.

The grantor has the obligation to provide the concessionaire with the minimum number of goods in order to allow the concessionaire to fulfill its sales expectations. The grantor also has the obligation to respect the areas assigned to the concessionaire and to provide the necessary information for the proper exploitation of the concession. The concessionaire, in exchange, has the obligation to buy goods exclusively from the grantor, abstain from marketing outside the assigned area, provide the proper facilities to comply with the concession, and train its personnel in accordance with grantor's regulations.

Concession agreements cannot be executed for less than four years. If a lower period of time is agreed upon, or if the agreement is executed as an indefinite term contract, it will be considered as executed for four years. Exceptionally, the agreement can be executed for a period of two years in cases where the grantor provides the concessionaire with the facilities needed to develop the business.

If the term set forth in the agreement has expired and the performance of the agreement continues without establishing a new term, the agreement will be considered an indefinite-term contract.

Concessionaires have the right to receive compensation that can consist of a commission on the price of sold units or a fixed retribution.

The same termination procedures and consequences applicable to agency agreements are applicable to concession agreements. Note that in the case of termination of an indefinite-term contract, the grantor will be compelled to repurchase products and spare parts bought by the concessionaire at the same price paid by the concessionaire in the first place.

Unless otherwise agreed, the concessionaire is not allowed to designate any sub-concessionaire or agents.

4. **How does the Argentina government regulate proposed merger and acquisition activities by foreign investors, and are there any areas of the economy where they are prohibited (e.g., natural resources, energy or telecommunications)?**

Argentine law does not provide for specific regulations of mergers and acquisition activities by foreign investors and generally accepts investments in all areas of commercial life, although there are certain regulations that have made investment in certain industries more restrictive for foreign investors, and there are regulations in place to control economic concentrations, regardless of whether a foreign investor is involved in a merger or not. The most relevant of these restrictions are the following:

- Security Zones Regulations (i.e., Decree Law 15,385/44, Law 23,554, Law 26,338, Law 22,352, Law 26,737, and Resolution 166/2009 of the Ministry of Domestic Affairs) provide that foreign individuals or entities must obtain an exceptional governmental authorization to acquire ownership or other rights (including leases) over “security zones,” which are certain areas specifically determined by the Ministry of Defense near international borders or surrounding certain specific real estate property located within Argentina.

The transfer of ownership or the granting of a lease or any form of personal or real right, by which the possession or tenancy of a real estate property located within a Security Zone is transferred to a foreign individual or entity (defined broadly so as to include local subsidiaries of foreigners), is subject to the prior approval of the National Commission of Security Zones (NCSZ) under an exception standard. This means that the approval will be subject to stricter requirements than those applied to approval requests made by Argentine individuals or entities.

The filing before the NCSZ requires the parties to provide a copy of the transaction agreement (together with various other documentation and information, including an investment plan to be made in the real estate concerned). Therefore, in principle, the filing cannot be made before signing the relevant agreement.

Although the NCSZ has discretion as to whether to authorize or reject a proposed transaction, in general, transactions are cleared provided that the parties fully comply with the requirements of the filing.

This regulation has a relevant effect in both the agribusiness and mining industries, given the geographical location requirements of both industries.

- The Cultural Heritage Act provides that foreign entities or individuals can own up to 30% of the stock or voting rights of any national broadcasting company.

Until recently, there were two other relevant restrictions affecting foreign investments: (1) the Rural Lands Act limited the acquisition of rural lands by foreign individuals or entities, and (2) the Aeronautic Code provided that most stock or voting rights of national aviation companies dedicated to the internal transportation of passengers, cargo, or mail had to be owned or controlled by Argentine companies or individuals domiciled in Argentina. However, Decree of Necessity and Urgency (DNU) No 70/2023, in force since 30 December, 2023, repealed the Rural Lands Act and modified the relevant sections of the Aeronautic Code, thereby eliminating such restrictions.

Now, Argentine Merger Control Regulations (the “Antitrust Regulations”) require certain economic concentration transactions to be notified to and approved by the Argentine Antitrust Authority (i.e., the Trade Secretariat of the Ministry of Economy, which is the adjudicating authority, and the National Commission for the Defense of Competition, which issues non-binding reports, together, the “Antitrust Authority”).

Economic concentrations affected by the Antitrust Regulations are those resulting in the control or attainment of substantial influence, directly or indirectly, of one or more companies or assets. Economic concentrations subject to notification include mergers, transfers of ongoing concerns, stock acquisitions, asset acquisitions, shareholders’ agreements, joint venture agreements, and any other agreement granting de jure or de facto control or substantial influence over management decisions of a business (provided that they meet the quantitative thresholds explained below and that none of the legal exemptions explained further below applies).

An economic concentration must be notified to the Antitrust Authority if the following two thresholds are met:

- The combined Argentine annual net sales of the acquiring group (including its controlling and controlled entities) and the acquired group (including its controlled entities), including exports by foreign subsidiaries to Argentine clients, as well as exports from Argentine subsidiaries to clients abroad, during the last fiscal year exceed ARS50,619 million; and
- Either the amount of the Argentine portion of the transaction or the value of the assets to be transferred in Argentina exceeds ARS10,123 million.

The quantitative threshold amounts must be updated by the Antitrust Authority before 31 January of each year (those mentioned above

correspond to 2024). Also, an economic concentration may require notification despite not meeting the second threshold listed above if the acquiring group was involved in prior transactions that meet certain parameters in the same relevant market in Argentina.

The following economic concentrations are exempt from the notification requirement:

- Acquisitions of companies in which the buyer already owns more than 50% of the shares and of the voting rights, as long as it does not entail a change in the nature of control of the company (i.e., from sole to joint control or from joint to sole control);
- Acquisitions of bonds, debentures, notes, and non-voting shares;
- Acquisitions of a single Argentine company by a foreign company that owns no assets in Argentina (excluding those held for residential purposes) nor shares in other Argentine companies, and has had no significant regular and periodic exports to Argentina during the preceding 36 months; and
- Acquisitions of companies in liquidation that did not transact business in Argentina in the preceding year, except if the main activity of the target company is the same as that of the acquirer.

According to the well-established case law of the Antitrust Authority, the above legal exemptions are to be narrowly interpreted.

Economic concentrations must be notified by the direct acquirer (or its immediate controlling entity or the parent entity of the economic group). In the case of mergers, notification must be made by the “merging” and the “merged” entity. In all cases, notification by the seller is voluntary; however, the Antitrust Authority may expressly require the notification also to be performed by the seller, depending on the circumstances of the economic concentration under review.

Pursuant to a transitory clause embedded in the Antitrust Regulations, until one year after the creation of the new Antitrust Authority, the notification of a reportable economic concentration may take place at any time (from the moment the parties execute some sort of binding legal document) up to one week after the closing or the acquisition of control, whichever happens first. Therefore, at present, there is no stand-still obligation, and the notifying companies may consummate an economic concentration without first having antitrust approval and notify up to one week thereafter.

Even if closing without antitrust clearance is allowed, the Antitrust Authority always retains the power to partially or totally undo economic

concentrations that are considered to be anti-competitive and harmful to the general economic interest. Recently, in a handful of reportable economic concentrations triggering competition concerns in Argentina, the Antitrust Authority issued injunctions requesting the merging parties to suspend or halt the implementation of their merger in Argentina several months after the parties had closed and consummated their transaction.

Once one year elapses from the creation of the new Antitrust Authority (although its creation is uncertain at the present time) and thus the above-mentioned transitory clause in the Antitrust Regulations expires, the ex-ante merger control regime will become operative. At that time, the consummation of economic concentrations or the acquisition of control without prior authorization from the Antitrust Authority will be prohibited and sanctioned accordingly.

The Antitrust Regulations do not stipulate a specific deadline for the notification once the ex-ante regime becomes effective. However, it would be in the parties' interest to file as early as possible after signing to obtain a clearance decision from the Antitrust Authority and thus be legally allowed to close the economic concentration.

5. How do labour statutes regulate the treatment of local employees and expatriate workers?

Argentina has a fairly complex labor legislation designed to protect the rights of employees and workers by setting special rules concerning the employment of women, as well as rules governing working conditions and working hours, providing for payment of salaries during illnesses, setting surcharges on salaries for overtime and unhealthy work, establishing annual vacations, setting mandatory life and labor risk insurance, providing mandatory payment of a 13th monthly salary per year, and requiring the payment of indemnification in the event of wrongful dismissal.

Unlike most other domestic laws that can be waived or modified by agreement, Argentine labor laws generally embody public policy principles. As a result, the waiver by employees of rights afforded under labor regulations is generally unenforceable and employers or third parties may not adversely affect these rights.

Also, dismissal of employees is subject to specific rules. Although there are some caps for highly paid employees, any employee is entitled to one month's salary per year of service plus one or two months as prior notice, the latter depending on seniority. Those compensations do not apply in

case of dismissal for a justified cause. Employees on a trial period (i.e., during the first three months of employment) are not entitled to severance payment, except made with prior notice (15 days).

There is no restriction regarding the employment of foreigners, provided they hold temporary or permanent residence permits.

Temporary residences will entitle foreign individuals to work in Argentina for a two-year period. After the first two-year period, the employee will be able to request a permanent residence.

Argentine companies (either local subsidiaries or branches of foreign companies) may make a request to the Argentine Migrations Office for temporary residence permits for employees:

- Who they are planning to bring into Argentina; or
- Who are at that time residing in Argentina.

Alternatively, this temporary residence permit may be requested directly by the employee. In the case of applying for a temporary residence for the employee's family members, the corresponding family ties should be proven.

6. **How do local banks and government regulators deal with the treatment and conversion of local currency, repatriation of funds overseas, letters of credit, and other basic financial transactions?**

Argentina has strict FX control affecting the FX market, the ability for local and foreign residents (either companies or individuals) to perform cross-border transfers—including payments of principal and the interest on loans and other indebtedness, services provided by foreign residents, and imports—and the ready availability of foreign currency for exporters of goods and services.

That being said, in December 2023, the new government implemented several changes to the existing FX control regime aimed at simplifying the process of importing goods and services and making it more transparent.

Below is a brief overview of certain FX regulations that may be particularly relevant to direct foreign investment.

LEGAL ENTRY OF EXPORT PROCEEDS OF GOODS AND SERVICES

Argentine exporters of goods and services are required to transfer their export proceeds into Argentina and exchange them for Argentine pesos. Of these proceeds, 80% must be exchanged in the official FX market, and the remaining 20% must be exchanged through blue chip swap transactions consisting of buying and selling certain bonds (which implies a higher exchange rate than the one obtained in the official FX market). In the case of exports of goods, the timeframe for the legal entry and conversion of export proceeds depends on the applicable tariff position of the product, while in the case of exports of services, the deadline for compliance with the legal entry of the proceeds is five business days upon collection.

PROFITS AND DIVIDENDS

Except under certain circumstances, local legal entities require prior written authorization from the Central Bank to access the FX market for the distribution of profits and dividends abroad. Such authorization is rarely obtained in a timely manner.

The most relevant exception to the rule is local companies that have received direct investment (equity/capital) contributions through the official FX market since January 17, 2020, to the extent all the following conditions are met:

- The aggregate amount of the transfers abroad on account of profits and dividends made through the FX market since January 17, 2020, including the payment being requested, does not exceed 30% of the amount of the new contributions of foreign direct investment received as of January 17, 2020 (computed in Argentine pesos);
- The transfer abroad is intended to be made within a term not less than 30 calendar days from the settlement in the FX market of the last contribution that is computed for the purposes of the requirement set forth in the first condition mentioned above; and
- The local company must provide written evidence of the definitive capitalization of the capital contributions, or proof of the initiation of the correspondent procedure before the relevant Office of Companies to register the capitalization of the contributions and undertake to submit the documentation of the definitive capitalization of the contribution within 365 calendar days from the initiation of the procedure.

REPATRIATIONS BY FOREIGN RESIDENTS

Repatriation by foreign residents of either foreign direct investments or portfolio investments requires prior written authorization from the Central Bank, which is rarely obtained in a timely manner.

Prohibitions exist against selling foreign currency-denominated securities before and after requesting access to the FX market

Local entities and individuals cannot sell foreign currency-denominated securities or transfer such securities to a depository institution located abroad (i) during the previous 90 or 180 calendar days from the date on which access to the FX market is being requested; and (ii) for the subsequent 90 or 180 calendar days (the timing varies depending on the applicable law of the security used for the transaction).

Thus, although blue chip swap transactions are not specifically forbidden, in practice, these new regulations imply an effective restriction on performing these types of transactions for companies or individuals that usually operate through the FX market.

IMPORTS OF GOODS

As of December 13, 2023, the government eliminated the web-based system, SIRA, through which importers had to request authorization to import goods and pay for them through the official FX market. Instead, importers may now access (through their local banks) the official FX market—without prior approval from the Central Bank—to make deferred payments for new imports following their customs entry into the country, as per the schedule outlined below.

- Petroleum oils, gases, electric power: from the entry date.
- Pharmaceutical products and/or inputs for local production, and certain fertilizers and/or phytosanitary products for local production: as of 30 days from the entry date.
- Certain finished automobiles and the customs tariff positions listed in Section 12.2 of the External Trade and Exchange rules: as of 180 days from the entry date.
- For other imports of goods, the following schedule applies, counted from their entry date:
 - (a) 25% of the price of the imported goods, as of 30 days;
 - (b) an additional 25% of the price of the imported goods, as of 60 days;
 - (c) another additional 25% of the price of the imported goods, as of 90 days; and
 - (d) the remaining 25% of the price of the imported goods, as of 120 days.

In addition, importers may also access the official FX market to pay imports prior to their customs entry into the country and/or prior to the schedule indicated above, in certain scenarios.

IMPORTS OF SERVICES

As of December 13, 2023, the government also eliminated the web-based system, SIRASE, through which importers had to request authorization to import services and pay for them through the official FX market. Instead, importers may now access (through their local banks) the official FX market—without prior approval from the Central Bank—to pay for imported services, as per the schedule outlined below.

- Passenger transportation, travel and other card payments, audio-visual and related services, government services, travel assistance and other health services, cash withdrawals and card expenses, expenses paid to foreign financial institutions in regular operations: at any time.
- Freight services related to the import of goods: on the same dates on which access to the official FX market may be obtained for the payment of the imported goods.
- Other personal, cultural, and recreational services: 90 days as of the date of provision.
- Services not previously covered, provided by an unrelated party to the importer: after 30 days from the date of provision.
- Services not previously covered, provided by a related party: after 180 days from the date of provision.

In addition, importers may also access the official FX market to pay imports prior to the schedule indicated above, in certain scenarios.

PAYMENTS OF PRINCIPAL IN EXCESS OF USD2 MILLION

Resident individual and legal entity borrowers of financial indebtedness and debt securities with principal maturities in excess of USD2 million falling due between October 15, 2020, and December 31, 2023, intending to access the FX market for payment of such maturities must submit a refinancing plan to the Central Bank based on the following parameters (the “Mandatory Refinancing Plan”):

- The net amount to be paid through access to the FX market within the original term must not exceed 40% of the principal amount due; and
- The outstanding principal must be refinanced through new foreign debt with an average life of at least two years.

Certain types of indebtedness do not require a Mandatory Refinancing Plan, such as indebtedness with international organizations or their associated agencies or with official credit agencies, or guaranteed by any of them, and certain refinancings that imply a net inflow of funds to the country or that have met the parameters mentioned above for the Mandatory Refinancing Plan.

Finally, payment of principal or interest of intercompany financial debt (as opposed to trade-related debt) is subject to prior Central Bank authorization until December 31, 2024. Such authorization is rarely obtained.

FX CRIMINAL REGIME

The Argentine FX Criminal Regime provides different types of penalties for actions/omissions that violate the FX rules set forth by the Central Bank. These include monetary fines; the suspension or cancellation of the persons or entities involved in the infraction authorization to operate or intermediate in the FX market or to act as an importer, exporter, or FX broker; and/or imprisonment.

Additionally, if the infringement of the FX rules was executed by the directors, legal representatives, agents, managers, trustees, or members of the supervisory board of a legal entity on its behalf, the monetary fine may be effective not only on the assets of the legal entity but also on the private assets of the above-mentioned individuals who have intervened in the commission of the infringement.

7. What types of taxes, duties, and levies should a foreign investment in Argentina expect to encounter?

Foreign investors conducting business in Argentina through a local branch or a wholly or partially owned subsidiary are subject to the same taxes, duties, and levies as any other local entity. These may be federal, provincial, or municipal, and, therefore, may vary depending on where the entity's local headquarters are located, where it carries out its business, and on the activities it performs.

The most relevant or common taxes that such entities may encounter in Argentina are the following:

- Income tax is a federal tax calculated on the legal entity's worldwide income (i.e., Argentine and foreign-sourced income) on a sliding scale ranging from 25% to 35%, and a 7% withholding tax at the time of distribution of dividends.

- Value-added tax (VAT) is a federal tax applicable to the sale of goods, provision of services, and the import of goods into Argentina. VAT is levied on the difference between the tax debit and tax credit at a 21% general rate.
- Tax on debits and credits is a federal tax applicable on debits and credits from and to Argentine bank accounts and similar transactions, at an applicable rate of 0.6%. This tax is also levied on the transfer and delivery of funds when these transactions are made through organized payment systems in replacement of bank accounts, without considering the person or entity responsible for making or receiving such payments.
- Turnover tax is a local tax levied on revenue resulting from business and activities carried out within an Argentine province and/or the City of Buenos Aires. Each province has different tax rates and exemptions under their tax codes. The average tax rate is 3%.
- Stamp tax is a local tax applicable on onerous acts and agreements executed in Argentina or executed abroad with effects within the country. The applicable tax rate is approximately 1% but this may vary according to the jurisdictions involved and the type of instrument. Parties executing an agreement are jointly responsible for payment. Tax codes usually include a large variety of exemptions to stamp tax which, along with certain tax-efficient ways to implement contracts, should be analyzed on a case-by-case basis.

In addition, foreign shareholders of local entities may be subject to the following taxes applicable to activities carried out or services rendered in Argentina:

- Income tax: Foreign beneficiaries are only subject to tax with respect to their Argentine-sourced income through a withholding mechanism. The applicable withholding tax rate depends on the type of income and whether a double tax treaty (DTT) is applicable or not. Dividend distributions are subject to a 7% withholding, regardless of the nature and residency of the beneficiary.
- Personal assets tax: Shareholders of Argentine companies are liable for personal assets tax of 0.5% on the company's net worth. The Argentine company is responsible for making this payment on behalf of the shareholders.
- Turnover tax: This is particularly applicable to foreign residents when a "relevant digital presence" is detected in certain jurisdictions, which occurs whenever certain thresholds are surpassed. Each jurisdiction's tax code should be analyzed to determine the point at which a relevant digital presence will trigger the taxable event in the turnover tax.

How comprehensive are the intellectual property laws of Argentina, and do the local courts and tribunals enforce these laws regardless of the nationality of the parties?

Argentina provides an intermediate level of intellectual property protection granted by federal legislation such as the Trademark Law, the Patent Law, the Model and Design Executive Decree, the Copyright Law, and the Commercial Secrets Law.

Although counterfeited goods are found in the jurisdiction, federal civil and commercial courts are swift to enforce intellectual property when requested by the lawful owner of the infringed intellectual property right, regardless of nationality.

In addition, Argentina is a party to some of the most relevant treaties and international agreements addressing this subject matter, including, among others:

- The Agreement on Trade-Related Aspects of Intellectual Property Rights, including trade in counterfeit goods;
- The Berne Convention for the Protection of Literary and Artistic Works;
- The Universal Copyright Convention;
- The WIPO Copyright Treaty;
- The WIPO Performances and Phonograms Treaty;
- The Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations;
- The Geneva Phonograms Convention;
- The Paris Convention for the Protection of Industrial Property; and
- The International Convention for the Protection of New Varieties of Plants.

Moreover, the collection and processing of personal data in Argentina is regulated by the Personal Data Protection Law 25,326 (the “DPA”) and its Regulatory Decree 1558/200, as well as its complementary regulations. The DPA—as opposed to the General Data Protection Regulation of the European Union—does not have extraterritorial scope. That is, the DPA only applies to the collection and processing of personal data within Argentine territory.

In June 2023, the Executive Branch submitted to the House of Representatives for its analysis, a draft bill to amend the current DPA. The provisions set

forth therein resemble the main European Union General Data Protection Regulation dispositions. Also, in November 2023, the Argentine Agency of Access to Public Information (the "AAIP") published the new standard model clauses for international data transfers. Such clauses are those issued by the Iberoamerican Data Privacy Network, which have also been adopted by Peru and Uruguay.

9. **If a commercial dispute arises, will local courts or will international arbitration offer a more beneficial forum for dispute resolution to foreign investors?**

It is generally advisable that foreign investors rely on arbitration for the resolution of commercial disputes. This is particularly given so that commercial disputes submitted to local courts may take several years before a first-instance decision is issued. Additionally, for commercial disputes, there is a filing fee (Tasa de Justicia) that is 3% of the total amount in dispute, which makes commercial court litigation an expensive endeavor. Further, in many cases, arbitrators are better suited to resolve highly technical matters that may involve complex operations or procedures.

When resorting to arbitration, foreign investors may choose a local institutional arbitration (such as the Arbitration Tribunal of the Buenos Aires Stock Exchange), a foreign institutional arbitration (such as the International Chamber of Commerce), or an ad hoc arbitration. It may further be agreed that the arbitral award will be final and binding for the parties.

10. **What advice can you provide for how best to negotiate or conduct business in Argentina?**

Tax and labor matters are probably the most relevant matters that a foreign investor must keep in mind. It is important to note that in addition to rather long-tail exposure, both these issues have specific regulations. In that sense, labor laws are designed to protect employees and not employers, and the employment relationship is presumed. It is therefore suggested that investors have specialized advisors in labor matters in order to avoid any potential liabilities. Regarding tax matters, it is important to note that the political organization of the country as a federal country means that there are three tiers for tax matters: federal, provincial, and municipal taxes. Each tier will have its own taxes and these are cumulative. Further, particularly at a municipal level, taxes are industry-specific. Targeted advice should be sought in order to avoid any potential risks for non-compliance with taxes.

Bahamas

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Glinton Sweeting O'Brien is a full-service commercial law firm located in Nassau, The Bahamas. Founded in 2005, we have quickly grown into a premier law firm through innovation and a keen client focus. We serve our clients within The Bahamas and around the world (including the Americas, Europe, and Asia) with a personal touch and efficiency, harnessing the power of technology throughout.

Our practice areas encompass commercial and residential real estate, construction and development, commercial transactions, financial and corporate services, secured lending and public/private offerings, regulatory and administrative law, immigration, estate planning and probate, and tax, as well as civil litigation involving land disputes, employment, creditor and borrower rights, insolvency, insurance, contentious probates, trust litigation, shareholder disputes, personal injury, and fraud. Our clients include UHNW individuals and families, domestic and international developers, financial institutions, and public and private companies, as well as law and accounting firms.

Our diverse legal team includes attorneys, management professionals, and dedicated support staff. We aim to provide tailored, pragmatic advice designed to achieve the best possible results for clients with maximum efficiency. Our goal is to establish strong relationships with our clients to obtain a holistic view of their needs and requirements, thereby affording us the opportunity to offer cohesive, comprehensive, and compliant solutions.

Knowledge, expertise, service, and solutions form the foundation of GSO's success and continued growth in The Bahamas.

1. What role does the government of the The Bahamas play in approving and regulating foreign direct investment?

The government of The Bahamas plays a direct and important role in approving and regulating foreign direct investment in the country. It has established guidelines and policies that must be followed and provide incentives and concessions to encourage such investment. The two government bodies that oversee foreign direct investments are the Bahamas Investment Authority ("BIA") and the National Economic Council ("NEC"), which is headed by the Prime Minister of The Bahamas and Members of his Cabinet. Based on the nature of the proposed investment, the appropriate government agencies are directly engaged for input on the feasibility of the projects. The government encourages foreign direct investments in the following areas:

- Tourist resorts
- Upscale condominium, timeshare, and second home development
- Information and data processing services
- Assembly industries
- High-tech services
- Ship registration, repair, and other services
- Light manufacturing for export
- Agro-industries
- Food processing
- Mariculture
- Banking and other financial services
- Captive insurance
- Aircraft Services
- Pharmaceutical manufacture
- Off-shore medical centers

This list is not exhaustive. Foreign investors wishing to do business in The Bahamas must complete and submit a project proposal to the BIA, which vets and then submits the proposal to NEC for their review and consideration. The NEC's main objective is to determine whether

proposed projects will be viable and beneficial to The Bahamas and the Bahamian people. The project proposal outlines the following information:

- **Address of foreign investor.**
- **Description of the project proposal** - comprehensive executive summary of the project (with marketing plan).
- **Principals** - all the principals in the venture (major beneficial owners), along with identifying particulars such as place and date of birth and passport or social security number for each one. Character references, curriculum vitae, and police report with fingerprints are also required for each beneficial owner.
- **Proposed location of project** - site plan for the area and architectural sketches, where applicable.
- **Land requirement.**
- **Proposed project start-up date** - maximum time for the commencement, and if possible, completion of the project.
- **Management/personnel requirement** (non-Bahamian specialist employees).
- **Capital investment** - total capital investment to be made in the project along with a breakdown of the items involved and an estimate for start-up costs.
- **Employment projection** - number of Bahamians to be employed in the construction phase, as well as during the commencement and operation of the business.
- **Financial arrangement.**
- **Environmental impact** - any possible harmful environmental effects must be identified along with mitigating measures that will be employed to deal with them – an Environment Impact Assessment is required and an Environmental Management Plan would be requested, if deemed necessary, by the Department of Environmental Planning and Protection.
- **Economic impact** - indicate potential benefit to the national economy, including National Insurance Board (“NIB”) revenues, business license fees, taxes, utilities, and possible entrepreneurial spin-offs.

The government offers many investment incentives, which are ultimately provided if a project is approved to proceed. Examples include (but are not limited to) the following:

- The Hotels Encouragement Act inter alia exempts hotel developers from customs duties on all imported materials required for the construction, equipping, furnishing, and completion of a new hotel. Exemptions from real property tax and licensing fees are also available.
- The Industries Encouragement Act exempts exporters from import duties on raw materials, building supplies, and equipment for manufacturing. This act is of particular benefit to manufacturers.
- The Agricultural Manufactories Act provides subsidies to agricultural businesses in the form of interest-free loans for the purchase of supplies plus exemption from duties on a wide range of products including building supplies, processing materials, and farm trucks. It also provides an exemption from export taxes.
- The Hawksbill Creek Agreement created the Free Trade Zone of Freeport on the island of Grand Bahama, which gives businesses exemption from taxes on profits, capital gains, inheritance, income, earnings, distributions, gifts, and imported and exported goods. In addition, import duties and taxes on real estate have been waived through the year 2054.
- Family Islands Development Encouragement Act (expires 30th June 2026) establishes a special economic program for certain Family Islands, whereby there are exemptions on business license tax, customs duty, and value-added tax.

Once a project is approved by NEC, then the foreign investor must proceed with several local government applications, the most important of which includes obtaining a business license to legally operate in The Bahamas.

2. **Can foreign investors conduct business in The Bahamas without a local partner? If so, how does The Bahamas government regulate commercial joint ventures between foreign investors and local firms (include information on common corporate structures)?**

There is no requirement for a foreign investor to have a local partner to conduct business in The Bahamas. Notwithstanding, the government looks favorably on applications where expert local partners are chosen to collaborate instead of outsourcing to a foreign partner. The process of approval remains the same, i.e., submittal of a project proposal for consideration by the NEC.

Foreign investors commonly use an International Business Company (“IBC”) to conduct business in The Bahamas, subject to receiving approval from the government to operate and then obtaining its applicable licenses and local government approvals. Favorable features of an IBC are:

- The shareholders have limited liability.
- Speed of incorporation at the Registrar of Companies once the name is approved for use.
- It may issue registered, fractional, ordinary, preference, redeemable, and convertible shares; however, bearer shares are prohibited. Shares may be issued in any currency.
- It requires only one shareholder and one director, which may be a corporate director.
- Neither shareholders nor directors need to be resident in The Bahamas, and there is no requirement that shareholders’ or directors’ meetings be held in The Bahamas, but the IBC must maintain a registered office in The Bahamas.
- It is necessary to keep a register of shareholders and a register of directors and officers, but the registered shareholders, directors, and officers may be nominees. The register of shareholders is only required to be kept at the registered office of the company. Ordinarily, only shareholders may inspect the register of shareholders. The register of directors and officers, however, must be filed with the Registrar of Companies and is open for public inspection.

3. What laws influence the relationship between local agents and distributors and foreign companies?

The Bahamas has its own statute laws which, as a former colony of the United Kingdom, are based on English Common Law and its legal precedents. Contracts between local agents and distributors and foreign companies can be subject to Bahamian law, the laws of the jurisdiction of the foreign company, or the laws of a jurisdiction of the parties’ choosing. This is normally negotiated between the parties and stipulated in the contract.

4. **How does The Bahamas government regulate proposed merger and acquisition activities by foreign investors, and are there any areas of the economy where they are prohibited (e.g., natural resources, energy or telecommunications)?**

As discussed above, all foreign investment activities must be vetted and approved by the NEC. Once the relevant approvals have been obtained, there is limited government involvement in the merger and acquisition activities of foreign investors except in the case of publicly traded companies. In such instances, the relevant provisions of the Securities Industry Act will govern.

It is important to note that there are certain areas of the economy reserved for Bahamians only. Such areas include the following (not an exhaustive list):

- Wholesale and retail operations
- Commission agencies engaged in the import/export trade
- Real estate and domestic property management agencies
- Domestic newspapers and magazine publications
- Domestic advertising and public relations firms
- Nightclubs and restaurants, except specialty, gourmet, and ethnic restaurants operating in a hotel, resort complex, or tourist attractions
- Security services
- Domestic distribution of building supplies
- Construction companies, except for special structures which require international expertise
- Personal cosmetic/beauty establishments
- Commercial fishing within the exclusive economic zone of The Bahamas
- Auto and appliance service operations
- Public transportation inclusive of locally solicited charter boat tours
- Landscaping

5. How do labour statutes regulate the treatment of local employees and expatriate workers?

The Employment Act, 2001 (as amended) and the Industrial Relations Act, 1970 (as amended) are the two principal pieces of legislation governing employee rights within The Bahamas (collectively, the Employment Act and the Industrial Relations Act are referred to as the “Labour Statutes”).

The Labour Statutes govern all contracts of employment, oral or written, whether Bahamian or non-Bahamian. While the Industrial Relations Act primarily governs unionized workers, it also provides for the adjudication of employee-employer disputes whether a complaint is filed by a Bahamian or non-Bahamian. The Employment Act governs workers not governed by an industrial agreement. While non-Bahamian employees are afforded the same rights and are bound by the same obligations under the Labour Statutes, employers and employees are also subject to the applicable immigration legislation.

Non-Bahamian workers require work permits from the Department of Immigration before they can legally commence working. An employer may apply for a work permit for a foreign employee. Typically, a project proposal by a foreign investor will list the number of foreign employees it requires and usually these are for specialized areas which specialty may not be readily available in the Bahamian workforce. Once approved by the government to operate in The Bahamas, work permits are then applied for as requested via the project proposal.

Written contracts of employment are not mandatory but are advised and often prepared, especially when a union is involved. This will ensure that all parties involved are aware of their employment rights and the terms of their employment contract.

The Employment Act addresses some of the following employee rights.

- Standard working hours
- Employee compensation
- Vacation entitlement
- Sick leave
- Maternity entitlement
- Employment dismissal and compensation
- Fingerprinting and lie detector testing

6. **How do local banks and government regulators deal with the treatment and conversion of local currency, repatriation of funds overseas, letters of credit, and other basic financial transactions?**

The Bahamian dollar (BSD) is the official currency of The Bahamas and it has one-to-one parity with the U.S. dollar (USD). Both BSD and USD are accepted in the domestic economy.

The Bahamas is subject to exchange control for its “resident” individuals and companies, including non-Bahamians who are deemed/designated “resident” for exchange control purposes. Non-residents and offshore entities are not subject to exchange control. The Exchange Control Act and Exchange Control Regulations govern the regulation of exchange control, and the Central Bank of The Bahamas is the regulator responsible for the administration of exchange control regulations. The Central Bank has relaxed various elements of the exchange control regulations and has delegated some of its authority to commercial banks as it relates to conversions, opening of accounts for foreign persons, etc.

Another role of the Central Bank is to upkeep The Bahamas’s foreign reserve. Accordingly, it monitors the inflow and outflow of foreign currency in The Bahamas and facilitates the repatriation of foreign currency funds by persons deemed or designated “resident” for exchange purposes.

7. **What types of taxes, duties, and levies should a foreign investment in The Bahamas expect to encounter?**

Once the NEC approves a project, the foreign investor must then obtain a business license to begin operating in The Bahamas. Before proceeding with that step, the applicant must register with NIB. All persons engaging in gainful employment (employer and employees) in The Bahamas must register with the NIB. NIB is tasked with the administration of The Bahamas’s social security program. Once employees are hired, there is a monthly payment of 9.8% per employee to NIB calculated against a cap of \$740 per week or \$3,207 per month. It is shared as follows: 3.9% (employee’s portion) and 5.9% (employer’s portion) = 9.8%.

Thereafter, application may be made to the Department of Inland Revenue for a business license and VAT registration. The current VAT rate is 10% and the annual business license fees (generally, and provided there are no concessions from the Government) are as follows:

- a) for a business with turnover greater than \$100,000.00 per annum but not exceeding \$500,000.00 per annum, a business license fee of 0.5% of turnover;
- b) for a business with turnover greater than \$500,000 per annum but not exceeding \$5 million per annum, a business license fee of 0.75% of turnover;
- c) for a business with turnover greater than \$5 million per annum, a business license fee of 1.25% of turnover.

The business license fee varies based on industries. Below is a listing, however, it is not an exhaustive list

- A business license fee at a rate of 0.75% of turnover applies to the following businesses:
 - a) agricultural and animal husbandry/mixed farming;
 - b) fishing/fish farms; and
 - c) food/meat/fruit processing.
- A business license fee of 0.75% of turnover shall apply to a hotel licensed under the Hotels Act (Ch. 288) where that hotel has ten (10) rooms or more.
- Where a business is part of a group of companies with turnover greater than \$400 million, provided that the group includes a hotel licensed under the Hotels Act (Ch. 288) and the hotel accounts for at least 50.1% of the turnover of the group, a business license fee of 0.75% of turnover shall apply.

Further taxes include VAT of 10% on the purchase price of property by a foreign investor for development purposes and real property taxes (annually for commercial properties, the first \$500,000 = 0.75% of the assessed value ; >\$500,000 to <\$2m = 1% of the assessed value and >\$2m = 1.5% of the assessed value.

Notwithstanding the above-noted taxes and license fees, the government of The Bahamas offers concessions and tax incentives for foreign investors.

8. **How comprehensive are the intellectual property laws of The Bahamas, and do the local courts and tribunals enforce these laws regardless of the nationality of the parties?**

The Bahamas has comprehensive intellectual property laws which are enforceable in The Bahamas regardless of the nationality of the parties. Copyright protection is granted for the life of the right holder and an additional 70 years after death.

Trademarks and patents are also available for protection. The Registrar General's Office has an Intellectual Property Register which is accessible by the public.

The Government of The Bahamas is also committed to modernizing and ensuring that intellectual property rights are protected and maintained in The Bahamas. The government has provided the public with a suite of intellectual property bills for public consultation. These bills may be found at the following link: <https://www.ipbahamas.gov.bs/>

9. **If a commercial dispute arises, will local courts or will international arbitration offer a more beneficial forum for dispute resolution to foreign investors?**

Both local courts and international arbitration are available to an aggrieved party. An assessment of the nature and circumstances of the matter will assist in determining which forum is more beneficial for an aggrieved party, whether Bahamian or non-Bahamian.

Foreign investors may commence actions in the courts of The Bahamas to address disputes provided the statutory indicia are present. Litigation is a well-established method of adjudicating matters; however, it can take years to complete a matter and can be cost-intensive. While litigation of a dispute in the courts of The Bahamas is well established, the use of arbitration is relatively new, the Arbitration Act having come into existence in 2009. In The Bahamas, the benefits of using arbitration stems from the decrease in the completion time and the fact that it is binding and confidential.

Unfortunately, these benefits can be cost-intensive and, in some cases, more expensive than litigation.

Recognizing the value and an international shift towards including arbitration as an option to resolve disputes, the Government of The Bahamas has and continues to invest in promoting The Bahamas as a seat of arbitration. As

recent as last year (2023), the Government of The Bahamas enacted substantial amendments to the Arbitration Act and the governing procedural rules of the Supreme Court to allow for increased efficiency in processing matters and enacting the International Commercial Arbitration Act, which governs international disputes.

10. **What advice can you provide for how best to negotiate or conduct business in The Bahamas?**

Conducting business in Barbados offers many opportunities, particularly in sectors like tourism, offshore finance, real estate, and renewable energy. The country's business environment is relatively open to foreign investors, with a stable legal and regulatory framework. Key sectors include tourism and international financial services, making Barbados an attractive destination for niche market ventures. However, because of the small domestic market, businesses often look to regional or international expansion for growth.

Barbados places a strong emphasis on relationship-building in business. Trust and long-term connections are vital to success, and communication tends to be informal, yet professional in business settings. It's important to engage with local partners, especially when navigating the legal and regulatory landscape. The Barbados Chamber of Commerce and government agencies like the Barbados Investment and Development Corporation (BIDC) and Invest Barbados provide valuable networking and support for foreign investors.

The legal framework in Barbados is also investor-friendly, with a well-defined regulatory environment and protection for intellectual property. The country's stable currency pegged to the US dollar reduces currency risk. However, businesses should be aware of the relatively high cost of doing business, the importance of complying with employment and labor laws, and the competition in key sectors. To succeed, it's crucial to invest time in understanding the local market, building relationships, and exploring potential government incentives.

Barbados

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Lex Caribbean was founded in 1997 and is a leading law firm practicing the laws of multiple jurisdictions in the Caribbean. We operate from three offices in Trinidad and Tobago and from single office locations in Barbados and Jamaica, advising on the laws of Barbados, Jamaica, St. Lucia, Trinidad, and Tobago. We also coordinate legal advice from several other jurisdictions in the region, working closely with strategic partners that we know and trust. Our local cultural affinity and the seamlessness of our deployment across multiple Caribbean territories differentiate us from all other law firms in our markets.

Collectively our lawyers combine diverse ethnicity and a shared Caribbean heritage with training and experience gained in several financial centers around the world. We cultivate productive relationships across all sectors with key agencies and stakeholders in our local environments and leverage a global network of professional firms to deliver quality, integrated cross-border legal solutions at competitive prices.

Lex Caribbean offers innovative, responsive & seamless legal services. Our local cultural affinity and the seamlessness of our deployment across multiple Caribbean territories differentiate us from all other law firms in our markets.

1. **What role does the government of Barbados play in approving and regulating foreign direct investment?**

Barbados has historically welcomed foreign direct investment (FDI) and promotes investment in many industries and sectors, including tourism and renewable energy. The Barbados Investment and Development Corporation was established by legislation and has many functions relating to investment under the law. The Central Bank also plays a role in regulating foreign investment, whereby there are exchange control permissions that must be granted based on the nature and currency of an investment.

2. **Can foreign investors conduct business in Barbados without a local partner? If so, how does the Barbados government regulate commercial joint ventures between foreign investors and local firms (include information on common corporate structures)?**

Foreign investors may conduct business without a local partner. There are some specific instances where the government may regulate commercial ventures between foreign investors and local firms. An example of this is some renewable energy projects within Barbados.

3. **What laws influence the relationship between local agents and distributors and foreign companies?**

The relationship between local agents and distributors and foreign companies may be governed by the Sale of Goods Act Cap. 318, consumer protection laws, and contract law.

4. **How does the Barbados government regulate proposed activities by foreign investors and are there any areas of the economy where they are prohibited (e.g., natural resources, energy, telecommunications or real estate)?**

The Fair Competition Act Cap. 326C of the laws of Barbados is instructive on proposed mergers and acquisitions which are likely to affect fair competition in Barbados. The Fair Trading Commission must grant permission to effect a merger as described in section 20 of the Fair Competition Act.

5. **How do labour statutes regulate the treatment of local employees and expatriate workers?**

The employment-employee relationship is governed mainly by the Employment Rights Act 2012-9 of the laws of Barbados along with other subsidiary laws such as the Severance Payments Act, Employment of Women (Maternity Leave) Act, Trade Unions Act, and Protection of Wages Act. These various laws outline the treatment of employees in Barbados relating to termination, disciplinary procedures, terms of employment, and other related issues.

6. **How do local banks and government regulators deal with the treatment and conversion of local currency, repatriation of funds overseas, letters of credit, and other basic financial transactions?**

The Central Bank of Barbados is the premier financial institution in Barbados and is responsible for promoting monetary stability in the country. The Central Bank releases many circulars which address the dealings of local and foreign currency, and other basic financial transactions.¹

7. **What types of taxes, duties, and levies should a foreign investment in Barbados expect to encounter?**

Foreign investors may encounter corporate income tax, value-added tax (VAT), property taxes, customs duties, and stamp duties.

8. **How comprehensive are the intellectual property laws of Barbados, and do the local courts and tribunals enforce these laws regardless of the nationality of the parties?**

The intellectual property laws in Barbados are comprehensive and consist of the Trade Marks Act Cap. 319, Copyright Act Cap. 300, Patents Act Cap. 314, Protection of New Plant Varieties Act, 2001-17, etc., along with various corresponding regulations. These laws may be enforced in Barbados against nationals and non-nationals once the court has the jurisdiction.

¹Exchange Control Circulars (centralbank.org.bb)

9. **If a commercial dispute arises, will local courts or will international arbitration offer a more beneficial forum for dispute resolution to foreign investors?**

International arbitration offers a more beneficial forum for dispute resolution to foreign investors given the current backlog of cases in the Barbados Courts. International arbitration also has the added benefit of being confidential, whereas the Barbados Courts are public record. Notwithstanding the aforementioned, international arbitration is not without its limitations.

10. **What advice can you provide for how best to negotiate or conduct business in Barbados?**

Conducting business in Barbados offers many opportunities, particularly in sectors like tourism, offshore finance, real estate, and renewable energy. The country's business environment is relatively open to foreign investors, with a stable legal and regulatory framework. Key sectors include tourism and international financial services, making Barbados an attractive destination for niche market ventures. However, because of the small domestic market, businesses often look to regional or international expansion for growth.

Barbados places a strong emphasis on relationship-building in business. Trust and long-term connections are vital to success, and communication tends to be informal, yet professional in business settings. It's important to engage with local partners, especially when navigating the legal and regulatory landscape. The Barbados Chamber of Commerce and government agencies like the Barbados Investment and Development Corporation (BIDC) and Invest Barbados provide valuable networking and support for foreign investors.

The legal framework in Barbados is also investor-friendly, with a well-defined regulatory environment and protection for intellectual property. The country's stable currency pegged to the US dollar reduces currency risk. However, businesses should be aware of the relatively high cost of doing business, the importance of complying with employment and labor laws, and the competition in key sectors. To succeed, it's crucial to invest time in understanding the local market, building relationships, and exploring potential government incentives.

Bermuda

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Cox Hallett Wilkinson is one of the leading mid-sized law firms in Bermuda. Bermuda is a stable self-governing dependent territory of the United Kingdom and an important and respected offshore financial centre. The jurisdiction's legal system is based upon the application of English common law and doctrines of equity subject to the statutes enacted by the Bermuda legislature. The firm is proud of the breadth of expertise it offers. This ranges from commercial law, both in corporate and financial transactions and litigation and arbitration, to local litigation and private client work serving the local community. Members of the firm are active members of the professional organizations relevant to its practice including the Bermuda Bar Association and the Society of Trust and Estate Practitioners.

1. What role does the government of Bermuda play in approving and regulating foreign direct investment?

The Government of Bermuda welcomes foreign investment in Bermuda and is committed to working with industries and investors in Bermuda to ensure that initiatives are introduced to ensure the success of the international business sector. The Government continues to take proactive steps to introduce significant legislative acts to ensure Bermuda remains an innovative and highly reputable offshore jurisdiction.

Favoured as a premier neutral tax jurisdiction due to its political stability and reputable legal infrastructure with a right of final appeal to the Privy Council in London, Bermuda is an industry leader in insurance, reinsurance, captive insurance, and trust management. Bermuda has also made a concerted effort in the promotion and establishment of fintech and digital asset business on the island, using the island's history of innovation to become one of the first countries globally to introduce a regulatory framework for digital assets.

The Bermuda Government has delegated its oversight and regulatory duties to an independent entity, the Bermuda Monetary Authority (the "BMA") and the Registrar of Companies ("RoC"). The BMA regulates international business and acts as the gatekeeper for the jurisdiction by regulating and approving applications to conduct business in Bermuda (as more particularly described in question 4 below). Additionally, the BMA develops risk-based financial regulations that it applies to the supervision of Bermuda's banks, trust companies, investment businesses, investment funds, fund administrators, money service businesses, corporate service providers, and insurance companies.

The Registrar of Companies regulates and administers the economic substance regime in Bermuda, which applies to those entities who conduct "Relevant Activities" in Bermuda. The economic substance regime was enacted to address the principle that jurisdictions should not facilitate the use of structures that attract profits but do not reflect real economic activity that is being undertaken in that jurisdiction. Further information should be requested from local counsel as to whether the proposed entity would fall within the scope of the economic substance and whether the proposed business is a "Relevant Activity."

2. **Can foreign investors conduct business in Bermuda without a local partner? If so, how does the Bermuda government regulate commercial joint ventures between foreign investors and local firms (include information on common corporate structures)?**

Foreign investors may conduct business in Bermuda without a local partner subject to some restrictions. The Companies Act 1981 (the “Act”) requires that shares in a local company, which is a company incorporated with the intent to conduct business domestically, be owned and controlled by a minimum of 60% Bermudians (the “60/40 Rule”). In 2012, the Bermuda Government passed legislation abolishing the 60/40 Rule for certain industries (for instance, insurance, telecommunications, energy, and hotel operations). Foreign investors in a local company may apply to the Minister of Economic Development (the “Minister”) for consent to hold more than 40% interest in a local company pursuant to Section 114B of the Act.

Due to its limited land mass, there are restrictions on foreign ownership of real estate in Bermuda under both the Act and the Bermuda Immigration and Protection Act 1956 (the “Immigration Act”), and further information should be requested from local counsel if this is a relevant factor in choosing a jurisdiction to conduct business.

Foreign investors seeking to conduct business with other exempted undertakings in Bermuda or outside of Bermuda will not be subject to the 60/40 Rule and are subject to few restrictions as to the commercial arrangements. Commercial arrangements between the partners are generally set out in a joint venture agreement, including voting rights, distribution and equity rights and restrictions, and corporate governance requirements. A variety of corporate structures may be used as joint venture vehicles in Bermuda, including limited liability companies, limited liability corporations, partnerships, and trusts.

COMPANIES WITH LIMITED LIABILITY

Pursuant to the Act, companies may be limited by shares or by guarantee.

Exempted companies are companies incorporated in Bermuda by foreign investors, which are exempted from the 60/40 Rule for the purposes of conducting business in Bermuda with other exempted companies or conducting business from Bermuda with international businesses, unless granted ministerial consent to conduct business domestically.

PERMIT COMPANIES

A permit from the Minister of Finance (the “Finance Minister”) is required for an overseas company (incorporated in a jurisdiction outside of Bermuda) to engage in business or carry on any trade or business in

Bermuda. An overseas company will be deemed to be engaging in business or carrying on trade or business in Bermuda if:

- It occupies premises in Bermuda; or
- It makes known by way of advertisement, or by an insertion in a directory, or by means of letterheads that it may be contacted at a particular address in Bermuda; or
- It can be otherwise seen to be engaging in or carrying on trade or business in or from Bermuda on a continuing basis.

The Finance Minister, when deciding whether or not to grant a permit will consider:

- The economic situation in Bermuda and the due protection of persons already engaged in or carrying on any trade or business in Bermuda;
- The nature and previous conduct of the company and the persons having an interest in the company whether as directors, shareholders or otherwise;
- Any advantage or disadvantage which may result from the company engaging in or carrying on a trade or business in Bermuda; and
- The desirability of retaining in the control of Bermudians the economic resources of Bermuda.

Reasons must be given as to why the company is seeking a permit as opposed to incorporating a Bermuda-exempted company. The application must also include certified copies of the constitutional documents of the overseas company, its latest unaudited financial reports and, in some instances, personal and financial references for its directors and beneficial owners.

A permit company must disclose the ultimate beneficial owner to the BMA and provide a signed personal declaration for any individual holding or controlling 10% of the voting rights in the company.

Permit companies are permitted to operate in a manner similar to an exempted company – i.e., to conduct business outside of Bermuda or with other exempted companies in Bermuda.

PARTNERSHIPS

Partnerships are commonly used vehicles for foreign investors seeking to establish a business in Bermuda. A partnership may elect to have a separate legal personality. The relationship between the partners will be governed by a partnership agreement, which provides partners with a freedom of contract with respect to matters such as voting, meetings and governance, allocation of profits and losses and distributions.

The primary legislation governing the establishment and administration of Bermuda partnerships is listed below:

- The Partnership Act 1902 (as amended) (the “Partnership Act”);
- The Limited Partnership Act 1883 (as amended) (the “LPA”); and
- The Exempted Partnership Act 1992 (as amended) (“EPA”).

A limited partnership must have at least one general partner who engages in the management or transacts the business of the partnership. The role of the limited partner in the partnership is similar to that of a shareholder in a company in that the liability of the limited partner is limited to the amounts that they have agreed to contribute to the partnership, provided that they are not considered to be taking part in the management of the limited partnership. There are so-called ‘safe harbour’ circumstances where a limited partner will not be deemed to be taking part in the management of a partnership including voting an amendment to the partnership agreement, dissolution of the partnership, remaining a general partner, and appointing (or being) members of the management board. The liability of a general partner of a limited partnership is unlimited.

An exempted partnership is where at least one partner does not possess Bermudian status. In the case of an exempted limited partnership, the EPA preserves the limited liability of limited partners under the LPA and provides that any liability or penalties incurred are the responsibility of the general partners. An exempted partnership may be resident in Bermuda and may carry on business in connection with transactions external to Bermuda.

Pursuant to the Overseas Partnership Act, 1995, overseas partnerships (i.e., a partnership formed in a jurisdiction outside Bermuda) may be subject to obtaining the consent of the Finance Minister in a similar manner described above for overseas companies.

LIMITED LIABILITY COMPANIES (LLCS)

Bermuda introduced limited liability companies (“LLCs”) based on the Delaware model pursuant to the Limited Liability Company Act 2016 (the “LLC Act”). An LLC may elect to have a separate legal personality distinct from that of its members. The relationship between the LLC and its members will be governed by an LLC agreement, which provides the members of an LLC with a freedom of contract with respect to matters such as voting, meetings and governance, allocation of profits and losses, and distributions.

A Bermuda LLC may be formed by one or more members with each member having an interest in a capital account (similar to a partnership) as opposed to shares in a company and can be managed by its members, with no need for a board of directors or a general partner. Where the LLC has opted for a separate legal personality, the LLC will operate with the capacity rights, powers and privileges of a natural person until it is dissolved.

The LLC Act was introduced to modernise the legislative framework and increase Bermuda's appeal to foreign investors. LLCs are commonly utilised by investment funds and managers but can be used for any type of business purpose, including as a trading or investment holding entity.

TRUSTS

The trust industry has a strong presence in Bermuda and trusts are commonly used as special-purpose vehicles in Bermuda.

3. **What laws influence the relationship between local agents and distributors and foreign companies?**

Bermuda is a colony of the United Kingdom, and its legal system is based on common law principles. Many foreign companies will appoint local agents and distributors to advise on Bermuda practice and industry norms. The law governing such contractual relationships is subject to the agreement of the parties involved.

4. **How does the Bermuda government regulate proposed activities by foreign investors and are there any areas of the economy where they are prohibited (e.g., natural resources, energy, telecommunications or real estate)?**

Mergers and acquisitions by foreign investors are regulated by the BMA. Since the 1940s, all foreign shareholders seeking to invest in a Bermuda company or an LLC must be approved to conduct business in Bermuda. The BMA requires that all foreign individuals controlling 10% of the voting rights in the Bermuda company or LLC must file a personal declaration declaring their beneficial interest with the BMA and obtain prior written consent to hold shares in a Bermuda entity. There are no substantive competition laws in Bermuda that would limit a company's ability to acquire a target company that operates in the same business sector.

The Act prohibits all Bermuda companies and LLCs from operating the following business activities:

- Trafficking in armaments as defined in the Armaments (Control) Act 1964;
- Except as authorised by law, operating lotteries as defined in the Lotteries Act 1944 or gambling facilities, including the operation thereof through the Internet; and
- Except as authorised by law, importation, exportation, trading in, manufacture, production, or supply of controlled drugs as defined by the Misuse of Drugs Act 1972.

Furthermore, the Act restricts Bermuda companies and LLCs from operating the following business without the specific consent of the Minister:

- Operating a financial institution within the meaning of section 1(1) of the Bermuda Monetary Authority Act 1969 other than institutions that are investment funds, or persons registered under section 4 or 10 of the Insurance Act 1978; or
- Providing by way of business the professional services of a barrister and attorney, medical practitioner, architect, dental practitioner, public accountant, optometrist, optician, professional surveyor, nurse, health service provider, or any profession or occupation specified under the First Schedule to the Professions Supplementary to Medicine Act 1973; and
- Acquiring land or holding land other than in the case of land acquired or held under sections 4A and 129 of the Act.

5. How do labour statutes regulate the treatment of local employees and expatriate workers?

The Employment Act 2000, as amended (the “Employment Act”), applies where an employer in Bermuda enters into an employment contract with a person (a) who is employed wholly or mainly in Bermuda for remuneration under a contract of employment or (b) who performs services wholly or mainly in Bermuda for another person for remuneration on such terms and conditions that his relationship with that person more closely resembles that of an employee than an independent contractor.

Where such a relationship exists, a statement of employment must be provided to the employee setting out, among other things, a description of the job and the gross wage payable. The Employment Act also covers such matters as disciplinary measures, severance pay, and overtime.

Foreign nationals working in Bermuda will require a work permit issued by the Minister of Home Affairs through the Department of Immigration. The work permit is issued to the employer in respect of a specific employee for a defined term. Applications for both the initial work permit and each renewal are reviewed on a case-by-case basis. The duration of work permits may vary from a periodic work permit or short-term permit (3 months), standard (from 3 to 5 years), to a 10-year work permit for key employees. Fees will vary depending on the type of work permit requested.

In all instances, permission to reside must be granted to any family members intending to accompany the applicant to Bermuda. Each family member will need to supply the appropriate documentation required by the Department of Immigration.

6. How do local banks and government regulators deal with the treatment and conversion of local currency, repatriation of funds overseas, letters of credit, and other basic financial transactions?

The unit of currency is the Bermuda dollar (BSD), which has parity with the U.S. dollar (USD); the U.S. dollar is also accepted for trade in Bermuda.

Bermuda is independent for exchange control purposes, operated under The Exchange Control Act 1972 (the "Exchange Control Act") and regulated by the BMA. Exempted undertakings conducting business in Bermuda are deemed to be non-resident for the purposes of the Exchange Control Act.

There are no capital gains, withholding, or income tax payable in respect of the repatriation of funds overseas, letters of credit, or other basic financial transactions where the holder is an exempted undertaking.

Where it is necessary to convert assets from Bermuda dollars, a foreign currency purchase tax of 1% will be charged by the Banks on top of the daily foreign exchange rates from time to time.

7. What types of taxes, duties, and levies should a foreign investment in Bermuda expect to encounter?

Bermuda imposes no income, profit, or capital gains tax. A Bermuda-exempted company may apply under the Exempted Undertakings Tax Protection Act 1966 to the Finance Minister for an assurance that such company will not be liable to pay such taxes if they are introduced into Bermuda before 31 March 2035.

Pursuant to the Payroll Tax Act 1995, corporations conducting business in Bermuda and employing employees in Bermuda for four or more hours per week are required to pay payroll tax in respect of each employee.

On 18 December 2023, the Bermuda legislature enacted the Corporate Income Tax Act 2023 (the "Corporate Income Tax Act"). The Corporate Income Tax Act will commence operation on 1 January 2025 and generally imposes a 15% corporate income tax (CIT) on certain Bermuda resident "entities" that are part of multinational enterprises with annual group revenue of €750 million or more. "Qualified refundable tax credits" are available, providing the possibility that entities liable to CIT may ultimately pay a lower effective tax rate than the 15% tax rate. However, it should be noted that there is significant work to be done to create the necessary infrastructure required to enforce and collect the proposed Corporate Income Tax Act and future updates should be provided by Bermuda counsel on the development and introduction of the corporate income tax regime.

8. How comprehensive are the intellectual property laws of Bermuda, and do the local courts and tribunals enforce these laws regardless of the nationality of the parties?

Bermuda's intellectual property rights legislation is largely based on the UK's equivalent legislation. Legislation is subject to constant review to keep up with technological developments and trends and is regulated by the Registry General's Office.

Intellectual property protection in Bermuda is available for trademarks, patents, copyrights, and designs. Relevant intellectual property laws in Bermuda include:

- Trade Marks Act 1974, as amended by Act No.26 of 1975, Act No. 44 of 1985 and Trade Marks (Modification and Amendment) Act No.39 of 1991, which provided for the introduction of service marks;

- Trade Marks and Service Marks Regulations 1993, effective June 19, 1993, which incorporated the introduction of service marks;
- Trade Marks and Service Marks Amendment Regulations 2013;
- Patent and Designs Act, 1930 and Patent & Design Rules 1903;
- Copyright and Designs Act 2004;

The Registry General and the Bermuda courts enforce the laws regardless of the nationality of the parties. In the event that such IP rights are infringed, the following types of relief are available:

- Emergency and permanent injunctions;
- Anton Piller orders;
- Delivery up and/or destruction of infringing articles;
- Discovery upon oath;
- Damages; or
- An account of damages.

9. **If a commercial dispute arises, will local courts or will international arbitration offer a more beneficial forum for dispute resolution to foreign investors?**

Arbitration is a common dispute resolution tool used in Bermuda in the event of commercial disputes. Assuming the existence of an arbitration agreement between the parties to the dispute, international arbitration offers greater scope, and thus the possibility of a more beneficial forum for dispute resolution than the Bermuda courts.

International arbitrations are favoured especially by the insurance/reinsurance industry.

The benefits of agreeing to an international arbitration include:

- The ability to determine the number of arbitrators;
- The ability to determine the qualification required of the arbitrators;
- The ability to determine the procedure for appointment of arbitrators;
- Arbitrators can receive any evidence deemed relevant, apart from without prejudice communications;

- Confidentiality of the proceedings and documents; and
- The scope to have determinations of law on non-Bermuda law basis

A benefit to using the Supreme Court of Bermuda as a venue is the greater flexibility for the determination of issues involving disputes with non-parties to an arbitration agreement. The Bermuda judiciary is considered to be pro-arbitration, with the Commercial Court as an administrative subdivision of the Supreme Court of Bermuda capable of hearing challenges to arbitral proceedings. The Court of Appeal hears challenges to any arbitral awards.

Arbitration agreements are generally upheld on public policy grounds depending on the scope and terms of any agreement: *Lenihan v LSF Consolidated Golf Holdings Ltd* [2007].

10. What advice can you provide for how best to negotiate or conduct business in Bermuda?

For those foreign investors seeking to conduct business in Bermuda, it is advisable to engage local counsel to discuss your proposal and to ensure that the corporate structure is acceptable from a Bermuda law perspective and is the most effective vehicle to obtain your goals and objectives.

The Bermuda Business Development Agency (the “BDA”) was established in 2013, with the goal of assisting Bermuda’s public and private sectors through targeted business development initiatives. The BDA provides a concierge service and can assist by making formal introductions to the appropriate Bermuda industry partners, regulators and advisors.

The following regulatory links and online resources may be of assistance:

- The Bermuda Monetary Authority: <http://www.bma.bm/SitePages/Home.aspx>
- The Registrar of Companies: <https://www.registrarofcompanies.gov.bm/>
- The Registry General: <https://www.gov.bm/department/registry-general>
- Bermuda Business Development Agency: <http://bda.bm>
- Butterfield Bank: <http://www.butterfieldgroup.com/Pages/default.aspx>
- Clarien Bank Limited: <https://clarienbank.com>
- Bermuda Commercial Bank: <http://www.bcb.bm/about-bcb>

Bolivia

FIRM

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Indacochea & Asociados is a distinguished corporate law firm in Bolivia, highly regarded in prestigious legal directories. Situated in Santa Cruz de la Sierra, the Firm specializes in providing comprehensive legal counsel on complex commercial matters, offering unparalleled access to exceptional legal expertise and in-depth understanding of both local and global industries. With over 33 years of experience, we have consistently led in various legal domains, representing a diverse clientele comprising national and international entities in pivotal commercial projects across Bolivia.

At the core of our philosophy is a dedication to nurturing enduring client relationships and delivering exceptional commercial services. We prioritize the professional growth of our attorneys through a comprehensive development plan, ensuring our team remains at the forefront of legal innovation. Our commitment to excellence is reflected in our unwavering focus on providing tailored legal solutions that exceed client expectations.

Indacochea & Asociados is renowned for its exceptional client service, characterized by a client-centric approach, transparent communication, and a steadfast commitment to achieving optimal outcomes. With a team of highly skilled attorneys and a stimulating work environment, it is uniquely positioned to provide unparalleled support to clients navigating the commercial landscape in Bolivia.

1. **What role does the government of Bolivia play in approving and regulating foreign direct investment?**

The Bolivian government plays a crucial role in the approval and regulation of Foreign Direct Investment (FDI) in the country. It establishes policies and regulations to encourage and control FDI, aiming to attract investments that drive economic growth and national development while protecting the interests of the country and its citizens. Additionally, the state directs, controls, and regulates the strategic sectors of the country's economy as established in the Political Constitution of the State. The Bolivian government may also offer fiscal incentives and other benefits to attract investments in strategic sectors or specific regions of the country.

2. **Can foreign investors conduct business in Bolivia without a local partner? If so, how does the Bolivia government regulate commercial joint ventures between foreign investors and local firms (include information on common corporate structures)?**

In Bolivia, foreign investors can conduct business without the need for a local partner in most cases. However, in certain sectors such as strategic ones, the participation of a local partner or the formation of a joint venture with a local company is required. This depends on the sector of activity and the specific regulations applicable. For sectors where foreign investment is allowed without a local partner, investors can establish local companies whose partners/shareholders can be entirely foreign. Furthermore, the Commercial Code provides for the possibility for foreign companies to establish a branch in Bolivia. Such branches are governed by the laws of the place of their incorporation regarding their form and legal existence. However, to carry out commercial activities in the country, they must apply for registration with the Trade Registry (SEPREC) demonstrating that they are legally organized and enabled according to the laws of their country of origin. In foreign branches, foreign companies are subject to Bolivian laws and regulations governing investment, including registration requirements and tax obligations. The most common corporate structures are:

- Corporation (S.A.): A form of company in which the share capital is divided into shares and whose shareholders have limited liability.
- Limited Liability Company (S.R.L.): A form of company in which the liability of the partners is limited to their capital contributions and which offers greater management flexibility than the corporation.

3. **What laws influence the relationship between local agents and distributors and foreign companies?**

In Bolivia, the relations between local agents and distributors and foreign companies are influenced by various laws and regulations:

- **Commercial Code:** The Bolivian Commercial Code establishes general provisions related to commercial contracts, including distribution and agency contracts. These provisions regulate aspects such as the form of contracts, the obligations of the parties, payment terms, contract termination, and rights and obligations in case of breach.
- **Consumer Protection Law:** This law establishes the rights and obligations of consumers in Bolivia and regulates the relations between providers of goods and services, including foreign companies, and Bolivian consumers. This may affect the commercial practices of local distributors representing foreign companies.
- **Specific Sectoral Regulations:** Depending on the sector of activity, there may be specific regulations governing the relations between local agents and distributors and foreign companies. For example, in the pharmaceutical industry, the distribution of medicines is regulated by specific laws that establish additional requirements for the marketing and distribution of pharmaceutical products.
- **Monopoly Control and Free Competition Law:** Competition and antitrust laws may impact the relations between local agents and distributors and foreign companies, especially regarding anticompetitive practices, exclusivity agreements, and abuse of dominant market position.

4. **How does the Bolivia government regulate proposed activities by foreign investors and are there any areas of the economy where they are prohibited (e.g., natural resources, energy, telecommunications or real estate)?**

The Bolivian government regulates merger and acquisition activities, especially when proposed by foreign investors, through various laws and regulations, as well as through specific regulatory authorities. Some key considerations include:

- **Monopoly Control and Free Competition Law:** Bolivia has a competition and antitrust law that regulates business activities to prevent anti-competitive practices and protect competition in the market. This law can have significant implications for mergers and acquisitions, especially if they could affect competition in a particular sector.

- **Specific Sectoral Laws:** In certain sectors of the economy, such as natural resources, energy, and telecommunications, there may be specific laws and regulations governing mergers and acquisitions. These regulations may vary by sector and may include restrictions on foreign participation in sector companies, as well as specific procedures for the approval of mergers and acquisitions.
- **Sectoral Regulatory Authorities:** In some sectors, such as energy and telecommunications, there are specific regulatory authorities that oversee business activities and may have jurisdiction over mergers and acquisitions in the sector. These authorities may require prior approval for mergers and acquisitions that affect competition or the provision of essential services in the sector.

In terms of areas of the economy where mergers and acquisitions may be prohibited or restricted for foreign investors, strategic sectors are usually subject to greater regulation and control by the Bolivian government. This may include areas such as natural resources (mining, hydrocarbons), energy (generation and distribution of electricity), and telecommunications. In these sectors, the government may impose restrictions on foreign participation or require the involvement of local partners in sector companies.

5. How do labour statutes regulate the treatment of local employees and expatriate workers?

Labor legislation in Bolivia establishes rules and regulations to protect the rights of both local employees and expatriate workers alike; however, the law stipulates that a minimum of 7 Bolivian workers must be hired for every foreign worker within the same company. Below are some key aspects of how the treatment of these two groups is regulated:

- **Basic Labor Conditions:** Bolivian labor law sets minimum standards for working conditions, which apply equally to local employees and expatriates. This includes aspects such as minimum wage, working hours, vacation time, job security, and protection against discrimination and harassment in the workplace.
- **Hiring and Work Visa:** Employers wishing to hire expatriate workers must comply with the work visa requirements established by the Bolivian government. These requirements may include demonstrating that there are no local workers available for the position and meeting certain eligibility criteria. However, labor law ensures that employers cannot unfairly discriminate against local workers in favor of expatriates.

- **Equal Treatment and Non-Discrimination:** Bolivian labor law prohibits discrimination in the workplace based on national origin, race, gender, religion, sexual orientation, disability, among others. This applies to both local employees and expatriate workers, ensuring fair and equitable treatment for all workers.
- **Protection of Labor Rights:** Fundamental labor rights, such as the right to freedom of association, collective bargaining, and strike, are protected by Bolivian labor law and apply equally to all workers, regardless of nationality.
- **Social Security:** Employers, for both local employees and expatriates, are obligated to contribute to Bolivia's social security system, which includes benefits such as medical care, pensions, and unemployment insurance.

6. How do local banks and government regulators deal with the treatment and conversion of local currency, repatriation of funds overseas, letters of credit, and other basic financial transactions?

In Bolivia, banking operations and other financial entities are duly regulated by the Financial System Supervision Authority (ASFI), an entity that regulates and supervises financial operations. There are specific regulations and procedures for the treatment of different financial transactions, including the conversion of local currency, the repatriation of funds abroad, letters of credit, and other basic financial transactions. Some important aspects related to these activities are described below:

- **Conversion of Local Currency:** Local banks are authorized to carry out currency exchange operations from local currency to foreign currency and vice versa. These transactions are regulated by the Central Bank of Bolivia (BCB), which establishes official exchange rates and supervises the foreign exchange market to ensure its stability and transparency.
- **Repatriation of Funds Abroad:** Foreign investors wishing to repatriate funds abroad must comply with certain requirements and procedures established by the Bolivian Central Bank (BCB) and other regulatory authorities. These requirements may include providing documentation supporting the legality and origin of the funds, as well as paying applicable taxes and fees.

- **Letters of Credit:** Letters of credit are commonly used financial instruments in international trade to guarantee payment between buyers and sellers. Local banks issue letters of credit at the request of their clients, both for domestic and international transactions, and act as intermediaries to ensure compliance with the conditions agreed upon between the parties.

7. What types of taxes, duties, and levies should a foreign investment in Bolivia expect to encounter?

For foreign investment in Bolivia, it is essential to consider the following types of taxes, duties, and levies that may apply:

- **Value Added Tax (VAT):** VAT applies to all usual commercial transactions, such as the sale of movable goods located or placed in Bolivia, construction contracts, service provision, rentals, and any other provision, as well as the definitive importations made in Bolivian territory. The nominal rate is 13% on the invoiced amount, and the effective rate of this tax is 14.94%.
- **Transaction Tax (IT):** The IT applies to the exercise of commerce, industry, profession, occupation, business, rental of goods, works and services, or any other activity—lucrative or not—transfer for free of charge of movable and immovable property and rights. This tax reaches all types of companies, natural or legal, public or private, including sole proprietorships. The tax rate is 3% applicable to the gross monthly income.
- **Corporate Income Tax (IUE):** The IUE taxes—as its name indicates—applies to the net profit (gross profit minus deductible expenses necessary to maintain the source) obtained by public or private companies, including sole proprietorships, liberal professions or trade, branches of companies that carry out partial activities in the country, the rental of movable things located or economically used in the country, as well as those generated by civil, agricultural, mining, forestry, extractive, commercial, and industrial activities, or by the leasing of works or the provision of services within Bolivian territory. The tax rate is 25% on the taxable net profit for companies. The payment of the IUE constitutes an advance payment of the aforementioned IT for the next management, that is, the IT declared for the operations carried out by the companies can be offset with the IUE that was paid in the previous annual management. This means that if the company closes management in December and pays the IUE determined, this payment will serve to offset any payment that must be made for the IT in the following management.

- **Tax on Foreign Beneficiaries' Profits (IUE-BE).** The IUE-BE taxes those profits of Bolivian source credited, paid, or remitted to beneficiaries abroad and those activities partially carried out in the country. The subject obliged to make the retention of this tax will be the one that carries out the action of "paying, accrediting, or remitting" income obtained from Bolivian source to a beneficiary abroad. In this sense, the responsible party (company domiciled in Bolivia) must withhold and pay the corresponding rate for the IUE-BE on any income of Bolivian source that was paid/remitted/accredited to a beneficiary abroad until the expiration of the payment of taxes of the following month to the one in which these facts occurred. The rate for income to foreign beneficiaries is 12.5% of the amount remitted.

8. **How comprehensive are the intellectual property laws of Bolivia, and do the local courts and tribunals enforce these laws regardless of the nationality of the parties?**

Bolivian legislation regarding intellectual property is based on Decision 486 (industrial property, trademarks, and patents) and 351 (intellectual property, copyright, and related rights) since Bolivia is part of the Andean Community of Nations. All processes in intellectual property matters are carried out administratively within the National Intellectual Property Service (SENAPI) in accordance with its internal procedure. The only differentiation between the nationality of the parties is in the cost of the fees. Any dispute is resolved administratively, and the court of appeal is the Andean Community Tribunal.

9. **If a commercial dispute arises, will local courts or will international arbitration offer a more beneficial forum for dispute resolution to foreign investors?**

The choice between local courts and international arbitration as a forum for the resolution of commercial disputes will depend on various factors, including the nature of the dispute, the applicable laws, the preferences of the parties, and the perceived effectiveness of the local judicial system. Both local courts and international arbitration have advantages and disadvantages for foreign investors:

Local Courts:

- **Accessibility and Costs:** Local courts may be more accessible and less costly compared to international arbitration for disputes of lesser value.
- **Knowledge of Local Law:** Local courts are familiar with local law and can effectively apply it in dispute resolution, which can be beneficial in cases involving local law issues.
- **Enforcement of Decisions:** Decisions of local courts are usually easier to enforce within the country, as local authorities have jurisdiction over the parties involved.
- **International Arbitration:**
- **Neutrality and Impartiality:** International arbitration may offer a more neutral and impartial environment for dispute resolution, especially in cases where parties mistrust the local judicial system.
- **Confidentiality:** International arbitration can be more confidential than litigation in local courts, which can be beneficial for protecting sensitive commercial information.
- **Flexibility and Specialization:** International arbitration allows parties to select arbitrators specialized in the disputed matter and can offer a more flexible process tailored to the parties' needs.

10. **What advice can you provide for how best to negotiate or conduct business in Bolivia?**

First and foremost, seek advice from a relevant and reputable firm with knowledge of the legal and regulatory framework, especially in areas such as taxes, intellectual property, and labor contracts. Seek legal counsel to ensure compliance with all regulations.

Stay informed about the political and economic context in Bolivia, as this can affect the business climate and investment opportunities in the country.

Conduct thorough market research of the Bolivian market to understand demand, competition, and opportunities in your specific sector. Adapting offerings to the needs of the local market can increase the chances of success.

Bolivia is a diverse country with a variety of cultures and traditions. Consider regional and cultural differences when doing business in different parts of the country.

Brazil

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Felsberg Advogados is a full-service law firm with more than 120 attorneys. We have significant experience in complex business transactions, such as privatizations, project finance transactions, corporate restructurings, tax planning and mergers and acquisitions, and a tradition of exceptional quality and personal service.

Well-known for its work in global transactions, Felsberg Advogados has a dynamic team of professionals with extensive international exposure, including working with foreign parties and issues and sensitive to foreign cultural matters in negotiations and transactions. The firm also provides its lawyers with the resources and technology to provide legal solutions and service that meet and exceed the challenges faced by our clients.

Our attorneys are fluent in several languages, including English, Chinese (Mandarin), Spanish, German, French and Italian. Many of our lawyers are also licensed to practice law in other jurisdictions. Felsberg Advogados is particularly qualified to assist clients with international law matters.

Felsberg Advogados has offices in the three most important cities in Brazil: Sao Paulo, Rio de Janeiro and Brasilia.

1. **What role does the government of Brazil play in approving and regulating foreign direct investment?**

Brazil is a federation composed of 26 states, one federal district, and more than 5,500 municipalities. Although each public entity is entitled to enact its own legislation, such right is limited by the Brazilian Constitution. Foreign direct investment is exclusively governed by Federal legislation, which must be approved by the Brazilian Congress and ratified by the Brazilian President. Although Brazil is a bureaucratic country, recent measures have been taken to facilitate and accelerate the inflow of foreign investments into Brazil.

2. **Can foreign investors conduct business in Brazil without a local partner? If so, how does the Brazilian government regulate commercial joint ventures between foreign investors and local firms (include information on common corporate structures)?**

As a general rule, foreign investors can conduct business without a local partner. In any event, foreign investors can also establish joint ventures with Brazilian partners. The choice of such Brazilian partners is in the absolute discretion of the investor. Such joint ventures do not need to be approved, as a rule, unless in the event of merger control issues or other regulatory approvals, as far as regulated/restricted sectors are concerned.

A foreign investor may establish itself in Brazil either through a branch or a subsidiary. Branches are subject to prior approval being obtained from the Brazilian Federal Executive Branch and are most used by foreign banks and airline companies. Subsidiaries, which are Brazilian companies established under Brazilian law, represent a more straightforward approach to establishing a presence in Brazil. Although several types of companies exist under Brazilian law, the two most frequently used are the Limited Liability Company (*Limitada*) and the Corporation (*Sociedade por Ações - S. A.*).

The limited liability company is the most simple, flexible, and inexpensive type of company to operate in Brazil. A limited liability company can have one or more shareholders, also known as "quotaholders," whether or not Brazilian resident individuals or corporate entities. The quotaholders may set up a limited liability company by executing a "*Contrato Social*" (Articles of Association) and comply with registration requirements of the local applicable registry in which the registered office of the company is located (either the Board of Trade – or *Junta Comercial* – for business companies, and the Registry for Corporate Entities – *Registro de Pessoas Jurídicas* – for non-business companies). The corporate capital of a limited liability company

is divided into quotas, which represent each quotaholder's interest in the company's corporate capital. The limited liability company must be managed by one or more individuals resident in Brazil or not (whether quotaholder(s) or not), appointed by the quotaholders in the Articles of Association or in a separate corporate document. In case the management of a limited liability company is conducted by a foreigner not resident in Brazil, said foreigner administrator must have an attorney-in-fact duly appointed who must be resident in Brazil. Decision-making in the limited liability company is generally a simple process, particularly where there are only one or two quotaholders. Each quota usually entitles the holder to one vote at a quotaholders' meeting. However, quorum for resolutions in the limited liability company is in general the majority vote (i.e., 50% of the voting capital plus one voting quota). Thus, the quotaholder who holds a majority equity interest ensures control of the company.

Corporations are not as flexible and inexpensive to run as limited liability companies. The corporation is incorporated by private subscription of the company's capital by at least two individuals or corporate entities or any combination thereof, whether or not resident in Brazil. A corporation may be a listed corporation (*S.A. de capital aberto*) or a non-listed corporation (*S.A. de capital fechado*), depending on whether or not its securities, including shares, are traded on the over-the-counter market or on the stock exchange. The corporation's corporate purposes must be specifically and fully described in its "*estatuto social*" (by-laws). Once approved, the by-laws must be registered and published, prior to the commencement of the company's activities. Corporate documents of the corporation are also registered with the competent Board of Trade. The shares of the corporation may be classified as (i) common shares, or (ii) preferred shares with or without voting rights. The number of non-voting or restricted voting preferred shares may not exceed fifty percent (50%) of the total number of issued shares. Further, preferred shareholders in a non-listed corporation are entitled to (i) priority distribution of fixed or minimum dividends, which may be cumulative or not; (ii) priority in the reimbursement of capital upon liquidation of the company, with or without a premium; or (iii) a combination of items (i) and (ii). Corporations are composed of up to four main administrative bodies: (i) the General Shareholders' Meetings, (ii) the Board of Directors, (iii) the Management Board, and (iv) the Audit Committee. The Board of Directors may be composed of at least three shareholders or non-shareholders members while the Management Board may be composed of one or more individuals and the Audit Committee may be composed of three or more individuals. As the same rule is applicable to limited liability companies, there is the possibility to appoint foreigners to the Board of Directors and Management Board, in which case they must appoint an attorney-in-fact resident in Brazil. A Board of Directors is only mandatory for listed

corporations and corporations with authorized capital. Matters submitted for resolution at a duly convened general shareholders' meeting may be approved by shareholders representing fifty percent of the voting capital plus one voting share. Applicable legislation contemplates a higher quorum for a few specific matters. Furthermore, the by-laws may specify a higher quorum than that established by law.

3. What laws influence the relationship between local agents and distributors and foreign companies?

Agency and distribution relationships are governed by the Brazilian Civil Code (Law No. 10,406/02) and other specific laws, as applicable on a case-by-case basis. One example is Law No. 4,886/65, amended by Law No. 8,420/92, which is related to commercial representatives and is very protective towards commercial agents/distributors.

4. How does the Brazilian government regulate proposed merger and acquisition activities by foreign investors, and are there any areas of the economy where they are prohibited (e.g., natural resources, energy or telecommunications)?

As stated previously, Brazilian Antitrust Law (Law No. 12,529/2011) entrusts regulation of competition to the Administrative Council for Economic Defense (CADE) – the Brazilian competition adjudicatory agency. The acts and agreements which may limit or restrain free competition or which may lead to the creation of a monopoly in affected markets of products or services, including mergers, corporate amalgamations, equity and asset acquisitions, associative contracts, consortiums, joint ventures, etc., must be submitted for CADE's approval prior to their implementation, in case they meet one of the following thresholds: (i) at least one of the groups involved in the transaction has registered, in the last fiscal year, annual gross sales or total turnover in the country equivalent or superior to BRL 750,000,000.00; and (ii) at least one other group involved in the transaction has registered, in the last fiscal year, gross annual sales or total turnover in the country equivalent to or greater than BRL 75,000.00. Failure to notify a mandatorily reportable transaction or the early implementation of a transaction prior to CADE's approval may be penalized by a fine ranging from approximately BRL 60,000.00 to BRL 60,000,000.00. Moreover, it is important to note that the Brazilian Antitrust Law is also applicable to acts performed and agreements entered into outside of Brazil in case their effects may somehow impact the Brazilian market and meet the jurisdictional thresholds.

Following a recent series of legislative reforms, as well as some court rulings that changed the previous interpretation of laws restricting certain sectors, several markets that were previously totally or partially reserved for Brazilians (individuals or companies) are now open to foreigners, such as healthcare, domestic aviation, and private security services sectors. This openness may be expressed without any restrictions or with the requirement that the operating company must be incorporated under Brazilian law and have its headquarters in Brazil (even if it is held by a foreign group). In the case of coastal shipping, the use of foreign vessels is now also permitted. However, there are some areas of the economy that remain reserved/partially restricted to Brazilians (individuals or companies), such as (i) the acquisition of rural land, which is highly regulated; (ii) companies operating in Brazil's geographic border areas, where at least 51% of their equity capital must be held by Brazilians; and (iii) media and cable television companies, where at least 70% of their equity capital must be held by Brazilians.

5. How do labour statutes regulate the treatment of local employees and expatriate workers?

All employees are treated the same. Expatriate workers require a work permit to work in Brazil.

In general terms, the Brazilian Consolidated Labor Code (CLT) establishes judicial procedures for labor claims, rules regarding relationships between employees and employers, and regulations for the organization of unions and collective bargaining procedures. Brazilian employee-employer relations are also governed by the Federal Constitution, employment contracts, labor and social security statutes other than the CLT, collective bargaining agreements, and companies' internal rules of conduct (*regulamento interno*). Collective bargaining agreements are entered into between employees' and employers' unions, or directly with employers (*acordos coletivos*). These agreements may establish rights that could ultimately benefit employees more or less than the existing statutory rights.

In addition to what may be established in any written employment agreement, under Brazilian labor law, an employee is entitled to the following enumerated rights: annual mandatory salary increase, annual Christmas bonus, annual 30-day paid vacation plus 1/3 vacation bonus, accrued severance fund (FGTS) paid by the employer, transportation voucher for the total cost of the employee's transportation, 15 days of sick leave paid for by the employer, prior notice period in the event of termination, etc.

Furthermore, all employees and employers in Brazil are considered to be represented by unions. The rules agreed to under collective bargaining agreements are binding for employers and employees, whether such employers and employees are associated with their respective unions or not. Some labor unions are more flexible in negotiations, while other unions are much more rigid. It is important to note that, although some conditions (like work shifts and overtime additional pay) may be negotiated and governed by collective bargaining agreements, the suppression of benefits that are established by law (i.e., Christmas bonus, FGTS, or additional payment for unhealthy/hazardous working conditions) may not be waived, even through collective bargaining agreements, regardless of seniority. Thus, any private agreement or negotiation in this regard is considered null and void.

Termination of the employment relationship without just cause should be preceded by written notice of at least 30 days (the employee is entitled to three additional days per worked year, with a maximum of 60 days, totaling 90 days). Failure by the employer to give such prior notice obligates the employer to pay the employee the amount of remuneration that the employee would normally receive in such period. Termination without cause requested by the employer entitles the employee to the following statutory severance: (i) balance of salary; (ii) vacation accrued, paid pro rata based on the employee's right to one month of paid vacation for each year of employment; (iii) vacation bonus accrued, paid pro rata based on the employee's right to one-third of one month's compensation once every year; (iv) Christmas bonus accrued paid pro rata based on the employee's right to an additional 1/12 of monthly compensation for every month of employment (or a corresponding fraction thereof, for periods less than a month, but at least 15 days). This compensation shall be calculated from the previous 1 January to the day of termination; (v) indemnification of 40% over the employee's FGTS balance (the employee must have an FGTS bank account for purposes of such payment by the employer). Other payments may be due if particular situations occur or if certain provisions are included in the employment agreements. Regardless of the form of dismissal, the employee is entitled to receive severance payments by the 10th calendar day following the last day worked, even if the prior notice is paid in lieu.

6. How do local banks and government regulators deal with the treatment and conversion of local currency, repatriation of funds overseas, letters of credit, and other basic financial transactions?

The unit of currency is the Brazilian real (BRL).

The Brazilian Central Bank (BACEN) is charged with registering, following up, and monitoring foreign investments. BACEN has a modern system of registration of foreign investments, the Declaratory Electronic Registration of Foreign Direct Investments, which provides that direct foreign investment must be registered electronically on the online information system of BACEN (SCE-IED). Also, foreign loan transactions and some specific transactions such as the issuance of securities abroad and loans relating to export transactions, can generally be registered through the Electronic Declaration Register of Financial Operations (External Credit) – SCE-Credit, also with no need of prior authorization from BACEN. Foreign investors have the same rights as national investors. Capital investment, repatriation, and profit remittance related to foreign investments duly registered with BACEN may be carried out without prior authorization of BACEN.

There are a few financial declarations with BACEN that may be due by Brazilian companies with foreign direct investment if they meet certain thresholds. One example is the Quarterly Financial Statements Registration with BACEN that must be filed quarterly by all Brazilian companies that have foreign investors as their direct shareholders and hold total assets equal or higher than BRL 300,000,000.00 on each reference date. This and other BACEN declarations that are not complex need to be registered and must be complied with by the Brazilian companies, if they meet the thresholds, in order to avoid fines charged by BACEN.

7. What types of taxes, duties, and levies should a foreign investment in Brazil expect to encounter?

The Brazilian tax system operates in three distinct tiers: federal, state, and municipal, each imposing a variety of taxes, duties, and levies that may vary throughout the country. Despite its complexity, the Brazilian tax system offers unique features that can be appealing for foreign investors. In this respect, we highlight that Brazil does not impose taxes on dividends distributed by Brazilian companies to their shareholders, whether they are residents of Brazil or not. Furthermore, Brazil has entered into several tax treaties for the avoidance of double taxation on income, in addition to tax treaties of other natures (e.g., social security, airline business, etc.).

Please find below a summary of the most representative taxes in Brazil:

CORPORATE INCOME TAX (IRPJ) AND SOCIAL CONTRIBUTION ON NET PROFITS (CSLL)

IRPJ is a federal tax levied at a 15% rate on the taxable income. An additional surplus of 10% on the annual taxable income exceeding BRL 240.000,00 (BRL 20.000,00 per month) may be charged. CSLL is also a federal tax levied at the rate of 9% on the so-called “adjusted result” (similar to the taxable income). Companies can choose between the actual profit method (“lucro real”) or the presumed profit method (“lucro presumido”) to calculate their taxable income, with each method having its own regulations and implications.

Currently, dividends paid out or credited by companies are not subject to income tax, whether paid out to individuals or to companies resident in Brazil or abroad.

In addition, it is worth noting that cross-border transactions between related companies (including companies located in tax havens of those underprivileged taxation regimes) are subject to transfer pricing rules in Brazil for both imports and exports. Finally, thin-capitalization rules establish two different limits, based on the debt-to-equity ratio, for the deduction of interest paid to related parties or to residents in tax havens or in regions with privileged tax regime.

TAXES ON GROSS INCOME - PIS AND COFINS

PIS and COFINS are federal social contributions levied on the company’s gross income. These taxes operate under cumulative and non-cumulative systems.

Under the cumulative system, PIS and COFINS are levied at the rates of 0.65% and 3% respectively. Under the non-cumulative system, the PIS and COFINS burden corresponds to 1.65% and 7.6%, respectively (the total combined rate under this system is 9.25%, but it is possible to subtract the PIS and COFINS credits granted to the taxpayer). In order to calculate the PIS and COFINS credits, the 9.25% should be applied over certain costs and expenses that companies have with local corporate entities.

PIS and COFINS are also levied on imports of goods and services at a general rate of 9.25%. Different rates are applied to the importation of specific goods set forth by the Law.

WITHHOLDING TAX (WHT)

Withholding taxes are imposed on payments made between residents in Brazil and non-residents in Brazil, with rates varying depending on the nature of the transaction and the residency of the beneficiary.

Depending on the type of remittance, a different tax treatment may arise. Taxation varies greatly in accordance with the nature of the cross-border payments (e.g., dividends, JCP, interest, technical services fees, general services fees, royalties, capital gains, financial or operating leasing expenses, etc.).

SPECIAL CONTRIBUTION ON ROYALTIES AND ON TECHNICAL SERVICES AND ADMINISTRATIVE SUPPORT FEES (CIDE/ROYALTIES)

CIDE is a local contribution on royalties and technical service and administrative support fees remitted to non-residents in Brazil, levied at a rate of 10%.

FEDERAL EXCISE TAX ON MANUFACTURED PRODUCTS (IPI)

IPI is a value-added tax imposed on each phase of the manufacturing process, as well as on the imports of goods, with rates varying based on the type of goods manufactured.

TAX ON FINANCIAL TRANSACTIONS (IOF)

IOF is levied on foreign currency exchange, financing agreements, insurance, and on transactions involving securities at different rates. The rates may vary from zero to 25%, depending on the nature of the transaction.

SOCIAL SECURITY CONTRIBUTION (INSS)

Social security contributions are levied on payroll and on salaries payable by companies and beneficiaries respectively. There are also social contributions due to other agencies (SESC, SENAE, etc.).

For beneficiaries, the calculation basis is the gross salary and the applicable rate varies from 7.5% to 14%, depending on the amount received. For companies, the social contribution is imposed on total payroll, and the rate may reach approximately 28%, depending on the company's activities.

STATE VAT (ICMS)

ICMS is a state VAT levied on imports and transactions that imply the legal transfer of goods. ICMS rates vary depending on the state and the nature of the goods. In the State of São Paulo, ICMS is generally levied at an 18% rate. Interstate transactions are subject to reduced ICMS rates (4%, 7%, or 12%, depending on the origin and the State of destiny).

SERVICES TAX (ISS)

ISS is levied on the rendering of services listed in Supplementary Law No. 116/2003, as well as on the imports of services. ISS legislation and regulations are enacted by each municipality. Local laws, however, must follow the Supplementary Law's guidelines.

In accordance with national legislation, the minimum ISS tax rate is 2% and the maximum is 5%, which varies depending on the municipality and on the service rendered. The most common rate in the largest Brazilian cities is 5% (e.g., for most services in the cities of São Paulo and Rio de Janeiro).

Finally, it is worth noting that, recently, Brazil introduced a Tax Reform on consumption taxes, replacing five taxes (PIS, COFINS, IPI, ICMS, and ISS) with a dual Value-added Tax – the so-called Contribuição sobre Bens e Serviços (“CBS”) and Imposto sobre Bens e Serviços (“IBS”). CBS and IBS will be levied on transactions involving merchandise, services, intangibles, and rights, with full implementation set for 2033 after an initial rollout in 2026. During the transition period, current taxes will be collected alongside the new ones, and will be gradually extinguished.

In addition, the Tax Reform provides for the creation of a new tax known as the “Selective Tax,” which will be imposed on the production, import, or sale of goods and services deemed harmful to health and the environment. The Selective Tax will be capped at 1% of the market value of the good/service and will not be levied on electric power and telecommunications services, nor on goods and services subject to reduced IBS/CBS rates.



How comprehensive are the intellectual property laws of Brazil, and do the local courts and tribunals enforce these laws regardless of the nationality of the parties?

Brazil is a signatory of the main international intellectual property treaties (such as the Paris, Bern and Rome Conventions, and TRIPS). Intellectual property rights are regulated by federal laws in Brazil (the Industrial Property Law no 9.279, enacted in 1996 –, which also regulates unfair competition; Federal Law no 9.610, enacted in 1998 – Copyright Law; and Federal Law no 9.609, enacted in 1998 – Software Law).

The Brazilian Patent and Trademark Office (*Instituto Nacional da Propriedade Industrial - INPI*) is the governmental agency in charge of protecting industrial property rights, as well as registering licensing and technology transfer agreements. Local courts and tribunals enforce such laws regardless of the nationality of the parties.

Intellectual Property comprises copyrights (related to literary, scientific and artistic works), software protection, and also industrial property, including trademarks, patents, designs, trade secrets, and other intangible assets.

TRADEMARKS

Under Brazilian law, trademarks must be visually perceptible and distinctive. Brazil allows protection of word, design, a combination of word and design, tridimensional, and positional signs as products, services, certification, and collective trademarks. Geographical indications are also protectable in Brazil.

The protection granted to trademark registrations in Brazil is limited to the Brazilian territory (principle of territoriality) and to the field of activity in which the trademark is used (principle of specialty), except for well-known trademarks (even if not registered in Brazil, in accordance with the Paris Convention), and highly renowned or famous trademarks registered in Brazil (once registered in Brazil, the protection is extended to all classes of products/services).

With Brazil's adherence to the Madrid Protocol on October 2, 2019, anyone-individual or legal entity- can apply at the same time, in a single process and language, for the registration of a trademark in the member countries of the Protocol. The international applications designating Brazil can now be filed using the multiclass system (which is not available for local filings), as well as indicating co-ownership applicants. Furthermore, and while filing through the Protocol, it is no longer mandatory for a foreign applicant to appoint a local attorney, and the registration fees can be paid in a single currency, avoiding conversion problems. Finally, with the Madrid Protocol, the date for the extension of the trademark registration will be unique, even if new countries are included in the registration list for the same trademark.

PATENTS

Under Brazilian law, patents are granted for inventions and utility models (partial or full improvements on physical objects that are of practical use and have industrial applications). The patent protection is obtained by registering the patent with the INPI and application requirements are novelty, industrial use or application, and inventive step or inventiveness.

Patents may be granted for periods of 20 years for inventions and 15 years for utility models. A Brazilian patent grants its holder the power to prevent third parties from producing, using, selling, or importing patented products.

According to Brazilian law, a non-exclusive, compulsory license may be issued on these occasions: (i) national emergency or public interest; (ii) abuse of patent rights; (iii) abuse of economic power; and/or (iv) failure to exploit the patent in the Brazilian market within three years of its granting or failure to adequately serve the Brazilian market.

INDUSTRIAL DESIGNS

Industrial designs are legally defined as “the plastic ornamental shape of an object or the ornamental combination of lines and colors that may be applied to a product, establishing a new and original visual result in its external configuration that must be used in industrial production.”

An industrial design must advance the current state of the art and must be original (so defined as “those that have a distinctive visual configuration from previous objects”). The law especially establishes that the combination of known elements may be original if it results in an original combination. The law excludes from protection any works deemed purely artistic, with no industrial application.

Industrial designs are not subject to automatic substantive examination by the INPI, but the owner of the registration may, at any time during the term of the registration, request examination of the subject matter of the registration as to novelty and originality. They are granted for a 10-year period, renewable for three additional five-year periods.

SOFTWARE

The Brazilian Software Law awards computer programs the same level (with certain exceptions) of protection as copyrights. Therefore, the protection of software in Brazil does not derive from registration and lasts for 50 years following January 1 of the year subsequent to its creation.

Registration of software with the INPI is advisable to guarantee material evidence of priority of use and authorship. Registrations of source code and other technical documents relating to the software may be kept confidential. Violation of software rights is subject to penalties ranging from monetary fines to imprisonment.

The protection offered under the Brazilian copyright legislation is also applicable to the software law. However, with respect to moral rights, the copyright law is not applicable to software, even though the law protects the right of the author to claim authorship at any time and oppose any unauthorized changes that might affect his/her honor or reputation.

The law also regulates the ownership of the software created during an employment or contractual relationship. If the software was created by the employee or the contracted party during contractual and employment relationships, the commercial exploitation will be owned by the employer/contractee.

COPYRIGHT

The Brazilian Copyright Law is mostly based on the French 'droit d'auteur' system and establishes wide protection to authors under moral and patrimonial rights. The scope of the law is clearly shown in the definition of protected intellectual works: they are "the creations of the spirit expressed in any way and fixed in any support, tangible or intangible, known or that may be invented in the future." Copyright protection is independent of registration and lasts for 70 years after the death of the author.

Copyright registration is not mandatory for obtaining protection. However, registration creates a presumption of authorship in case of litigation. In this case, the copyright may be registered with specialized agencies in accordance with the nature of the work, such as the National Library (for literary works), the School of Fine Arts of the Federal University of Rio de Janeiro (for paintings, printings and sculptures), and the Federal Council of Engineering and Architecture (for designs and architectural works), among others.

9. If a commercial dispute arises, will local courts or will international arbitration offer a more beneficial forum for dispute resolution to foreign investors?

Both dispute resolution methods are available to a foreign investor. However, there is no universal answer to this question. The nature of the matter under dispute will help to determine which forum is best for a particular foreign investor. In any event, the Brazilian Arbitration Act (Law No. 9.307/1996), which is inspired by the UNCITRAL Model Law on International Commercial Arbitration, establishes a modern and safe legal framework in favor of arbitration. Within this context, the Brazilian Arbitration Act determines that arbitration awards have the same effects as any judgments rendered by the courts. Hence, the Brazilian Arbitration Act grants foreign investors additional security when entering into agreements with Brazilian-domiciled parties containing clauses that submit any arising conflicts to arbitration. Brazil has also ratified the 1958 New York Convention on the recognition and enforcement of foreign arbitration awards. With the ratification of this convention, Brazil clearly joins the group of countries that have included arbitration in their legal systems and have acknowledged arbitration as an effective means of dispute resolution. All legal instruments for the development and application of arbitration have been enacted in Brazil. The agreements to arbitrate contained in domestic and international instruments are recognized under Brazilian law and arbitration awards are enforceable in Brazil, provided that they are adjudicated in Brazil or are submitted for ratification to the Brazilian Superior Court of Justice for awards rendered abroad.

All legal instruments for the development and application of arbitration have been enacted in Brazil. The agreements to arbitrate contained in domestic and international instruments are recognized under Brazilian law and the awards rendered by arbitration tribunals may be enforced in Brazil, provided that they were adjudicated in Brazil or were submitted for ratification to the Brazilian Superior Court of Justice for awards rendered abroad.

10. **What advice can you provide for how best to negotiate or conduct business in Brazil?**

Brazil not only has one of the largest economies in the world, but also it is one the largest countries (territorially speaking). Such characteristics are clearly reflected in the Brazilian legal system, which derives from a civil law tradition.

Although Brazilian corporate and commercial legislation were heavily influenced by international practice, the Brazilian tax and labor system have unique features which should be considered by foreign investors willing to carry on business in Brazil. Brazil is a very employee-friendly country, as labor courts tend to be extremely protective of the employees. The tax system is quite complex – thus, having comprehensive tax planning is usually mandatory for a successful business in Brazil.

Another important item to be considered when deciding to invest in Brazil is the location of such investment. While the South and Southeast regions are quite developed and economically self-sustainable, other regions are less well-developed. Because of that, transport and logistic costs should always be taken into account when deciding where to conduct business.

British Virgin Islands

FIRM

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Campbells is a leading full-service offshore law firm established nearly 50 years ago. From our three offices, we provide comprehensive corporate and litigation advice and services to clients worldwide concerning Cayman Islands and British Virgin Islands law.

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1. What role does the government of the British Virgin Islands play in approving and regulating foreign direct investment?

The British Virgin Islands (commonly referred to as “BVI”) is a British Overseas Territory. As a British Overseas Territory, the British Virgin Islands are under the jurisdiction and sovereignty of the United Kingdom. The British Virgin Islands are internally self-governing (with its own independent legal system), with the United Kingdom retaining responsibility for defence and foreign relations.

The BVI does not have a specific foreign direct investment regime, but the government of the British Virgin Islands plays a critical role in attracting, approving, and welcoming foreign direct investment into the British Virgin Islands, particularly in the real estate and fund sectors. There has been significant activity in recent years in the fintech and virtual assets space.

In 2021 and 2022 the BVI government introduced the Business Licensing Act and the Virgin Islands Investment Act (currently not in force) in order to provide a regulatory framework for investments in the BVI. The legislation is proposed to require any foreign investor proposing to invest in the BVI to make an application to the government before such investment is made and the government will take into account the benefit of the investment into the BVI, in particular by considering:

- The contribution of the investment to the national development, economic growth, public policy, and national security objectives of the BVI;
- The contribution of the investment to the advancement of persons who have been socially, economically, or educationally disadvantaged by past discriminatory laws and practices;
- The contribution of the investment to the implementation of programmes and policies aimed at redressing social and economic imbalances in the BVI, including gender-based imbalances;
- The contribution of the investment towards increasing employment creation in the BVI;
- The contribution of the investment to the advancement of the development of a geographical area of low social and economic development;
- The contribution of the investment to the transfer of technological and managerial skills, knowledge, and innovation;

- The contribution of the investment to value addition to the natural resources, manufacturing, and services sectors of the BVI;
- The extent to which the investment will procure goods and services from the small to medium enterprises sector and belonger suppliers in general;
- The impact on the environment and contribution to environmental benefits; and
- Any other factors the Virgin Islands Trade Commission may prescribe.

The BVI government also introduced the National Economic Investment Fund, to which investors with qualifying investments will be required to contribute. The Fund will finance infrastructure development, environmental protection, and development and social programmes in the BVI.

2. **Can foreign investors conduct business in the British Virgin Islands without a local partner? If so, how does the British Virgin Islands government regulate commercial joint ventures between foreign investors and local firms (include information on common corporate structures)?**

In limited circumstances, foreign investors may be able to obtain governmental approval to conduct local business without a local partner. By way of background, in order to carry out business in the British Virgin Islands, a trade licence issued under the Business, Professions and Trade Licences Act 1989 must be obtained from the Trade and Investment Promotion Department subject to limited exceptions, for example in the area of company management services. In order to be able to work in the British Virgin Islands, a work permit must be obtained. Employers are obliged by law to give preference to British Virgin Islands citizens applying for employment if that person is as qualified as a foreigner applying for that role. In practice, foreign investors are encouraged to involve a local partner in their venture. The choice of local partners is at the absolute discretion of the foreign investor.

A joint venture would normally use a BVI Business Company registered in the British Virgin Islands as a corporate vehicle. The principal company law statute in the British Virgin Islands is the BVI Business Companies Act (as revised).

Advantages of Using a BVI Company:

EASE OF INCORPORATION

A BVI Business Company can be incorporated within 24 hours of the British Virgin Islands registered agent having received all of the required anti-money laundering due diligence information on the proposed shareholders, directors, and ultimate beneficial owners of the company. The costs of incorporating a British Virgin Islands company are low in comparison to other offshore jurisdictions. Once a British Virgin Islands company is incorporated, there is a requirement to pay an annual government licence fee plus any standard fees charged by the registered agent. The affiliate of the Meritas member firm Campbells Legal (BVI) Limited offers company formation and maintenance services through its licensed registered agent affiliate.

FLEXIBILITY

The BVI Business Companies Act (as revised) is unique in the flexibility it provides. For example, the constitutional documents (the memorandum and articles of association) of a BVI Business Company can be drafted to accommodate a specific transaction or shareholders' agreement or can be amended to include required provisions from a particular stock exchange.

NO RESIDENCY REQUIREMENTS FOR DIRECTORS

There is no requirement for a BVI Business Company to have British Virgin Islands resident directors (subject to a limited exception for financial services providers). This, of course, does not preclude a client from choosing to have BVI resident directors should they need to for tax purposes outside the British Virgin Islands.

DIRECTORS OF JOINT VENTURE COMPANIES

The basic statutory duty of a director is to act in a manner that he believes to be in the best interests of the BVI Business Company. This can often be an issue for a director of a joint venture vehicle when appointed by a particular shareholder. However, this is addressed in the BVI Business Companies Act (as revised) and provides that a specific provision can be drafted into the articles of association of the BVI Business Company permitting a director of a joint venture company to act in the best interests of one or more shareholders regardless of whether such action is in the best interest of the company itself.

DIVIDENDS AND DISTRIBUTIONS

One of the major advantages of using a BVI Business Company in your global structure is the ease with which profits or assets can be released from the BVI Business Company to the shareholders. In order to declare a dividend or distribution, the directors of the BVI Business Company are

only required to declare that (i) the company's assets exceed its liabilities and (ii) the company is able to pay its debts as they fall due. There is no requirement for the BVI Business Company to have distributable reserves or profits before a distribution can be paid out. Distributions and dividends can be paid either in cash or in specie.

3. **What laws influence the relationship between local agents and distributors and foreign companies?**

The main law to consider from an investment fund and securities business perspective (including the carrying on of investment management and advisory services) is the BVI Securities and Investment Business Act (as revised) ("SIBA").

In very broad terms, any BVI entity which provides such services will be subject to regulation in the BVI. Foreign managers appointed to BVI funds are generally not subject to any local regulatory requirements in the BVI (provided they do not carry on business in or from within the BVI).

Foreign funds that wish to undertake marketing to individuals physically present in the BVI would need to apply for recognition by the BVI FSC in accordance with SIBA (an exception applies for reverse solicitation).

A foreign fund can generally market to a BVI entity without restriction provided the marketing takes place outside of the BVI.

Otherwise, SIBA provides that no security may be offered to the public in the BVI for purchase or subscription unless:

- The offer is contained in a prospectus that complies with SIBA and is registered with the BVI FSC; and
- The offer complies with the requirements of the Public Issuer's Code; or
- An exemption is available.

Exemptions apply for offers made to:

- The government of the BVI;
- A person having a "close connection" with the issuer—e.g., an affiliate of the issuer, a director or employee of the issuer, or a relative of such a director or employee; or

- A “qualified investor” which includes certain entities which are regulated by the BVI FSC, including banks, insurance companies, licensees under SIBA and public, professional, and private mutual funds, a company, any securities of which are listed on a recognised exchange, and persons defined as “professional investors” under SIBA.

In practice, if foreign funds wish to market to BVI investors, they typically seek to limit such marketing activities to BVI entities (rather than individuals physically present in the BVI) and ensure the marketing takes place entirely outside of the BVI or they rely on reverse solicitation to avoid local regulatory filings and other requirements in the BVI.

4. **How does the British Virgin Islands government regulate proposed merger and acquisition activities by foreign investors, and are there any areas of the economy where they are prohibited (e.g., natural resources, energy or telecommunications)?**

The BVI does not have a merger control regime in respect of foreign direct investment.

Entities regulated by the FSC may be required to obtain prior written approval from the FSC in order to be able to proceed with the relevant transaction subject to certain thresholds.

Sector-specific regulatory approvals, including under the Telecommunications Act (as revised) and the Non-Belongers Land Holding Regulation Act (as revised), may be required for transferring, acquiring, or disposing of shares and property in a company that holds real property or a telecommunications provider.

5. **How do labour statutes regulate the treatment of local employees and expatriate workers?**

The constitutional guarantee against discrimination specifically allows for the regulation of employment relations in such a manner that allows local employees to be afforded preferential treatment. Where two or more candidates apply for a job and one of the candidates is a local applicant who qualifies for the job and has no disciplinary issues, preferential treatment dictates that an offer be made to the local applicant over the other candidate(s).

Expatriate workers must possess a valid work permit, regardless of whether it is paid or unpaid, full-time or part-time. Before the employment of an expatriate will be permitted, that individual's qualifications and experience must be proven to be necessary and sufficient for the position to be filled. Also, it must be proven that there is no local who is able and available to fill that position. Work permits are obtainable for one-year periods, although this is currently under review and is likely to be changed to a longer period for certain professions.

6. How do local banks and government regulators deal with the treatment and conversion of local currency, repatriation of funds overseas, letters of credit, and other basic financial transactions?

The US dollar is legal tender in the British Virgin Islands. There is no exchange control or restriction on the movement of US dollar funds into or out of the British Virgin Islands or on their conversion to other currencies.

7. What types of taxes, duties, and levies should a foreign investment in the British Virgin Islands expect to encounter?

In the British Virgin Islands, there is no income tax, corporate or personal. However, payroll taxes are levied on employees of businesses physically based and operating in the British Virgin Islands.

8. How comprehensive are the intellectual property laws of the British Virgin Islands, and do the local courts and tribunals enforce these laws regardless of the nationality of the parties?

The British Virgin Islands do have comprehensive intellectual property laws including modernized trademark legislation and the direct registration of trademarks in the BVI. Proprietors of UK-registered designs enjoy the same rights and privileges in the BVI as they do in the UK without any need to re-register. Designs registered in the UK automatically extend to the BVI for the life of the UK registration. The BVI also allows for the indirect registration of patents. An amended version of the UK's Copyright

Act of 1956 was extended to the BVI under The Copyright (Virgin Islands) Order 1962 and continues to be in effect today. Such laws are enforceable in the British Virgin Islands regardless of the nationality of the parties.

9. **If a commercial dispute arises, will local courts or international arbitration offer a more beneficial forum for dispute resolution to foreign investors?**

Both forums are available to a foreign investor. There is no universal answer to this question although litigation remains the primary dispute resolution mechanism in large commercial disputes. The nature of the matter under dispute will help to determine which forum is best for a particular foreign investor. The courts in the British Virgin Islands follow English common law and the ultimate court of appeal is the London-based Privy Council.

The British Virgin Islands Arbitration Act incorporates the UNCITRAL Model Law which ensures that British Virgin Islands arbitration is in accordance with international standards. The British Virgin Islands International Arbitration Centre opened its doors on 16 November 2016. The modern facilities match the new legal framework introduced by the Arbitration Act 2013 that came into force in 2014, backed up by the BVI's accession to the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards and the adoption of Arbitration Rules effective from 16 November 2016.

10. **What advice can you provide for how best to negotiate or conduct business in British Virgin Islands?**

It is advisable to seek out professional advice on how best to accomplish your investment objectives in the British Virgin Islands. A reputable commercial attorney is a good place to start. This attorney can give advice on the regulatory regime that governs what the investor would like to accomplish in the British Virgin Islands.

Cayman Islands

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Campbells is a leading full service offshore law firm established over 50 years ago. From their offices in the Cayman Islands, the British Virgin Islands and Hong Kong they provide comprehensive corporate and litigation advice and services to clients worldwide in relation to Cayman Islands and British Virgin Islands law.

The firm is regularly trusted to advise some of the most prominent names in finance, investment and insurance and is frequently involved in the largest and most complex transactions, disputes and insolvencies in both jurisdictions. Campbells' legal team is internationally recognised for its expertise by leading directories and trade publications and it is also proud to be actively involved in the development of legislation, sitting on critical government legislative committees. Campbells is proud to be a member of the international legal network Meritas.

Campbells offers a comprehensive range of corporate services in the Cayman Islands and the British Virgin Islands. With the increasing corporate governance and accountability demands companies are facing, it is more important than ever to have an experienced and reliable corporate services provider behind you. Our Cayman Islands affiliate, Campbells Corporate Services Limited, holds a full trust licence issued by the Cayman Islands Monetary Authority and provides comprehensive company management and trust services to both local and offshore clients. Our BVI affiliate, Campbells Corporate Services (BVI) Limited, holds a Class III trust licence issued by the British Virgin Islands Financial Services Commission and provides a full suite of company management services to international clients.

1. **What role does the government of the Cayman Islands play in approving and regulating foreign direct investment?**

The Cayman Islands is a British Overseas Territory. As a British Overseas Territory, the Cayman Islands are under the jurisdiction and sovereignty of the United Kingdom. The Cayman Islands are internally self-governing (with its own independent legal system), with the United Kingdom retaining responsibility for defence and foreign relations.

The Cayman Islands does not have a general foreign direct investment regime and there are no restrictions on foreign ownership of land or real estate in the Cayman Islands. However, a distinction is made between those businesses that carry on business locally and those businesses that carry on business outside the Cayman Islands. This is dealt with in further detail below.

The majority of Cayman Islands entities that are engaged in cross-border transactions are exempted companies, LLCs, exempted limited partnerships, and trusts.

In recent years, the Cayman Islands has faced pressure from a number of international groups such as the OECD and FATF concerning, in particular, base erosion and profit shifting and the establishment of beneficial ownership registers. The Cayman Islands government has responded swiftly to such requirements introducing the necessary legislative measures such as economic substance requirements, a beneficial ownership registration regime, and regulations for private funds.

The Cayman Islands Monetary Authority (CIMA) is the primary regulator responsible for the regulation and supervision of the financial services sector in the Cayman Islands.

2. **Can foreign investors conduct business in the Cayman Islands without a local partner? If so, how does the Cayman Islands government regulate commercial joint ventures between foreign investors and local firms (include information on common corporate structures)?**

Specific rules apply to foreign ownership and control of local businesses. The Local Companies (Control) Act (as revised) requires that 60% of the ownership interests in the local business be held by Caymanians and that there be Caymanian control of such local businesses.

Otherwise, unless one of the limited exemptions applies, a foreign investor looking to own or control a local business will require the grant of a local companies control licence by the Department of Commerce & Investment (DCI). These Caymanian ownership and local licensing rules do not apply to businesses that carry on business outside of the Cayman Islands.

Any investment into locally licensed and regulated businesses is subject to a “fit and proper” person assessment by CIMA under applicable regulatory laws. CIMA will closely scrutinise any applicant that is resident in a “high-risk jurisdiction” for anti-money laundering purposes.

The Trade and Business Licensing Act requires that certain types of businesses pay an annual fee for a Trade and Business License without which they may not conduct business in or from the Cayman Islands.

Certain types of financial services businesses are exempted from the above laws. They include businesses that are licensed or registered pursuant to:

- The Banks and Trust Companies Act
- The Companies Management Act
- The Mutual Funds Act
- The Private Funds Act
- The Securities Investment Business Act
- The Insurance Act

However, such businesses must be licensed or registered by CIMA.

If an entity is doing business in the Cayman Islands, it will be incorporated as an Ordinary Company pursuant to the Cayman Islands Companies Act (the “Companies Act”). These companies may be designated as resident and used for local purposes within the Cayman Islands, or as non-resident and used for offshore purposes.

Every ordinary company, whether local or non-resident, must hold an Annual General Meeting of shareholders. Within 21 days after the Annual General Meeting, the company must list all persons who are members of the company on the 14th day after the Annual General Meeting and those who have ceased to be members of the company since the last list was made. The list must also contain details of the company’s share capital, names and addresses of directors and officers of the company, and the nature of the company’s business. The list must be filed with the Registrar of Companies (the “Registrar”) in January of each year, together with the

appropriate annual fee (which varies depending on whether the company is classed as “resident” or “non-resident” and on the authorized share capital (between kyd\$300 and kyd\$1040 (approx. usd\$365.85 and usd\$1,268.29)).

In addition:

- The company is required to maintain at its registered office and open to public inspection, a Register of Members containing the names and addresses of its past and present shareholders. If required, nominees may be used and the information contained in the Register will relate to the nominees and not to the beneficial owners.
- The company is required to maintain at its registered office, a register containing the names and addresses of its directors, including alternate directors and officers. A copy of such register shall be sent to the Registrar (including any changes thereto within thirty days of any such change).
- The name of the company must include the word “Limited” or “Ltd.”
- All Cayman Islands companies except those that are “out of scope” (see below) are required to implement and maintain beneficial ownership registers (“UBO Registers”) that record details of the individuals who ultimately own or control 25% or more of the equity interests or voting rights, or who have rights to appoint or remove a majority of the company directors, together with details of any direct intermediate holding company. The information contained in the UBO Register must be reported to the Competent Authority in the Cayman Islands (the Registrar).

The Competent Authority will keep the register on the centralised beneficial ownership digital search platform maintained by the Competent Authority. The Registrar will keep all information on the centralised platform confidential. The centralised platform will only be searchable where a proper and lawful request has been made by either a law enforcement authority of a country that has entered into an agreement with the Cayman Islands or by certain Cayman Islands regulatory bodies, such as CIMA. Currently, the only country to have entered into reciprocal arrangements is the United Kingdom.

Companies are “out of scope” if they are:

1. Listed on the Cayman Islands Stock Exchange or an approved stock exchange;
2. Registered or hold a licence under a regulatory law;

3. Managed, arranged, administered, operated, or promoted by an approved person as a special purpose vehicle, private equity fund, collective investment scheme, or investment fund (including where the vehicle, fund, or scheme is a Cayman Islands exempted limited partnership);
4. Regulated in a jurisdiction whose Anti-Money Laundering legislation is deemed to be equivalent to the Anti-Money Laundering legislation of the Cayman Islands;
5. A general partner of a vehicle, fund, or scheme referred to in paragraph 3, which vehicle, fund, or scheme (i) is registered or holds a licence under a regulatory law; or (ii) is managed, arranged, administered, operated, or promoted by an approved person;
6. Holding directly a legal or beneficial interest in the shares of a legal entity that holds a licence under the Banks and Trust Companies Act, the Companies Management Act, the Insurance Act, Part III of the Mutual Funds Act, or the Securities Investment Business Act.

If an out of scope company has a direct or indirect subsidiary in which it owns or controls 75% or more of the equity interests or voting rights or has the right to appoint or remove a majority of the company directors, that subsidiary will also be out of scope.

Out of scope companies are not required to maintain UBO Registers but must provide written confirmation identifying grounds for exemption in a prescribed form with the Competent Authority.

If a company does not have any registrable persons, then a nil return should be entered in the company's UBO Register. A company is required to update the UBO Register within 30 days of becoming aware of a change to the information contained in it.

3. What laws influence the relationship between local agents and distributors and foreign companies?

Companies incorporated outside the Cayman Islands that establish a place of business in the Cayman Islands or commence carrying on business in the Cayman Islands are required to register under Part IX of the Companies Act.

Such registration must take place within one month of establishing the place of business and documentation provided to the Registrar includes:

- a. A certified copy of the foreign company's certificate of incorporation, or the equivalent document issued by the relevant authority as evidence of its incorporation;
- b. A certificate of good standing issued by the relevant authority dated within one month of the filing;
- c. A certified copy of the constitutional documents of the foreign company;
- d. A list of its directors together with the address of each director and the date of appointment and, where relevant, the date of the director's resignation;
- e. The names and addresses of one or more persons resident in the Cayman Islands authorised to accept on its behalf service of process and any notices required to be served on it.

Upon payment of the appropriate fee, the Registrar of Companies will issue a certificate that the company is registered in the Cayman Islands under the Companies Act.

The primary legislation regulating securities and investment business in the Cayman Islands is the Securities Investment Business Act (as revised) ("SIBA"), which is supervised by CIMA. The SIBA provides for the licensing and control of persons engaged in "securities investment business" in or from the Cayman Islands, and therefore it would be necessary for a foreign company to consider the applicability of the SIBA if engaging in securities investment business in or from within the Cayman Islands.

Securities investment business includes, amongst other activities:

- Dealing in securities (e.g., buying, selling, subscribing for, or underwriting securities as agent or principal);
- Arranging deals in securities (e.g., arranging a deal for investment in securities);
- Managing securities (e.g., discretionary portfolio management); and
- Advising on securities (e.g., advising an investor on potential securities investments).

"Securities," for the purposes of SIBA, include shares, certain partnership interests, debt instruments, derivative contracts, and virtual assets.

4. **How does the Cayman Islands government regulate proposed merger and acquisition activities by foreign investors, and are there any areas of the economy where they are prohibited (e.g., natural resources, energy or telecommunications)?**

Acquisitions of Cayman Island companies are typically structured through one of the following means under the Companies Act:

- A statutory merger
- A tender offer together with a squeeze-out
- A scheme of arrangement

The most commonly used acquisition method is a merger and the Companies Act provides for a statutory merger regime.

Each company participating in a merger or consolidation is referred to in the legislation (and below) as a “constituent company.” It is possible to merge or consolidate two or more companies. In a “merger,” one of the merging constituent companies survives (the “surviving company”) and is vested with the undertaking, property, and liabilities of the other constituent companies. In a “consolidation,” none of the constituent companies survives and, instead, a new consolidated company (the “consolidated company”) is vested with the undertaking, property, and liabilities of the constituent companies.

Some or all of the shares, whether of different classes or of the same class, in each constituent company may be converted into or exchanged for different types of property (consisting of shares, debt obligations, or other securities in the surviving company or consolidated company or any other corporate entity, or money or other property, or a combination thereof) as provided in the plan of merger or consolidation.

A Cayman Islands company may merge or consolidate with a foreign company provided that the Cayman Islands constituent company complies with the above requirements and, in addition, with respect to the foreign company:

1. The merger or consolidation is permitted or not prohibited by the constitutional documents of the foreign company and by the laws of the jurisdiction in which the foreign company is incorporated, and those laws and any requirements of the constitutional documents have been or will be complied with;

2. No petition or other similar proceeding has been filed and remains outstanding, and no order has been made or resolution adopted to wind up or liquidate the foreign company in the jurisdiction in which the foreign company is incorporated;
3. No receiver, trustee, administrator, or other similar person has been appointed in any jurisdiction and is acting in respect of the foreign company, its affairs or its property, or any part thereof;
4. No scheme, order, compromise, or other similar arrangement has been entered into or made in any jurisdiction whereby the rights of creditors of the foreign company are suspended or restricted;
5. Where the surviving company is to be a Cayman Islands company, the foreign company is able to pay its debts as they fall due and the merger or consolidation is bona fide and not intended to defraud unsecured creditors of the foreign company;
6. Where the surviving company is to be a Cayman Islands company, the transfer of any secured interest granted by the foreign company to the surviving or consolidated company has been approved by secured creditors and complies with the memorandum and articles and the laws of the jurisdiction of the foreign company;
7. Where the surviving company is to be a Cayman Islands company, the foreign company will, upon the merger or consolidation becoming effective, cease to be incorporated, registered, or exist under the laws of the relevant foreign jurisdiction; and
8. There is no public interest reason against the merger or consolidation.

The above requirements can be satisfied by a declaration of a director of the surviving or consolidated company that such requirements have been met, along with a statement of assets and liabilities.

As soon as a merger or consolidation becomes effective:

1. In the case of a consolidation, the new memorandum of association and articles of association filed with the plan of consolidation shall immediately become the memorandum of association and articles of association of the consolidated company and, in the case of a merger, if the memorandum and articles of association have been amended in the Plan, the Registrar shall register the amended memorandum and articles of association;

2. The rights, the property of every description including choses in action, and the business, undertaking, goodwill, benefits, immunities, and privileges of each of the constituent companies, shall immediately vest in the surviving or consolidated company; and
3. Subject to any specific arrangement entered into by the relevant parties, the surviving or consolidated company shall be liable for and subject to, in the same manner as the constituent companies, all mortgages, charges, or security interests, and all contracts, obligations, claims, debts, and liabilities of each of the constituent companies.

Mergers and consolidations are subject to the following restrictions:

1. The plan of merger or consolidation may take effect either when registered by the Registrar or may specify a future date on which the merger or consolidation takes effect (but not later than 90 days after registration);
2. The plan of merger or consolidation may provide for termination of the plan or amendment of the plan prior to the merger or consolidation taking effect;
3. A dissenting member of a constituent company shall be entitled to the fair value of his shares upon dissenting from a merger or consolidation. Significantly, following the giving of a notice of dissent, a dissenting member will cease to have any of the rights of a member except the right to be paid the fair value of his shares and certain other limited rights specified in the Companies Act;
4. Neither a segregated portfolio company nor a company not limited by shares can be merged or consolidated; and
5. A Cayman Islands company licensed or regulated by the Cayman Islands Monetary Authority may need to comply with additional obligations prior to merger or consolidation.

A scheme of arrangement is a court-approved compromise or arrangement that can be used to effect a takeover. A shareholder scheme must be approved by 75% in nominal value of the shareholders, or class of shareholders, present and voting either in person or by proxy at the shareholders' meeting and then sanctioned by the court. Similar to a statutory merger/consolidation, a scheme, once sanctioned, is binding on all shareholders (or relevant class of shareholders, as applicable) and the target.

Aside from the local ownership rules for investments into local businesses and the “fitness and proprietary” assessment for investments in regulated businesses, other considerations for a foreign investor include:

- Change of control rules applicable to entities regulated by CIMA under the Banks and Trust Companies Act (as revised), the Insurance Act, 2010, and the Mutual Funds Act (as revised). Generally, CIMA’s prior approval must be obtained for acquisitions of new or existing equity in such regulated entities.
- Sector-specific regulatory approvals, including under the Utility Regulation and Competition Act (as revised), are also relevant. This regulates competition between local utility service providers in the information, communications, technology, energy, fuel, and water sectors. The approval of the Utility Regulation and Competition Office (OfReg) must be obtained before closing on transactions involving such entities.
- Every Cayman Islands company must maintain a registered office in the Cayman Islands where certain statutory registers and records are kept. In the case of exempted companies, the registered office must be maintained by a licensed corporate services provider (CSP) who will be required to undertake client due diligence and maintain the beneficial ownership register considered above.
- For any target company with shares listed on the Cayman Islands Stock Exchange, it will be necessary to consider the requirements under the CSX Code on Takeovers and Mergers and Rules Governing Substantial Acquisitions of Shares.

5. How do labour statutes regulate the treatment of local employees and expatriate workers?

The employment of staff in the Cayman Islands is regulated primarily by the Labour Act and the Immigration Act.

The main provisions of the Labour Act include:

- A requirement to provide a written statement of working conditions.
- Statutory provisions regarding leave including minimum entitlement, public holiday pay, sick leave, and maternity leave.
- Provisions regarding the standard work week and overtime pay.
- Provisions regarding unfair dismissal.
- Provisions regarding health, safety, and welfare at work.

The Labour Act sets out the basic minimum standards that must be upheld in the employment of any workers in the Cayman Islands and applies equally both to local Caymanian workers and foreign expatriate workers.

In particular, the Labour Act requires that a written statement of the conditions of employment is provided to every employee stating:

- The job title, a brief statement of the general responsibilities and duties of the employee and any special requirements or conditions of the job;
- The regular hours of work, together with any particular terms or conditions relating to the hours of work;
- The rate of remuneration, or the method by which it may be calculated;
- The intervals at which remuneration is to be paid;
- In the case of employees whose pay is normally stated on some basis other than hourly, the hourly equivalent save that in the case of persons remunerated wholly or in part by commission, the rate of commission should be stated;
- The period of employment, if other than indefinite;
- The period of probation, if any;
- The employee's holiday entitlement or the method by which it may be calculated;
- The employee's entitlement to sick leave; and
- The length of notice which the employee is obliged to give and is entitled to receive to terminate the contract of employment.

In summary, the Immigration Act provides that:

- All staff present in, or moving to, the Cayman Islands to work and who are not exempted by virtue of holding Caymanian status or residency with the right to work, are required to obtain a gainful occupation licence issued by the Immigration Department (a work permit). All applications are considered by the Immigration Department and must be approved prior to arrival on the Island. It is usual for the employer to process the work permit application and the employer is responsible for paying the fee for the work permit.
- Work permits can be issued for a period of one to three years and are granted in respect of a specific position with a specific employer. This means that a work permit holder is not entitled to work in any other capacity on the Island under such permit and, indeed, any significant change in that individual's role within the employer's organisation must be approved by the Immigration Department.

- The emphasis in the Cayman Islands is on the recruitment and training of local staff to ensure development of local expertise. As such, Caymanian workers are given preference in recruitment. An employer must demonstrate to the Immigration Authorities that the position could not be filled by a Caymanian. This requires advertisement of the position and, depending on the position, registration with the Department of Employment Relations.
- Work permits are currently processed by two government boards, depending on the size of the Company, as follows:
 - The Work Permit Board is responsible for applications from businesses employing less than 15 persons on work permits.
 - The Business Staffing Plan Board is responsible for applications from companies employing 15 or more persons on work permits.

6. How do local banks and government regulators deal with the treatment and conversion of local currency, repatriation of funds overseas, letters of credit, and other basic financial transactions?

The Cayman Islands has its own currency, the Cayman Islands Dollar (“CI\$”); however the United States Dollar (“US\$”) is readily accepted in local transactions.

The conversion rate between CI\$ and US\$ (pegged at CI \$1 = US \$1.2) has existed since the Currency Act of 1974 was enacted.

There is no local exchange control in the Cayman Islands.

7. What types of taxes, duties, and levies should a foreign investment in the Cayman Islands expect to encounter?

The Cayman Islands are tax-neutral (there is no income tax, capital gains tax, or corporation tax). Further, the government will issue an undertaking that a holding company, if correctly structured, will remain free of income tax, capital gains tax, or corporation tax imposed by any future laws for a period of 20 years (which may be extended for another 10 years). Stamp duty, although imposed, can generally be avoided by keeping original documentation outside the Cayman Islands and, where payable, is normally capped at relatively low levels. Likewise, there are no foreign exchange controls. Save in respect of “economic substance” described

below, there is no requirement for pure holding companies to be registered with or regulated by any Cayman Islands authority or governmental body. In addition, there is no particular form required for financial statements or for such to be audited, so parties may choose the most appropriate accounting standards.

As a result of the OECD'S global Base Erosion and Profit Shifting ("BEPS") initiative and the EU Code of Conduct Group substance requirements modelled on BEPS Action 5, the International Tax Co-operation (Economic Substance) Act (as revised) ("ES Act") came into force in the Cayman Islands on 1 January 2019, together with related Regulations and Guidance Notes. As a member of the 141 BEPS Inclusive Framework jurisdictions, the Cayman Islands is committed to meeting substantial activity requirements put in place by the OECD Forum on Harmful Tax Practices.

Under the ES Act, certain vehicles formed or registered in the Cayman Islands are required to have economic substance in the Cayman Islands. The requirement to show economic substance is primarily aimed at preventing base erosion and profit shifting.

The ES Act applies to various "relevant entities" which include both Cayman Islands incorporated and foreign companies registered in the Cayman Islands. Investment funds are specifically excluded from the definition of relevant entity and, as such, they are not within the scope of the ES Act. The definition of "investment fund" is broad and will include a wide range of investment funds, including those that are not licensed or registered with the Cayman Islands Monetary Authority. The ES Act does not apply to "domestic companies" (as defined in the ES Act). In addition, entities that are tax resident outside of the Cayman Islands do not need to comply with the economic substance requirements but will need to provide satisfactory evidence of their tax residency.

Relevant entities that are subject to the ES Act will be required to satisfy the economic substance test (the "ES Test") if they are carrying on any "relevant activities."

Relevant activities include the following types of business:

- Banking
- Fund management
- Insurance
- Intellectual property
- Shipping
- Financing and leasing
- Headquarters

- Holding company
- Distribution and service centre.

Where an entity is subject to the economic substance regime, it will need to demonstrate that it complies with the requirements of the ES Act for each relevant activity.

All Cayman Islands entities must notify the Registrar of Companies annually by way of an Economic Substance Notification (“ESN”) whether they are in scope or out of scope for ES Reporting including the reasons that they are either in or out of scope as a prerequisite to filing their annual return.

The notification obligation is separate from the timing of compliance with the ES Test for entities that are relevant entities conducting relevant activities. Such entities are required to satisfy the ES Test and prepare and submit a report electronically via the Cayman Islands Department for International Tax Cooperation Portal on an annual basis.

The ES Test may be met by a relevant entity by:

- (i) Conducting core income-generating activities;
- (ii) Being directed and managed in an appropriate manner in the Cayman Islands; and
- (iii) Having an adequate amount of expenditure, physical presence, and employees or other personnel in the Cayman Islands.

A pure equity holding company is a company that holds only equity participations in other entities and earns only dividends and capital gains. As such they are subject to a reduced ES Test which will be satisfied if the relevant entity confirms that:

- It has complied with all applicable filing requirements under the Companies Act (as revised); and
- It has adequate human resources and adequate premises in the Cayman Islands for holding and managing equity participations in other entities.

Pure equity holding companies may engage their registered office service provider to satisfy these reduced economic substance requirements, provided that such company is passively holding equity interests in other entities.



How comprehensive are the intellectual property laws of the Cayman Islands, and do the local courts and tribunals enforce these laws regardless of the nationality of the parties?

The Cayman Islands offers a direct registration system for trade marks in accordance with the Trade Marks Act (as revised). The characteristics of the registration system include:

- The Nice Classification system as a mode of classifying goods and services under a trade mark
- Multi-class filings
- Criteria for assessing the registrability of a trade mark
- Disclaimer and limitation practices as a condition to registration in certain cases
- Trade mark opposition period of 60 days
- Provisions for the registration of certification and collective trade marks
- An initial 10-year duration and renewal term

Annual fees are due every 1 January for the life of a trade mark registration.

There also exists the Designs Rights Registration Act (as revised) which enables proprietors of UK and EU Registered Design Rights to extend their Registered Design Rights to the Cayman Islands and renew such rights for so long as they are renewed and valid in the UK or the EU. There is a requirement to pay annual fees every 1 January for the life of the registration.

The Cayman Islands permits the indirect registration of patents pursuant to the Patents Act (as revised). Once a UK or EP(UK) patent is granted, an application can be made to extend the scope of protection. The length of protection is dependent on that of the underlying UK or EP(UK) patent. An annual fee must be paid for the life of the patent in order to keep registered rights in good standing.

The Copyright (Cayman Islands) Order, 2015 and the Copyright (Cayman Islands) (Amendment) Order, 2016 (the "Orders") came into force on 30 June 2016. They extend certain provisions of the UK Copyright, Designs and Patents Act 1988 to the Cayman Islands.

The regime provides modern Intellectual Property (“IP”) protection for:

- Original literary work, dramatic, musical, or artistic work;
- Computer software and databases;
- Sound recordings, films, or broadcasts; and
- The typographical arrangement of published editions.

The Orders provide clarity with respect to copyright protection in the Cayman Islands, including with respect to:

- Subsistence, ownership, and duration of copyright;
- Rights of copyright owners, including authorship and duration of copyright;
- Permissible acts such as private use, research, news reporting, lawful use of computer programs, etc.;
- Copyright licensing and assignment;
- Moral rights (the right to be identified as the author of a work and related rights); and
- Remedies for infringement and enforcement.

The copyright regime now supplements other forms of IP protection for Cayman Islands companies, especially in relation to publications (including offering documents/private placement memoranda), marketing materials, product warnings and instructions, websites, logos, etc.

Enhanced criminal sanctions for copyright infringement will also assist brand owners seeking to prevent trade in counterfeit goods.

9. **If a commercial dispute arises, will local courts or will international arbitration offer a more beneficial forum for dispute resolution to foreign investors?**

Whether foreign investors would be better served by resolving their commercial disputes in the Cayman Islands courts or by international arbitration will depend upon the nature of the relevant dispute and the parties to it.

Litigation remains the dominant form of dispute resolution in the jurisdiction. There are a number of historical, legal, and practical reasons for this. The law of the Cayman Islands is a combination of statute and common law

and is based heavily on English law. The highest appellate body is the Judicial Committee of the Privy Council based in London. The Cayman Islands' judicial system is robust and stable, and the judiciary is experienced and well-respected internationally. These considerations promote confidence among foreign investors that disputes will be resolved by the Cayman courts in a just, efficient, and cost-effective manner.

Increasingly, local and foreign parties are utilising arbitration to resolve commercial disputes, particularly following the enactment of the Arbitration Act (2012 Revision) ("2012 Act") to replace its outdated predecessor. The 2012 Act is based on the UNCITRAL Model Law on International Commercial Arbitration and provides a modern framework for the resolution of local and international commercial disputes by arbitration. The Cayman Islands' judiciary is supportive of arbitration and its guiding principles, which are enshrined in the 2012 Act.

More recently, the Cayman Islands Mediation and Arbitration Centre (CI-MAC) has opened to provide the institutional administration of arbitral proceedings locally and world-class hearing facilities.

Foreign investors should discuss with their Cayman Islands legal advisors which form of dispute resolution is preferable by reference to their specific circumstances.

10. **What advice can you provide for how best to negotiate or conduct business in the Cayman Islands?**

It is advisable to seek out professional advice on how best to accomplish your investment objectives in the Cayman Islands. A reputable commercial attorney is a good place to start. This attorney can give advice on the regulatory regime that governs what the investor would like to accomplish in the Cayman Islands.

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Prieto is a Chilean law firm focused on advising both national and foreign clients in the business world. For over 45 years, we have been providing excellent service to our clients. We stand out for providing personalized attention and seeking practical solutions to complex problems.

Prieto's team of lawyers has been trained to organize themselves into flexible working groups, enabling immediate attention to the urgent requirements of clients, with the necessary dedication and resources, always counting on the direct participation of their partners. Most of their lawyers have postgraduate degrees in national and international universities.

Prieto has been a member of Meritas since 2018, which allows them to provide global and quality service to their clients, as well as being in contact with lawyers from all over the world.

1. What role does the government of Chile play in approving and regulating foreign direct investment?

Although the government supervises and monitors the activity of private and public entities in certain areas of the economy due to their importance for the stability and growth of the economy, or where there is a public interest, the general rule is that the market is the prime regulator and not the government. As such, Chile has a private enterprise-based economic system where the state may only intervene as a service provider when private entities are incapable or do not wish to enter specific economic sectors (Article 1, Constitution).

- (i) Foreign investors must use one of two mechanisms to bring capital into the country to make an investment: Chapter XIV of the Central Bank's Compendium of Foreign Exchange Regulations (Chapter XIV) – Default mechanism
- (ii) Direct Foreign Investment Law ("DFI Law").

Note that these two mechanisms are not exclusionary but are meant to complement each other. Chapter XIV is the mandatory regulation on the subject and shall apply to all investors regardless of their preferences, whereas the DFI Law is an optional scheme that offers additional benefits/assurances than those contained in the general regulation (i.e., Chapter XIV), but it is not meant to replace it. The reason for having two different mechanisms is due to a prior scheme that offered more securities to foreign investors called DL 600, where foreign investors entered into a contract directly with the Chilean State. DFI Law replaced that scheme, but the two-mechanism system remained.

CHAPTER XIV

Anyone can freely carry out foreign exchange transactions (Article 39, Organic Law 18,840, Central Bank of Chile). However, the Central Bank can impose certain requirements and limits on these transactions. In 2001, the Central Bank lifted many of these restrictions.

Under Chapter XIV, foreign currency transfers into Chile as an equity contribution to a Chilean subsidiary shall be channeled through the banking system (so-called Formal Exchange Market or "MCF") and reported by the financial entity to the Central Bank of Chile.

Chapter XIV's provisions only apply to investments above USD 10,000 (or its equivalent). Below such amount may be freely transferred to Chile.

According to the Chapter XIV mechanism:

- The contribution of capital, which can only consist of foreign currency, must be reported to the Central Bank of Chile;
- The introduction into the country of such foreign currency corresponding to the capital contribution must be materialized through the MCF;
- Capital and net profits generated by capital investments can be repatriated at any time;
- Foreign investors are subject to the general tax regime, and the investor is not guaranteed the right to access the MCF to buy the foreign currency necessary to remit capital or profits abroad.

DFI LAW (*Inversión Extranjera Directa*)

At present, the regime enacted through the DFI Law applies to investments made in Chile of USD \$5 million or more, performed through foreign currencies, tangible assets, reinvestment of earnings, capitalization of credits, technology in its various forms, or credits related to foreign investment or originated from related companies. Additionally, the DFI Law covers investments of USD \$5 million or more that are materialized through the acquisition of a stake in a company receiving investment in Chile (which must be incorporated and governed by Chilean Law), granting the investor, directly or indirectly, at least 10% of the voting rights.

Foreign investors that subscribe to the regime under the DFI Law can request certification of their investment from the Agency for Promotion of Foreign Investment (*Agencia de Promoción de Inversión Extranjera*) ("APFI"), for which they must prove the materialization of the investment and attach a detailed description of it, including its amount, destination, and nature. This certification is granted only after the investment has been executed.

The main considerations for foreign investors under this regime are the following:

- They have the right to access the MCF for the purpose of settling the foreign currencies that constituted their investment, remitting profits abroad, and repatriating capital investments;
- The repatriation of capital can take place once all tax obligations have been fulfilled. Note that this right is also implicit in the regulation contained in Chapter XIV, but the certification of investment provided by the Agency for Promotion of Foreign Investment makes it explicit.

2. Can foreign investors conduct business in Chile without a local partner? If so, how does the Chilean government regulate commercial joint ventures between foreign investors and local firms (include information on common corporate structures)?

Yes, foreign investors can operate independently in Chile without the need for a local partner.

Please note that there are no governmental or legal regulations concerning joint ventures between foreign investors and local partners, whether they are individuals or legal entities.

For this purpose, there are different organizational alternatives for a foreign investor to operate in Chile:

- (i) Through a Branch (*Agencia en Chile*), an extension of a foreign corporation in Chile. The branch is not a separate and unique legal entity that can be distinguished from its parent, and consequently, creditors of the Chilean branch are entitled to direct any claims for civil liability to the foreign corporation, which is the parent company. Furthermore, there are certain structural issues regarding branches which prompts us to advise not making use of these vehicles to make foreign investments in Chile.
- (ii) By way of incorporating a new company. Pursuant to our legislation, a company is a separate and distinct entity vis-à-vis its shareholders and/or partners.

The types of companies that a foreign investor can incorporate in Chile are the following: (i) Corporation (*sociedad anónima*); (ii) Limited Liability Companies (*sociedades de responsabilidad limitada*) ("LLC"); or (iii) Stock Corporations (*sociedad por acciones*) ("SpA").

Chilean law, except for SpAs which can have a single shareholder, provides that companies must have at least two partners and/or shareholders, whether Chileans or foreigners, without regard to minimum or maximum threshold requirements in connection with an interest in said companies. In this regard, there are no obstacles preventing a partner or shareholder from holding a minimal interest, for example, 0.001%.

Regardless of the type of the company, all the shareholders or partners may be foreigners. Also, all directors of a company may be foreigners. However, Chilean companies must appoint at least an individual with residence in Chile to represent the company before the Chilean IRS (*Servicio de Impuestos Internos*).

An important factor to bear in mind is that, independently of the vehicle to be used in Chile as a subsidiary, the partners and/or shareholders are only liable for the company's obligations up to the amount of their contributions to the company, whether such contributions have been made or promised to be made to the relevant company.

In Corporations and SpAs, the participation of the shareholder in the company is represented by freely transferable nominative shares, while in an LLC the participation of the partner is represented by "quota rights" which may only be sold, assigned, or transferred with the unanimous consent of all the partners of the LLC.

In terms of management, closed Corporations (which shares do not trade on a stock exchange market) are managed by a board of directors made up of at least three members with the possibility of alternate directors (each alternate corresponds to a titular director), all of which may be foreigners. Such board of directors is appointed by a Shareholders' Meeting which, ordinarily, should take place at least once a year.

The board of directors appoints a General Manager who, with respect to a closed Corporation, cannot be the President of the company, and in the case of publicly held Corporations, may not even be a director of the Corporation.

In turn, LLCs are managed directly by the partners or, alternatively, by a person or legal entity appointed by the partners for such purposes. However, notwithstanding the latter, there are no obstacles to having the management of the LLC through a board of directors, similar to a Corporation.

The management of an SpA may be freely organized in the by-laws. Accordingly, an SpA may be managed by any given body (a board, a committee, etc.), by one or more shareholders or by third parties, or through any other mechanism that the shareholders deem to be suitable.

Please note that under Chilean Law, there is no minimum capital requirement regardless of the type of the company.

With respect to profits, in closely-held corporations, shareholders may have the by-laws include any policy for the distribution of profits as they may wish. If nothing is expressed in the by-laws, at least 30% of the net profits need to be distributed in each fiscal year.

Closely-held corporations may also distribute interim dividends approved by the Board of Directors, provided that there are no accumulated losses. Should there be any accumulated losses, or in case the corporation ends up with losses or with profits in an amount lower than the distributed sum,

each Director shall be personally liable for the reimbursement of such dividends.

For SpAs, the by-laws may set out a preferred series of shares entitled to receive a dividend for a given or determinable amount and, in any event, becoming, therefore, a dividend that is not contingent upon actual profits earned by the SpA. Also, the by-laws may provide that profits resulting from, or associated with, a specific line of business or specific assets, be distributed as dividends regardless of general profits or losses of the SpA resulting from all other businesses, assets, and financial results generally.

In LLCs, the terms and conditions for profit distributions may be freely set forth in the by-laws by the partners.

With respect to its incorporation, Corporations are incorporated through the execution of a public deed by at least two shareholders. Certain legends required by the law must be included, such as the name of the shareholders, their profession, and domicile; the corporate name, purpose of the corporation, and its domicile; the capital stock and the number of shares into which is divided, and the description of preferred series, if any, among others. The public deed must also contain the by-laws of the corporation. A summary of the public deed must be published in the Official Gazette and registered with the Registry of Commerce within 60 days from the date of its execution.

For SpAs, incorporation formalities are substantially similar to those of Corporations, but the execution of a public deed may be replaced alternatively with a private document, provided that the signatures therein be authorized by a Notary and that such document be recorded in a Notary (protocolizado). Also, the applicable term for registration and publication of this public deed or private document is reduced from 60 days to 1 month.

LLCs are incorporated by execution of a public deed by at least two partners, either individuals and/or legal entities. Said deed must also set forth the name of the company, its corporate purpose, capital contributions, and so on, as well as the by-laws of the company. A summary of said deed must be published in the Official Gazette and registered with the Registry of Commerce within 60 days from its day of execution.

Notwithstanding the above, certain exceptions limit the possibilities of action for foreign investors. These are the following:

- i. Immovable goods and land in border areas. Nationals of Argentina, Bolivia, and Peru cannot acquire land close to international borders. This rule also applies to entities whose main offices are in those countries or those where 40% or more of their capital belongs to

nationals of a bordering country or which are effectively controlled by nationals of those countries.

Also, land that belongs to the state can only be acquired, leased, or transferred to Chilean individuals or entities when it is:

- located within ten kilometres of the national border; or
- located within five kilometres of the coast.

Finally, land at the shore within 80 metres measured from the line of the highest tides cannot be transferred.

- ii. Fishing and aquaculture. Only natural persons of Chilean nationality, legal entities incorporated under Chilean law, and foreigners with permanent residence in Chile can be granted authorization to harvest and capture hydrobiological species.
- iii. Hydrocarbons, lithium, and deposits in Chilean waters. Mining concessions cannot be awarded on liquid or gaseous hydrocarbons, lithium, or deposits of any type in Chilean waters or areas classified as important for national security.
- iv. Naturally occurring nuclear materials and nuclear energy. Naturally occurring nuclear materials cannot be subject to any legal act except those implemented or entered into by, with, or without the authorization of the Chilean Nuclear Energy Commission.
- v. Domestic shipping. Only Chilean boats can transport passengers and freight along the coast, by river, or on lakes between different points in Chile or between them and naval infrastructure in Chilean waters or the Economic Exclusion Zone.
- vi. Television. Only legal entities governed by public or private law and constituted and domiciled in Chile may hold a concession for an open television service or make use of it.
- vii. Telecommunications and radio. Only legal entities constituted and domiciled in Chile may hold a telecommunications or radio broadcasting concession.

3. What laws influence the relationship between local agents and distributors and foreign companies?

Since the private sector in Chile is governed mainly by the market as the prime regulator and not the government, there are no special laws that govern the interactions between local agents/distributors and international companies. Thus, the parties have the liberty to discuss their own terms and conditions, as long as there is no agreement that may be considered against Chilean public order.

4. How does the Chilean government regulate proposed merger and acquisition activities by foreign investors, and are there any areas of the economy where they are prohibited (e.g., natural resources, energy or telecommunications)?

With regards to mergers and acquisitions, equal treatment applies to both local and foreign investors.

With regard to restricted activities, please see question No. 2.

5. How do labour statutes regulate the treatment of local employees and expatriate workers?

Applicable labor laws are the Chilean Labor Code and the administrative judgments issued by the Labor Authority (Dirección del Trabajo).

First, it should be noted that there would be two options for personnel contracts: (i) Employment Agreement; and (ii) Services Agreement.

Article 3° of the Chilean Labor Code defines the employer as an “individual or entity who uses the intellectual or material services of one or more individuals under an employment contract.” In this sense, Chilean law makes no distinction as to the nationality of the employer, allowing a foreign company to hire a Chilean-based employee, without the necessity of any other requirements, other than the execution of the employment contract with the mandatory provisions required by Chilean law. Additionally, the law makes no distinction regarding the residence or domicile of the employer, even if such residence or domicile is in a foreign country.

In addition to the above, according to an administrative judgment (No. 4182/203) issued by the Labor Authority (Dirección del Trabajo), a foreign company with no residence in Chile may enter into an employment contract with a Chilean-based employee. However, such agreement shall be governed by Chilean law and, therefore, be subject to the oversight of the Labor Authority.

Additionally, entering into an employment contract in Chile involves the need to fulfill the following mandatory payments and withholding obligations:

Allowance	Percentage of the workers monthly remuneration over the taxable ceiling of UF 81.6 (approximately USD 3.300)	Responsible Party	Institution to be paid
Health	7%	Employee	ISAPRE/FONASA
Occupational accidents (AATEP)	0.93%	Employer	Insurance management agency (Mutual or ACHS)
Social Security Pension	10%	Employee	Directly to the AFP chosen by the employee.
Disability Insurance (SIS)	1.85%	Employer	Directly to the AFP chosen by the employee.
Child's severe health condition insurance (Law No. 21,063 or Sanna Law)	0.03%	Employer	Insurance management agency (Mutual or ACHS)
Unemployment Insurance	0.6%	Employee	Unemployment Fund Administrator
Unemployment Insurance	2.4%	Employer	Unemployment Fund Administrator

For operational employment purposes, in order to pay the aforementioned allowances to the respective institution, along with the applicable taxes for the employee arising from his/her salary before de General Treasury of the Republic (Tesorería General de la República), the Company must obtain a Chilean taxpayer number.

On the other hand, a Services Agreement is an agreement by which one party undertakes the obligation to provide specific services in favor of another, which in turn obligates itself to pay a certain amount of money for such services. The referenced contract is not expressly regulated by Chilean

Law; it is what the doctrine has named an “atypical contract” so, in this sense, it is regulated only by the Principle of Autonomy of Will, without other limitations than those established by law, public order and the rule of moral law.

In this regard, some characteristic elements constitute this kind of agreement:

- i. Render of a specific service.
- ii. Fee payment for the service.
- iii. Independence of the service provider.

The third element is the one that allows differentiation of this kind of agreement from an employment agreement. In the services agreement, the provider has total independence to render the required services as he or she determines. Then there is no relationship of either subordination nor dependence with the other party (key elements to materialize an employment agreement, according to Article 7 of the Chilean Labor Code), so that the agreement would be governed by civil rules and not by the Chilean Labor Code.

MIGRATION LAW

Under our current migration law, foreigners intending to carry out lucrative activities in the country must apply for a work permit or a visa. The work permit can be applied for abroad or once the foreigner enters Chile. In order to make the application, it is necessary to have a valid passport, the immigration card issued by the respective authority at the airport, and a letter from the Chilean company that requires the services of the foreigner. Work permits are subject to the duration of the tourist visa (which has a maximum duration of 90 days, extendable for one single time) and are only allowed for the duration of the tourist visa.

WORKING WEEK RULES

Generally, the working week cannot exceed 40 hours and can only be distributed from Monday to Saturday.

- i. Sundays and those declared by law to be public holidays shall be days of rest, except in the case of activities authorized by law.
- ii. The parties may agree to distribute the working week over five or six days, but on the seventh day, the worker must necessarily rest. If the employee works on a Sunday or public holiday, the employer would be subject to a fine in addition to paying for the time worked as overtime.

- iii. Certain employees, such as those who are entitled to represent the employer as managers, may be excluded from the limitation of working hours.
- iv. The ordinary daily working day must be continuous and may not exceed 10 hours. The working day shall be divided into two parts, leaving at least half an hour in between for lunchtime. This intermediate period shall not be considered as worked for the purpose of calculating the length of the daily working day.

If the working week is distributed only from Monday to Friday, with a maximum of 9 hours of work per day, the maximum overtime that the employee could work on a Saturday is 7.5 hours. This maximum would only be possible if the employee worked 0 to 4.5 hours of overtime during the week. If the employee has worked more overtime, this maximum is reduced, as the weekly maximum of 12 hours of overtime cannot be exceeded. The value of the overtime is an additional 50% of the value of the ordinary hour.

ANNUAL HOLIDAY

Workers with more than one year of service are entitled to an annual leave of 15 days with full pay. These days cannot be compensated in money.

DISMISSAL RULES

Under Chilean labor law, employers can only terminate an employment contract based on legal grounds stated in the Labor Code. Therefore, employees cannot be dismissed without cause (except in the case of employees entitled to represent the employer and with general administration powers over the company).

Consequently, to dismiss someone, the employer must communicate to the employee the specific grounds for termination and the facts that support the dismissal. This is important because the employer has the burden of proof when the employee files a complaint for unfair dismissal and can only prove what has been indicated in the letter of dismissal.

The period of notice will depend on the legal grounds invoked. Usually, the period is 30 days. However, instead of this prior notice, the employer may pay compensation equivalent to the employee's last remuneration and make the dismissal effective on the day it is communicated.

This letter must be either handed directly to the employee or sent through registered mail to the employee's domicile within three working days

following the date of the employee's separation. A copy of such letter must be sent to the competent Labor Authority.

Then, the employer must make available the settlement (finiquito) and its payment to the employee within 10 working days from the date of separation.

As previously indicated, employers can only terminate an employment contract based on legal grounds stated in the Labor Code, which are the following:

- i. Mutual agreement of the parties.
- ii. Resignation of the employee.
- iii. Death of the employee.
- iv. Expiration of the term agreed in fixed-term employment agreements.
- v. Termination of the work or service indicated in the employment contract.
- vi. Force majeure.
- vii. Necessity of the company.
- viii. Dismissal at will ("desahucio escrito del empleador"), only in the case of employees entitled to represent the employer and with general administration powers over the company.
- ix. Also, as per Article 160 of the Labor Code, the employment contract could be terminated without compensation when the employer terminates it under specific grounds.

6. How do local banks and government regulators deal with the treatment and conversion of local currency, repatriation of funds overseas, letters of credit, and other basic financial transactions?

Chapter XIV governs the treatment of international exchange operations related to credits, deposits, investments, and capital contributions from abroad, as well as those related to other obligations with foreign entities (as further described in question No. 1).

It should be noted that Chapter XIV's provisions only apply to investments above USD 10,000 (or its equivalent).

Lastly, it should be noted that those involved in credit operations whose amount is equal to or exceeds the sum of US\$1,000,000, or its equivalent in other foreign currencies, must inform, in writing, the Central Bank of Chile of the execution of said corresponding international exchange transaction through the form provided for in Chapter XIV.

7. What types of taxes, duties, and levies should a foreign investment in Chile expect to encounter?

In broad terms, the Chilean Income Tax Law levies all income that is considered profit arising from or derived from assets located in Chile, or from an activity developed within the country, as well as any kind of patrimonial increase, regardless of the residency or domicile of the person obtaining the income.

For a Chilean entity owned by a foreign company, the specific taxes levied on income by virtue of this law are the following: (i) First Category Tax (hereinafter "FCT"), which levies business activities undertaken or developed by the Chilean entity; and (ii) Additional Withholding Tax (hereinafter "AWT"), which is a withholding tax applied to investors that are not domiciled or resident in Chile—also called final taxpayers—for their Chilean source taxable income, and to certain payments made from Chile to foreigners.

The general AWT rate is 35%. However, for certain income and payments, there are reduced tax rates and exemptions (e.g., some types of financial interests (4%), remunerations for services of certain characteristics (15%), etc.). The same is the case where there is a Double Taxation Agreement signed by Chile and the corresponding foreign country, which also includes reduced tax rates and exemptions.

Chilean tax legislation has an integrated system, which means that business profits are levied in two stages, where the tax paid at the company level for its profits is usable as credit against the tax paid by the shareholders for such profits.

After the tax reform was approved in early 2020, Chilean legislation contemplates two main tax regimes: the "Pro Pyme General" regime and a general "Partially Integrated Regime." Chile's income tax regime continues

to be an integrated tax regime in the sense that with respect to dividends or profits distributions, a credit may be taken by the recipient equivalent to all or part of the FCT paid by the company distributing the dividend.

(i) Pro Pyme General Regime: This Tax Regime is oriented to Pymes (micro, small, and medium-sized enterprises; "SME"), which determines its taxable income, generally, based on income received and expenses paid, being obliged to keep full accounting records, with the possibility of opting for simplified accounting.

Companies will be taxed at 25% at the corporate level and their owners, on the basis of effective dividends or profits distributions, are entitled to credit 100% of the 25% FCT in the final taxes that affect them, except for those owners who are taxpayers of the FCT and are not under the Pro Pyme regime. This rate was temporarily reduced to 10% for fiscal years 2020, 2021, and 2022.

The Pro Pyme General regime requires that the average gross income of the Company in the last 3 years does not exceed 75,000 UF (approximately US\$3,063,000), which may be exceeded only once, and in no case may the income exceed 85,000 UF (approximately US\$3,470,000). For the calculation of the average gross income, the gross income received or accrued by the related companies or entities must be added. In addition, it is worth mentioning that at the time of commencement of activities, the effective capital must not exceed 85,000 UF.

(ii) Partially Integrated Regime: In this system, the FCT applies at a rate of 27% and only 65% of the FCT paid is creditable against the AWT. Therefore, under this regime, the total tax burden upon distribution of profits to non-Chilean residents would be 44,45%. However, if the distribution is paid to a tax resident in a country with which Chile has a Double Taxation Treaty ("DTT") in force, case in which 100% of the FCT paid by the Chilean company can be used as a credit against the AWT, being a total tax burden in this case 35%.

The FTC tax base is constituted by the net taxable income (basically, gross income, minus costs, and deductible expenses), which is generally determined by complete accounting records. This tax is paid in April of every year, although monthly advanced payments are required.

Following is an example of how profits of the subsidiary shall be taxed in Chile (under the Partially Integrated Regime), upon distribution of such profits to the parent company:

	With DTT	No DTT
Subsidiary's taxable income	100	100
FCT (27% of 100)	(27)	(27)
Net distributable income	73	73
Dividend distributed (100% of net distributable income)	73	73
Gross up for AWT (add FCT)	73+27	73+27
AWT (35% over 100)	(35)	(35)
100% credit for FCT paid	27	27
Restitution (35% credit FTC)	0	(9,45)
Net AWT	(8)	(17,45)
Net dividend received	65	55,55
Total tax burden	35%	44,45%

In respect of accounting books, the subsidiary could record its accounts in US Dollars or in Euros. Chilean companies need an authorization given by the Chilean IRS in order to register their accounts in a foreign currency (only US Dollars and Euro are allowed as foreign currency according to the IRS) under some conditions established by the law. Once the authorization is granted, the company is obliged to register the accountancy in such a way for at least two consecutive commercial years. Keeping the accountancy in foreign currency will prevent the companies from causing gains and losses because of monetary corrections.

MUNICIPAL TAX (PATENTE MUNICIPAL)

There is a municipal tax applied annually to companies resident in a municipality. The tax is applied over the equity of companies not directly engaged in primary or extractive activities (e.g., agriculture).

This tax is levied at an annual rate between 0.25% and 0.5% (as set forth by each Municipal Government), applied over the tax equity of the company with a minimum of one Monthly Taxation Unit (approximately US\$ 71) and a maximum of 8,000 Monthly Taxation Unit (approximately

US\$ 580,000). If the company invests in other companies that pay municipal taxes in Chile, said investment is deducted when determining the tax basis.

VALUE-ADDED TAX (“VAT”)

In general terms, Chilean Legislation establishes a 19% VAT applicable on customary sales, importations, and other similar activities expressly set forth in this law. VAT also levies the rendering of certain types of services. However, as of January 2023, all services are subject to VAT unless there is a specific exemption in the law.

The VAT tax base is constituted by the sales price of the goods and services.

The VAT affecting the purchase of a good or rendering of a service constitutes a fiscal credit in favour of the buyer, and in turn, the VAT constitutes a fiscal debt for the seller. In this manner, the seller must only deposit in fiscal accounts the difference between the VAT that was added to his purchases and the VAT charged in his sales.

Exporters of goods and services have a right to recover VAT that was charged or which the same had paid upon acquiring or importing goods or using services, all of which must have been destined for their exporting activities.

Consequently, if the foreign investor incorporates a company in Chile, the specific tax levied on income by virtue of this law is the First Category Tax (hereinafter “FCT”), which levies business activities undertaken or developed by the Chilean entity.

However, if the foreign investor does not incorporate a company in Chile, the Additional Withholding Tax (hereinafter “AWT”), would be applied. This tax applies to investors who are not domiciled or resident in Chile—also called final taxpayers—for their Chilean source taxable income. Additionally, certain payments made from Chile to foreigners are also levied with this tax.

The general AWT rate is 35%. However, certain income and payments have reduced tax rates and exemptions (e.g., some types of financial interests (4%), remunerations for services of certain characteristics (15%), etc.). The same applies if a Double Taxation Agreement is signed by Chile and the corresponding foreign country, which also includes reduced tax rates and exemptions.

It should be noted that Chilean tax legislation has an integrated system, which means that business profits are levied in two stages. The tax paid at the company level on its profits is usable as a credit against the tax paid by the shareholders on such profits.

Additionally, depending on the activities the foreign company's Chilean vehicle will execute, Municipal Tax (levied at an annual rate between 0,25% and 0,5%, applied over the tax equity of the company with a minimum of one monthly taxation unit) and/or Value Added Tax (19% applicable on customary sales and importations and other similar activities) would apply.

How comprehensive are the intellectual property laws of Chile, and do the local courts and tribunals enforce these laws regardless of the nationality of the parties?

In recent years, national intellectual property legislation has undergone some changes that have updated it to international standards. In particular, in May 2022, the provisions of Law No. 21,355 (which amended Law No. 19,039 on industrial property) came into force, incorporating new figures in the Chilean Industrial Property regulation, such as:

- The recognition of new types of signs that may be registered as trademarks (considered “non-traditional,” such as olfactory, three-dimensional, color patterns, and movement trademarks, among others);
- The expiration of trademark registrations due to lack of use;
- The elimination of commercial and industrial establishment trademarks;
- The incorporation of the crime of trademark counterfeiting;
- The incorporation of provisional patents;
- The new patent usurpation action; and
- The reformulation of the figure of trade secret.

In any case, it should be noted that Chilean law distinguishes between intellectual property and industrial property and, consequently, regulates each in different statutes. Intellectual property (mainly matters relating to copyright) is principally regulated by Law No. 17,336, while industrial property is regulated by Law No. 19,039. The latter legislation is much more up-to-date in complying with international standards than the intellectual property law.

Moreover, Chile has been a member of WIPO since 1975 and has joined in or ratified several treaties related to intellectual property, namely the:

- WIPO Performances and Phonograms Treaty (WPPT) 1996 (April 2001).
- WTO Agreement on Trade-Related Aspects of Intellectual Property Rights 1994 (TRIPS) (December 2004). The legislation that ensures compliance with TRIPS includes provision for expedited court proceedings and the authority to seize illegal copies of patented products.
- Patent Cooperation Treaty 1970 (PCT) (2008).
- Convention on Cybercrime 2001 (Budapest Convention) (2017).

The main agencies responsible for intellectual property matters are:

- The Intellectual Rights Department (*Departamento de Derechos Intelectuales*), which is in charge of the Intellectual Property Registry and reports to the National Cultural Heritage Service. This entity protects authors' copyright and related rights, both moral and pecuniary. Regulations regarding IP rights recognize the existence of intellectual property from the point it is created, and the registration process gives authors the means of proving the novelty of their work; and
- The National Institute of Industrial Property (*Instituto Nacional de Propiedad Industrial* or "INAPI"), which protects industrial property rights such as trademarks, denominations, geographical indications, patents, and designs. There are strict requirements to fulfill before industrial rights are granted, but once granted, the protection conferred is valid and enforceable in accordance with international standards."

With regards to application of these laws by local courts to the parties, nationality is not a factor that will be considered when an intellectual property dispute arises.

9. If a commercial dispute arises, will local courts or will international arbitration offer a more beneficial forum for dispute resolution to foreign inventors?

The determination of whether local courts or international arbitration would be more advantageous for foreign investors depends on the matter, quantity, and parties of the agreement that will be subject to dispute.

In this sense, both options propose advantages and disadvantages. Local courts' dispute resolution is cheaper than international arbitration.

However, international arbitration procedures may be faster and more specialized than resolving disputes in local courts.

Thus, we recommend assessing which option is better for the purpose in mind at the moment (e.g., local courts would suppose better dispute resolution for pursuing indemnities on an agreement, whereas arbitration would suppose better dispute resolution for a specialized construction agreement).

10. **What advice can you provide for how best to negotiate or conduct business in Chile?**

Chile has an attractive and dynamic business climate for investors due to its political and economic stability, openness to trade, legal security, and excellent growth prospects.

For business operations, we recommend selecting a team of lawyers and accountants who can set up advice on the best strategy for the client's purpose. Additionally, we recommend proper due diligence on the investment that will be taking place.

For effective negotiations, it is important to know the market where the transaction is taking place, which clauses are typically used, and which new clauses can be implemented in light of the customary practices in Chile. Additionally, we suggest having a local adviser for communication purposes to avoid misunderstandings between the parties.

Lastly, it is good to note that, in case a transaction is carried out in Chile and a NewCo is to be incorporated, the initial steps would be (i) the determination of the right company to invest in Chile (whether a Corporation, LLC, or SpA); (ii) the incorporation of such company with the fulfillment of legal requirements; (iii) obtention of the tax identification number from the Chilean IRS; (iv) initiation of activities before the IRS; (v) opening a bank account; and (vi) obtention of permits or special licenses.

Please feel free to contact us for further explanations or advice with respect to the subjects presented in this memorandum or any other legal issues you may be interested in being familiar with in advance of your potential investment in Chile.

Colombia

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Posse Herrera Ruiz is a well-established, full-service law firm, that uses a multidisciplinary, systematic approach to finding creative, prudent, and value-generating business solutions, that optimize the client's return on investment while minimizing risks. It has a team of over one hundred fifty (150) attorneys, including twenty-nine (29) partners (including two special counsels admitted to the New York State Bar), all fully bilingual and with broad experience across key practice areas.

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1. What role does the government of Colombia play in approving and regulating foreign direct investment?

Foreign direct investment (“FDI”) in Colombia is subject to registration with the Colombian Central Bank (Banco de la República). According to applicable foreign investment regulations, all foreign investments to be transferred into Colombian territory by a non-resident, are to be registered with the Central Bank through the filing of the corresponding foreign exchange information with a local financial institution and/or via compensation accounts.

In order to consider an operation as FDI, the Central Bank takes into account the date of the operation, the non-resident condition of the investor, if the contribution corresponds to any of the authorized modalities, and if the resources are effectively destined for the investment that is intended. The aforementioned conditions may need to be proved by the foreign investor, or any attorney in Colombia, to the control and surveillance entities whenever it is required.

The foreign investments that are addressed by the exchange regime and thus considered as a foreign investment are: (i) the acquisition by a non-resident of the participations, shares, and other kinds of contributions representing the capital of a Colombian company; (ii) the acquisition by a non-resident of the rights or participations in fiduciary businesses executed with fiduciary companies subject to the inspection and surveillance of the Colombian Financial Superintendence; (iii) the acquisition by a non-resident of real property, directly or through the execution of fiduciary business; (iv) contributions made by a non-resident through acts or contracts, such as collaboration agreements, concession agreements, administrative services; (v) supplementary investments to the allocated capital of a branch; and (vi) the investments in private equity funds.

The adequate registration of FDI grants the investor a legal right to remit proceeds and other yields (i.e. dividends), derived from the investment, outside of Colombia. Additional rights include (i) reinvestment of all proceeds, if so desired by the investor, (ii) capitalization of investment proceeds, and (iii) remittance of investment sale proceeds or remaining funds after the local company is wound up or liquidated. The aforementioned rights may not be diminished or curtailed, except as a consequence of temporary measures adopted by the Central Bank or the government whenever the country’s international reserves are reduced to less than three (3) months of imports. This event has not occurred since the exchange regime was liberalized in 1991.

2. **Can foreign investors conduct business in Colombia without a local partner? If so, how does the Colombian government regulate commercial joint ventures between foreign investors and local firms (include information on common corporate structures)?**

Foreign investors are allowed to conduct business in Colombia without a local partner. In case the foreign investor chooses to begin a business relationship with a local partner, a joint venture can be used to establish the contractual means of such enterprise. There is currently no specific governmental regulation for commercial joint ventures between foreign investors and local firms.

Taking into account the aforementioned, the most common corporate structure for joint ventures is the incorporation of new entities jointly owned by the parties and whose rights and obligations are ruled by a shareholders agreement and the bylaws of the entity. Of consequence, restrictions applicable to Colombian corporations must be taken into account at the moment of establishing a joint venture. As a general rule, shareholders agreements are accepted in Colombia; nonetheless, the same are subject to certain legal restrictions like the term of the agreement, which must not be longer than ten (10) years (it can be renewed for equal terms indefinitely); or that there cannot be a restriction to the sale of the stock of a certain stockholder, other than those restrictions inherent to preemptive rights.

3. **What laws influence the relationship between local agents and distributors and foreign companies?**

The distribution of products between Colombian companies and foreign companies may be divided into two different categories: (i) supply agreements and (ii) commercial agency agreements. The classification of a commercial relationship in one or the other depends on the allocation of risks regarding slow-moving inventory.

Thus, it will be considered a "Supply Agreement" if the agent has the property of the distributed goods after periodically purchasing them from the foreign manufacturer and the losses derived from slow-moving inventory are supported by it. On the other hand, it will be considered a "Commercial Agency Agreement" if an agent sells the products on the occasion of a promotion activity of the products and losses derived from slow-moving inventory are supported by the manufacturer.

Losses may be supported by the manufacturer through different mechanisms, including return policies or buy-back clauses for unsold products triggered after a determined period of time.

Supply Agreements are regulated, in the first place, by clauses agreed in the corresponding agreement and, alternatively, by provisions set forth in Articles 968 to 980 of the Code of Commerce.

Commercial Agency Agreements are regulated, in first place, by clauses agreed in the corresponding agreement and, alternatively, by provisions set forth in Articles 1317 to 1331 of the Code of Commerce. Among them, Article 1328, regarding the application of Colombian law as the law of contract, is mandatory and any clause agreed otherwise will be considered as “ nonwritten.”

It is important to mention that the interpretation of Article 1324 was modified by the Supreme Court of Justice through a ruling dated October 19th, 2011. In this decision, it was stated that “commercial severance payment,” set forth in Article 1324 and equivalent to the twelfth part of the average commission, royalty, or profit earned during the last three years, multiplied by the number of years of duration of the agreement, may be waived by the parties if it is agreed in the agreement.

4. **How does the Colombian government regulate proposed merger and acquisition activities by foreign investors, and are there any areas of the economy where they are prohibited (e.g., natural resources, energy or telecommunications)?**

The cornerstone principle of foreign investment regulations in Colombia is the non-discrimination of the foreign investor vis-à-vis national investors (and vice-versa); hence, there is no specific regulation to merger and acquisition activities by foreign investors. By and large, foreign investment is permitted in all economic sectors except for (i) the national defense industry, and (ii) the processing or disposal of hazardous waste not produced in Colombia. In addition, there are limitations applicable to oil and gas, financial, open television, and private security and surveillance sectors.

In addition, the Superintendence of Industry and Commerce is the National Antitrust Authority since Law 1340 came into force; therefore, this entity has exclusive competence regarding the review and antitrust clearance of mergers, acquisitions, and other types of business integrations. However,

there are two exceptions for antitrust clearance, which are: (i) mergers related to banking or financial entities; in this case, the authority that has competence is the Financial Superintendence, and (ii) business integrations related to aircraft operators such as codeshare agreements, joint development in chartering aircraft, sharing and blocking space on aircraft; for this sector, the competent authority is the Civil Aeronautics Board (Aeronautica Civil).

Branches dedicated to oil and mining activities and related services have a special regime whereby they have no obligation to repatriate into Colombia any revenues obtained from their activity. This means that they are able to keep abroad such funds without bringing them into the country. On the other side, these types of branches have no access to the foreign exchange market, and thus cannot access foreign indebtedness operations or financing for imports.

There are screening laws applicable to foreign direct investment in the financial and insurance industry. An investment in more than ten percent (10%) of the outstanding voting stock of an institution under surveillance from the Colombian Financial Superintendence ("CFS") requires prior approval of the CFS. This approval may not be denied provided the investment "promotes public welfare, and that investor duly credits its moral and financial solvency" as such is ascertained by the CFS.

5. How do labour statutes regulate the treatment of local employees and expatriate workers?

In Colombia, due to the principle of equal rights and obligations between foreigners and nationals established in the Colombian Constitution and Labor Code, the treatment of local and expatriate employees must be the same. Expatriate employees and local employees are entitled to the same rights, benefits, and social security coverage. According to our territoriality principle, the Colombian Labor Code is applicable to all employment relationships performed within the Colombian territory, regardless of the nationality of the parties involved.

Under Colombian labor law, employment agreements can be entered into verbally or in writing and are classified depending on their duration. Employment agreements can be executed for a fixed period, for the duration of the execution of a particular work, indefinitely, or to run an occasional, accidental, or temporary job.

However, foreigners that come to Colombia for employment purposes have to obtain a visa that enables them to work. Furthermore, in the event that the foreigners exercise a regulated profession, they must have a professional license or permit.

All the employees in Colombia have the right to earn a salary in compensation for the services rendered. The ordinary regular salary is the basic remuneration settled by the parties, in money or in kind. This salary can be freely agreed to by the parties but always bearing in mind the legal minimum wage, which for the year 2024 is the sum COP\$1,300,000 (that is approximately USD \$325, with a conversion rate equivalent of USD\$1 = COP\$3,885). Generally speaking, employees earning a regular salary are entitled to mandatory fringe benefits plus the payment of overtime, surcharges for night work or work on Sundays and holidays, and vacations. Notwithstanding the above, in Colombia there is the possibility for employees earning ten (10) legal minimum wages or more to earn an all-inclusive salary that compensates in advance all the mandatory fringe benefits, surcharges, and payments for overtime and night work and work on Sundays and holidays (without including vacations).

6. How do local banks and government regulators deal with the treatment and conversion of local currency, repatriation of funds overseas, letters of credit, and other basic financial transactions?

Financial transactions in Colombia involving foreign exchange and international investments are subject to general exchange principles, established by Law 9 of 1991 and Resolution 08 of 2000 issued by the Board of Directors of the Colombian Central Bank.

Pursuant to Resolution 08 of 2000 there are two sectors within the market for foreign currency: (i) all currencies that must be channeled through authorized intermediaries; and (ii) the currencies that are exempt from this obligation, but which voluntarily comply. Under Colombian foreign exchange regulations, foreign exchange intermediaries are authorized to enter into foreign exchange transactions to convert foreign currencies into Colombian pesos or Colombian pesos into foreign currencies.

Local banks are entitled to act as authorized exchange intermediaries according to exchange and international investment regulations in Colombia. Among other functions, banks are authorized to (i) sell and buy bills of exchange and currencies; (ii) issue letters of credit; and (iii) act as a transfer agent of any person and as such, receive and deliver funds, transfer, register, and endorse titles of shares, bonds, or other debt instruments.

Please bear in mind that the Colombian government and the Colombian Central Bank may also limit the remittance of dividends and/or investments of foreign currency received by Colombian residents whenever the international reserves fall below an amount equal to three months of imports. Also, although the Colombian peso is allowed to float freely, the Colombian Central Bank or the Colombian government may intervene in the exchange market.

7. What types of taxes, duties, and levies should a foreign investment in Chile expect to encounter?

Any foreign investor will encounter the same taxes that any other Colombian individual faces:

Corporate income tax: Levied on profits that increase the taxpayers' equity and are derived from its ordinary economic activities. For 2024, the effective income tax rate for corporations and other legal entities may rise to thirty-five percent (35%). Exceptions to this include a 20% rate for corporations recognized as operators and industrial users of free trade zones.

Income tax for individuals: Incomes must be sorted into five (5) schedules according to their nature, and then grouped into three (3) groups to determine the applicable income tax rate. These groups are: i) Labor and pension income (rate: 0 – 33%); ii) Capital and non-labor income (0 – 35%); and iii) dividends and profits income (0 – 10% to local tax residents).
Divide

Capital Gains Tax: Applies on profits that are not related to the taxpayer's ordinary economic activity. Capital gains are expressly defined by law. The applicable tax rate is, as a general rule, ten percent (10%).

Value Added Tax: Sales, services, and imports are subject to VAT. The general VAT rate outside free trade zones is nineteen percent (19%). The general rate is subject to exceptions with respect to specific goods or services as provided by tax regulation.

Financial Transactions Tax: Certain financial transactions are subject to the financial transactions tax, calculated at a rate of zero point four percent (0.4%) on the amount of the transaction.

8. **How comprehensive are the intellectual property laws of Colombia, and do the local courts and tribunals enforce these laws regardless of the nationality of the parties?**

Intellectual property laws of Colombia are comprehensive. Bolivia, Colombia, Ecuador, and Peru share the same Intellectual Property regime and legislation issued by the Commission of the Andean Community. These laws (also known as Decisions) are supranational, of direct effect, and immediate implementation. They are nationally binding and all authorities, courts, and tribunals alike, enforce them regardless of the nationality of the parties.

9. **If a commercial dispute arises, will local courts or will international arbitration offer a more beneficial forum for dispute resolution to foreign inventors?**

Either forum may be more beneficial to foreign investors depending on, *inter alia*, the amount in dispute, the infrastructure of the foreign investor in Colombia, its position within the dispute (claimant or defendant), the location of its assets, the subject matter of the dispute, etc.

The Colombian procedural law aims to guarantee that all judgments are rendered in accordance with due process rights and by an independent and impartial judge. However, the neutral character of international arbitration, which goes beyond independence and impartiality, might be more advantageous to foreign investors, at least as a matter of perspective. For instance, the neutral nationality of the arbitrators creates a sort of presumption that they are less likely to share an idiosyncrasy or common values with either party. In the same vein, the possibility for the parties to agree on a neutral seat of arbitration, on the law applicable to the subject matter of the dispute, on the language of the proceedings, and so on, might inspire more confidence in the foreign investors.

The need for expertise on certain complex or highly specialized subject matters might influence the choice of international arbitration over local courts. On the contrary, for disputes that do not require such specialization, the choice of international arbitration might be costly and inconvenient.

Concerning the enforcement, the enforcement of a foreign arbitral award takes more time than the enforcement of a national judgment. Indeed, Article 111(3) of the Law 1563 of 2012 states that, for the enforcement of foreign arbitral awards, it is necessary for its prior recognition, which might

take around two (2) to three (3) years. However, foreign awards are not subject to the ordinary and extraordinary motions available to challenge national judgment (annulment and revision).

In conclusion, the choice of the most beneficial forum for dispute resolution depends on several factors that must be assessed on a case-by-case basis.

10. **What advice can you provide for how best to negotiate or conduct business in Colombia?**

The decision on how to best conduct business in Colombia depends on a variety of factors. Colombia is a country open to foreign investment; however, professional legal advice should be sought out in order to establish business relationships in Colombia all the more if foreign investment is involved. Depending on the industry that pertains to the business that is to be established, a thorough study of the regulations applicable to that industry is recommended before any investment activity is performed. Furthermore, legal advice is recommended to determine, among others, (i) the business entity that may have to be created, (ii) the tax regime applicable to said entity with its pros/cons, and (iii) the mechanism to hire employees and/or independent contractors, etc.

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Recognized for its regional leadership, BLP is the law firm for conducting business in Central America, with over 150 lawyers providing service in 28 practice areas at ten offices strategically distributed in Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and a representation office in Spain.

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Seeking a broader presence in the international market, the representative office in Madrid, Spain, creates a portal to European economies and generates business opportunities between Central America and Europe. Our international capabilities enable us to bring our global clients closer to new investment opportunities in Latin America.

1. **What role does the government of Costa Rica play in approving and regulating foreign direct investment?**

Costa Rica has long been recognized as a regional leader in social and economic development in Latin America. The Costa Rican government welcomes foreign investment. This positive attitude is backed by all major political parties. Since 1982, Costa Rica has consistently improved investment conditions. PROCOMER, a government agency, actively promotes investment through offices located in several countries. Constitutionally, neither the law nor its application can distinguish or make differences of any kind between foreign or local investment. All investors are considered the same under Costa Rican law.

2. **Can foreign investors conduct business in Costa Rica without a local partner? If so, how does the Costa Rican government regulate commercial joint ventures between foreign investors and local firms (include information on common corporate structures)?**

Foreign investors can conduct business in Costa Rica without a local partner; however, to be registered as an exporter, a local entity will be required or in the case of individuals, having a valid migratory status in the country.

Although there is no specific regulation regarding joint ventures in Costa Rican law, they are created and regulated through general contract regulations. Often, when a joint venture is entered, it results in the incorporation of a special-purpose company.

To do business in Costa Rica, several legal approaches can be used, such as sole proprietorship, forming a local company, or opening a branch office of a foreign corporation.

LOCAL COMPANY

The two most common commercial formations under Costa Rican law are the Sociedad Anónima (S.A.) which is similar to a Corporation in the U.S., and Sociedad de Responsabilidad Limitada (S.R.L.), which is similar to a Limited Liability Company (Ltd.) in English. In either case, shareholders are only liable up to the amount of their capital contribution during a defined term of commercial existence. The distinguishing characteristics of each business formation in Costa Rica are listed below.

The Sociedad Anónima (S.A.)

Property interests are represented by shares, which are considered securities and are freely transferable. The capital of the company can be in any currency and shares can be issued with different preferences. In addition, the corporation may issue debt. The Board of Directors must have at least one President, a Secretary, and a Treasurer; a Comptroller (auditor) must be appointed.

The Limited Liability Company (S.R.L)

Property interests in the S.R.L. are represented by “quotas” whose original face value constitutes the sole amount for which the quota-holder is liable. Such investment must be designated in Costa Rican currency. This type of company is created with a defined time frame and could be eligible in the United States as a “pass-through” tax entity. Quotas are not securities and by law are not freely transferable. There is a legal right of first refusal in the acquisition of quotas for the benefit of the remaining quota holders.

There is a preferential right to subscribe for new capital in proportion to quotas held. All quota interests have equal rights; no preferences or limitations can be set. The company is managed by one or more managers with the authority granted by the quota holders. It does not require a Board of Directors or a fiscal supervisor. The S.R.L. cannot issue debt.

Notable company obligations in Costa Rica

All Costa Rican legal entities must submit a declaration of the ultimate beneficial owners to the Central Bank within 20 working days of their incorporation.

Moreover, all information identifying the ultimate beneficial owners must be provided to the Central Bank of Costa Rica every year, as well as whenever there is a change in the chain of ownership or final beneficiaries of an S.A. or S.R.L.

Branches and Trusts

Foreign companies may conduct business in Costa Rica through the branches of their parent company provided that the following requirements are met:

- Appointment of a legal representative with full power to act on behalf of the Branch.
- Declaration of the branch’s corporate objective.
- Declaration of the parent company containing: Share capital, full names of all current officers and managers, and legal term of existence.

The Branch shall be subject to the laws and jurisdiction of Costa Rica for all acts performed or to be performed within the country.

All documents submitted that have been issued abroad must be duly legalized or certified (apostilled). In addition, foreign companies may act within the country through the registration of a legal representative before the Mercantile Registry.

Special Permits and Authorizations

To operate in Costa Rica, a business may require several permits or licenses. Before its launch, the business should be analyzed to ensure that the operation does not require special permits or particular authorizations. In addition, some businesses may choose to apply for sets of incentives.

FREE TRADE ZONE (FTZ)

For companies making new investments in the country, the FTZ system offers a series of governmental incentives and benefits such as exemptions from:

- Income Tax (ISR)
- Valued Added Tax (VAT)
- Taxes on Remittances Abroad
- Export and Import Tariffs
- Taxes payable to local governments

The main permits to consider are municipal permits, work permits such as the registration of the employer in the Costa Rican Social Security System, and permits for tax exemptions or special regimes.

Eligibility Requirements

To qualify for FTZ incentives, the applicant must meet several requirements, including investing in new fixed assets, conducting an activity authorized under the law, and committing to hiring a certain number of employees. The main categories under which a company can apply for Free Trade Zone benefits include:

- Services
- Manufacturing
- Trading
- Adventure Parks
- Hospitals

How to apply for Free Trade Zone status

To utilize the benefits of the FTZ, a company must apply to PROCOMER.

Once the application is approved, the government issues an Executive Agreement that consolidates the FTZ tax benefits according to the project's geographic location and the type of project.

3. What laws influence the relationship between local agents and distributors and foreign companies?

Costa Rica has a specialized law that regulates relations between local agents and distributors, Law for the Protection of the Representatives of Foreign Companies (Law N° 6209). It establishes public policy rights in favor of the local agents or distributors that cannot be waived by the parties, including the specific causes that allow the termination of the agreement.

4. How does the Costa Rican government regulate proposed merger and acquisition activities by foreign investors, and are there any areas of the economy where they are prohibited (e.g., natural resources, energy or telecommunications)?

Costa Rica has a generally open and non-discriminatory government procurement system and concession regime under which nationals and foreigners can freely participate and bid for public contracts under equal conditions. Foreign investors are generally welcome to invest in mergers and acquisition activities in Costa Rica.

Notwithstanding the foregoing, there are some exceptions to this general rule, like the Maritime Zone Law, which imposes limitations on foreigners in the granting of rights to maritime zone concessions.

The Costa Rican judicial system prohibits any kind of discrimination to the detriment of foreign investors, which allows foreigners to carry out the same acts nationals are allowed to, except for the good of the public domain and public services.

5. How do labour statutes regulate the treatment of local employees and expatriate workers?

In Costa Rica, all employers receive the same treatment, with the exception that foreigners without residency status or work permits are not allowed to work legally in Costa Rica. Local and foreign entities engaged in business activities in Costa Rica may apply for special authorization from Immigration Authorities to bring temporary labor into the country, namely high-ranking executives and/or technicians.

Generally, Costa Rican labor laws require employment contracts to be signed. However, the absence thereof is not detrimental to the parties and does not diminish their rights. Employment contracts are simply private agreements executed between the employer and the employee that are not required to be formally recorded.

CONTRIBUTION TO THE SOCIAL SECURITY SYSTEM (CCSS)

Every employer must contribute to the CCSS on its behalf (employer's contribution) and must deduct from the salary of its employees (worker's contribution) a legally-defined fixed percentage. Therefore, the company must register as an employer and register each employee with the CCSS from the first day the employment relationship begins.

Also, each employer must insure its employees against occupational hazards before the National Insurance Institute (INS). The INS is a government institution that is currently the only entity that offers such insurance.

Every employer is also obliged to withhold monthly tax on the salary of its employees according to progressive income brackets up to 25% of the gross salary.

WORK HOURS

Costa Rica recognizes three work shifts:

- a. The day shift takes place between 5:00 a.m. and 7:00 p.m. and cannot exceed 8 hours per day and 48 hours per week.
- b. The night shift is between 7:00 p.m. and 5:00 a.m. and cannot exceed 6 hours per day and 36 hours per week.
- c. The mixed shift overlaps both the day shift and the night shift and cannot exceed 7 hours per day and 42 hours per week. A mixed shift that requires work for more than 3.5 hours after 7:00 p.m. is legally considered a night shift.

In certain cases, the employer may extend daytime and mixed hours for work that is not unhealthy or dangerous, as determined by law.

Overtime must be paid the usual hourly amount plus an additional 50% of such amount ("time and a half"). Ordinary hours plus overtime hours may not exceed 12 hours per day.

SALARY ADJUSTMENT

The mandatory minimum wage is adjusted yearly based on the inflation rate. However, if considered necessary, the government may adjust such minimum payment twice a year.

- **Rest Days, Holidays, and Vacations**

Employees are entitled to enjoy at least one scheduled day of rest per week. The law establishes which holidays are mandatory with enjoyment required in principle. An employee is entitled to a minimum of two weeks of paid vacation for every 50 weeks of continuous employment with the same company.

- **Illness and maternity leave**

Furlough due to common or regular illness as well as maternity leave is regulated by legislation and covered by the CCSS in different percentages. Disabilities due to accidents or occupational diseases are covered by the INS.

- **Termination of the Employment Contract**

Depending on the reasons for employment termination, the severance payments owed by the employer vary. The main reasons for termination of employment are (i) dismissal without labor responsibility (with just cause); (ii) dismissal with employer responsibility (without just cause); (iii) waiver; (iv) retirement; (v) death; and (vi) mutual agreement.

6. How do local banks and government regulators deal with the treatment and conversion of local currency, repatriation of funds overseas, letters of credit, and other basic financial transactions?

Treatment and conversion of local currency are regulated by the monetary policies issued by the Central Bank of Costa Rica (BCCR). The Costa Rican government does not currently restrict the ability of Costa Rican or foreign persons or entities to convert colones into dollars or other currencies and transfer them in or out of Costa Rica.

Any financial transaction performed by local banks is subject to the regulations and supervision of the General Superintendency of Financial Institutions (SUGEF). In addition, the performance in Costa Rica of activities that are considered financial intermediation would trigger a license regulatory requirement. Financial Intermediation is defined as the activity of taking deposits from the public, on a regular basis, to allocate them, at the intermediary's risk, into any form of credit or investment in securities, regardless of the contractual or legal entity used and the type of document in which transactions are formalized.

7. What types of taxes, duties, and levies should a foreign investment in Costa Rica expect to encounter?

The Costa Rican tax system is based on the principle of territoriality. This implies that only income derived from Costa Rican sources is subject to income tax.

The country's Income Tax Law defines source income as any income derived from services rendered, goods located, or capital used in the national territory and obtained during the tax period. Based on this principle, any income obtained from foreign sources should not be considered as part of gross income.

WHO SHOULD PAY TAXES IN COSTA RICA?

1. Any legal entity incorporated in Costa Rica and engaged in commercial activities, including any branch or other permanent establishment of a non-domiciled legal entity.
2. Natural persons domiciled in Costa Rica or those not domiciled once they remain in the country at least 183 days a year.
3. Permanent Establishment or Branch: An entity not incorporated locally could have a tax presence in Costa Rica when conducting business activities within the country. Branches and permanent establishments are taxed like any other regular taxpayer.

CORPORATE INCOME TAX

The general income tax rate applied to companies is 30%; if a company receives an annual gross income of less than 112,070,000 (approximately \$176,000) the rate ranges from 5% to 20%. While the amount of annual gross income determines the applicable rate of income tax, such rate is applied to the amount of net income, which is obtained after deducting all applicable costs and expenses.

INCOME TAXPAYER OBLIGATIONS

File income tax returns and pay any taxes due within two months and fifteen days from the end of the tax year.

TAXES ON DIVIDENDS

Dividends paid between Costa Rican entities subject to income tax are exempt from tax on dividend payments. In the case of domiciled natural persons, inactive companies, or persons domiciled abroad, a withholding tax of 15% is applied to dividends received.

VALUE-ADDED TAX (VAT)

VAT is applied to all sales of goods and services. VAT must be reported during the first 15 days of each month. The tax rate is 13% for most goods and services.

CAPITAL GAINS TAX

Capital gains are taxable in Costa Rica at a 15% rate. However, on the first sale of goods and rights obtained before July 1, 2019, the taxpayer may choose to apply the withholding tax of 2.25% on the sale price. Non-domiciled individuals or legal entities that own real estate in Costa Rica are subject to a withholding tax of 2.5% on the sale of the asset.

CAPITAL INCOME TAX

Income from movable capital is subject to a single and definitive tax of 15%. Real estate capital income is subject to a 15% tax with a one-time deduction of 15%.

TAXES ON REMITTANCES SENT ABROAD

A withholding tax is levied on Costa Rican income sent abroad. The rates of such tax range from 5.5% to 50% depending on the nature and concept of the payment. The taxpayer is the company or person domiciled abroad; however, the withholding agent is the person who receives the service domiciled in Costa Rica.

MUNICIPAL LICENSE TAX

Any company engaged in a lucrative activity must apply for a municipal license whose fee ranges from 0.1% to 0.35% of such a company's gross income. Moreover, specific licenses apply to important operations such as the Mobile Patent that is required of various technology companies that lack a specific work location.

REAL ESTATE TAX

Land, buildings, and other permanent structures must pay to the corresponding municipality an annual tax equivalent to 0.25% of their tax value.

TAX ON LEGAL ENTITIES

The tax on legal entities is paid annually and ranges from \$100 to \$400.

8. **How comprehensive are the intellectual property laws of Costa Rica, and do the local courts and tribunals enforce these laws regardless of the nationality of the parties?**

The protection of intellectual property rights in Costa Rica is a priority, as reflected in its constitutional protection, special laws, and the country's adherence to the main international treaties that protect this matter, such as the Berne Convention for the Protection of Literary and Artistic Works, the Paris Convention for the Protection of Industrial Property, the Rome Convention for the Protection of Performers, Recording Producers and Broadcasting Organizations, the Trademark Law Treaty, the Patent Cooperation Treaty, and the Agreement on Trade-Related Aspects of Intellectual Property Rights.

In Costa Rica trademarks, trade names, advertising signs, slogans, literary works, copyrights, patents, utility models, industrial designs, undisclosed information, and, in general, any intellectual property assets held by a company may be registered and defended.

Since many of these assets require a local registry for protection, they should be analyzed from the moment the local business or operation is started.

9. **If a commercial dispute arises, will local courts or will international arbitration offer a more beneficial forum for dispute resolution to foreign inventors?**

Costa Rican legislation allows both ways for the resolution of commercial disputes and authorizes parties to choose the forum as long as it is established in the contract. The Costa Rican legal system is based on the Spanish civil law system with judicial review of legislative acts in the Supreme Court, in the application of the national and international regulations.

Costa Rica has an independent judiciary, headed by a supreme court. The supreme court is divided into four specialized chambers. Civil and commercial procedures are mostly written, whereas criminal and administrative cases are mostly managed through oral hearings. Costa Rica has a dual system of arbitration, with one statute regulating domestic arbitration (number 7727) and another regulating international arbitration, which follows UNCITRAL Model Law. Arbitration is common in commercial and construction disputes. Several arbitration centres are active in the country.

10. **What advice can you provide for how best to negotiate or conduct business in Costa Rica?**

Costa Rica is very open to investment; however, there are several laws and administrative procedures for the establishment of business in Costa Rica, like the requirement of municipal and sanitary permits. Therefore, it is critical to have good professional counsel and/or experienced partners who have knowledge of the market, industry, and the business model. It is also important to have good contracts and regulations to avoid contingencies that could harm the business.

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HBN Law & Tax runs a general civil practice, mainly in the areas of corporate law, commercial law, banking and insurance law, telecommunications law, construction and real estate law, labor law, bankruptcy law, trademark law and dispute resolution. The practice of HBN Law & Tax further includes constitutional and administrative law and HBN Law & Tax frequently advises and represents local governments in those areas. Finally, its tax department provides tax advice and compliance services both to local and international operating clients involving domestic as well as cross-border international tax issues.

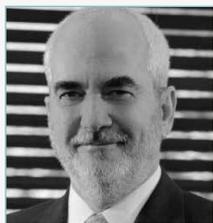
Dominican Republic

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RUSSIN, VECCHI & HEREDIA BONETTI (RV&HB) is the Dominican Republic office of the international law firm Russin & Vecchi, which has a presence in Asia, Europe, North America, and the Caribbean. Founded in 1969, RV&HB boasts a team of professional, multilingual lawyers specializing in various legal fields to serve both local and international clients. Committed to excellence and innovation, the firm enhances the legal business framework in the Dominican Republic while adhering to ethical standards and the rule of law.

RV&HB has pioneered unique legal practices in the country, managing landmark national and cross-border transactions including energy enterprise concessions, corporate restructuring, financing, international bidding, project development, government procurement, and foreign investment. The firm has developed expertise in transactions involving M&A and structured finance in numerous sectors, including the food and beverage industry, finance, mining, and energy.

The firm has been frequently recommended by top legal directories and has been shortlisted by Chambers & Partners as the 'Best Law Firm in the Dominican Republic' several times over the years.

1. **What role does the government of Dominican Republic play in approving and regulating foreign direct investment?**

The Dominican Republic offers outstanding advantages to foreign and national investors. The significant incentives and facilities offered by the Dominican State complement the many inherent factors that make this Caribbean country an attractive target for investments, positioning itself as the main recipient of foreign direct investment (“FDI”) in Central America and the Caribbean in 2022, in an environment where global FDI flows experienced a generalized slowdown.

The Foreign Investment Law No. 16-95 of 1995 and its Ruling of Application No. 380-96 grants foreign investors the same rights as domestic investors, eliminating any discrimination against foreign investment, which is highly encouraged by our government. The most important achievement provided by Law No. 16-95 is the opening of sectors of economic activity that were previously restricted for the registration of foreign investments.

Investment in the Dominican Republic generally has significant guarantees against political risks, inconvertibility, and expropriation granted by institutions such as the U.S. International Development Finance Corporation (DFC), the United States of America agency that provides financing and insurance for major international projects, which in December 2023, announced a new \$200 million loan, as well as a plan to open a regional office in the capital city, and the Multilateral Investment Guarantee Agency (MIGA), a World Bank agency.

The Center of Export and Foreign Investment of the Dominican Republic (CEI-RD), created by Law 98-03 of the year 2003, is the official agency of the Dominican Government for the promotion and development of Dominican exports and for attracting foreign investment to the country in order to contribute to the competitive insertion of the Dominican Republic in international markets.

In addition, the Dominican Republic has created, through Decree No. 626-12, a well-established and efficient one-stop investment window to speed up and streamline the processes of domestic and foreign investments and, by Decree No. 175-17, ProDominicana, a coordination and execution mechanism to promote the exportations and attract FDI.

2. **Can foreign investors conduct business in the Dominican Republic without a local partner? If so, how does the Dominican Republic government regulate commercial joint ventures between foreign investors and local firms (include information on common corporate structures)?**

Yes, foreign investors can conduct business in the country without a local partner and, in general, the Government does not intervene with joint ventures between foreign investors and local firms, except in the construction works ordered by the Dominican State.

In that sense, Law No. 322 of 1981 establishes that in order for a foreign company or individual to participate in a public procurement process for construction of works ordered by the Dominican State, it requires the association with a national or mixed capital company, according to the case. The mandatory participation of the national company will be between 30 and 50% in the contract with the Dominican State.

On the other hand, different types of legal vehicles have traditionally existed in the Dominican Republic to organize business. While there are several corporate forms, the most used corporate vehicles are:

Limited Liability Company - LLC (Sociedad de Responsabilidad Limitada, S.R.L.): An LLC can be formed with a minimum of two partners and a maximum of 50.

Its social capital is divided into quotas of at least DOP\$100, represented in nonnegotiable titles, and the partners' liability is limited to the value of their contribution. Although not expressly provided, since at least two partners are required and considering the minimum capital of the social quotas, the minimum capital of an LLC would be RD\$200. The tax for incorporating commercial entities is 1% of their corporate capita; however, the minimum tax to be paid is of RD\$1,000.

Corporation (Sociedades Anónimas, S.A.): For its incorporation, a minimum of two shareholders is required, and there is no maximum. To date, the authorized capital requirement is at least DOP\$30,000,000.00 (equal to USD\$10,000 approx.) from which at least 1/10 must be paid in, and its shares, which are freely negotiable, must have a nominal value of at least DOP\$1.00.

Simplified Corporation (Sociedad Anónima Simplificada, SAS): It is incorporated with the participation of two or more shareholders, and there is no maximum number of shareholders that can be part of it. The minimum authorized capital must be at least DOP\$3,000,000.00 (equal

to USD51,000 approx.) of which at least one-tenth must be paid in. The value of its shares is established by the bylaws.

In all entity types, only nominative shares/quotas are permitted.

3. **What laws influence the relationship between local agents and distributors and foreign companies?**

There are two main laws that influence the relationship between local agents and distributors and foreign companies, Law No. 173-66 and DR CAFTA. The purpose of Law No. 173-66 of 1966, on the Protection of Importer Agents of Merchandise and Products, is the protection of individuals or legal entities acting as concessionaires, engaged in promoting and/or managing the importation, distribution, sale, rental, or any other form of exploitation of goods or products from abroad or when they are manufactured in the country, against the damages that may result from the resolution without just cause of the relations by virtue of which they carry out such activities. This is a public order law whose provisions may not be superseded by private contracts.

After an agent or distributor is appointed, the foreign supplier may have very little flexibility in terminating the agent or distributor, even in the face of marginal performance. The law shall regulate the contractual relations between the parties, provided that such contracts are duly registered in the Central Bank of Dominican Republic in accordance with the procedure established in it. The protection under Law No. 173 consists of the imposition of substantial sanctions for termination of agencies or distributorships made without just cause. Law No. 173 makes no distinctions between agents or distributors. They are referred to as concessionaires.

Termination without just cause may result in a compensation requirement as outlined by Article 3 that includes gross profits of the local concessionaire for the last five years, amongst other elements for compensation.

It should be noted that under the Free Trade Agreement signed with the United States in 2004 (DR-CAFTA), the Dominican Republic undertook, in the context of its relations with the United States, that the contracting parties are entitled to be regulated by Law 173-66 or by the civil laws of the Dominican Republic, which allows them the possibility of opting for the application of this law. Consequently, if the contracting parties wish to be subject to the provisions of Law 173-66, they must expressly consent to it in the distribution agreement they subscribe to.

Similarly, under the Free Trade Agreement signed with the Caribbean Community in 1998 (CARICOM), particularly Article IV of its Protocol, the contracting parties are entitled not to be regulated by Law 173-66, but inversely as it is in DR CAFTA for the United States, an express provision in the distribution agreement must be made in order to exclude the application of Law 173.

4. How does the Dominican Republic government regulate proposed merger and acquisition activities by foreign investors, and are there any areas of the economy where they are prohibited (e.g., natural resources, energy or telecommunications)?

Mergers and acquisitions are not subject to merger control, solely to the previous authorization from the local income tax agency, according to the Dominican Tax Code. The Dominican Republic does not have a specific text that regulates in a general and detailed way the control over mergers and acquisitions, insofar as corporate general rules from Dominican General Companies Law that outlines the corporate requirements for a merger between Dominican companies.

We also have some other laws that touch this point directly or indirectly for regulated sectors of the economy; among these texts we have A) Law No. 125-01 of Electricity; B) Law No. 153-98 on Telecommunications; C) Monetary and Financial Law No. 183-02; D) Law No.146-02 on Insurance and Bonding; and E) Renewable Energy Law No. 57-07, that require the previous authorization from the competent regulator in said sectors.

It should be noted that we also have in effect Antitrust Law (Law No. 42-08), that creates Pro-Competencia; nonetheless, it doesn't have an established merger and acquisition control system.

5. How do labour statutes regulate the treatment of local employees and expatriate workers?

In the Dominican Republic, the labor relationships are governed by the Dominican Labor Code, the implementing regulation, and related laws. This Code is from 1992, so in practice, many times it shows inconsistencies with current labor practices and is a little outdated. It is very protective and beneficial to the employee.

The employer and the employee are subject to the employment contract, although its provisions can never supersede the rights under the Labor Code. A written contract of employment is not required. In the absence of a written contract, the Labor Code governs the employment relationship. However, when parties decide to execute employment contracts in writing, the Labor Code requires two originals to be filed at the local Labor Department. The rights included in the contract can only improve minimum rights under the Labor Code since all employees' rights are of public order and shall not be renounced or waived by the employees.

Dominican labor laws are territorial in nature, i.e., any work carried out in Dominican territory will be subject to the provisions of the Labor Code, regardless of the nationality or residence of the parties involved.

Wages are freely negotiated between the employer and the employee but cannot be less than the legally-established minimum wage for each industry. Salaries must be paid in cash (or bank deposit) and the interval between payments cannot exceed one month.

The Dominican Labor Code confers certain rights to workers after working uninterruptedly for a time of three months, including:

- A Christmas bonus.
- A profit-sharing bonus.
- Paid vacation leave.
- Severance and other benefits proportional to job tenure in the event of unjustified dismissal (the Code defines just cause in detail).
- 14 weeks of paid maternity leave, and between 2 and 5 days in cases of marriage, childbirth by wife or companion, and death of a spouse, child, parent, or grandparent.
- The right to associate into unions to defend their interests, and special protection for employees engaged in forming a labor union.
- The right to strike by unions. Strikes can only involve the peaceful interruption of the work carried out by the employees.

These rights are well known to the labor force and claims against employers are common. Labor Courts tend to favor the workers. Therefore, employers must be careful to adhere to the detailed provisions of the Code.

Concerning expatriate workers, it must be noted that at least 80% of a company's workforce must be Dominican. Likewise, no less than 80% of the payroll, except for salaries for technical or executive positions, must correspond to wages earned by Dominicans. These rules do not apply

to employees carrying out executive or managerial duties or occupying technical positions not available in the country, as well as to foreign individuals with a Dominican spouse or children, subject to approvals of the Labor Ministry.

The law requires a labor contract to be filed with the Ministry of Labor before hiring foreigners to work in the country in order to determine if the contract is justified, i.e., if local personnel could not perform the work. This is a prerequisite for a labor visa or residency. As a rule, contracts for technicians or management personnel are routinely approved.

Companies wishing to relocate their employees to the Dominican Republic are required to obtain a temporary residency for work purposes or a short-stay permit, depending on the period the employee will be working in the Dominican Republic. A temporary residency is issued for a one-year period, renewable. Short-stay permits are granted for a period from two to eleven months.

6. How do local banks and government regulators deal with the treatment and conversion of local currency, repatriation of funds overseas, letters of credit, and other basic financial transactions?

The official currency of the Dominican Republic is the Dominican Peso (DOP). There are no exchange controls in the country. Foreign currency operations are carried out under free market conditions and convertibility. Interest rates for transactions denominated in domestic or foreign currency are freely determined among market agents. The Dominican Republic guarantees full convertibility and rights of repatriation of 100% of a foreign investor's dividends, after the payment of the corresponding applicable taxes.

7. What types of taxes, duties, and levies should a foreign investment in the Dominican Republic expect to encounter?

INCOME TAX

The Dominican Republic has a taxation system that is mainly territorial. As a result, individuals and legal entities, nationals, and/or foreigners are subject to tax payment for their income originating from a Dominican source.

All individuals whose annual income amounts to DOP\$416,220.00 or more will be subject to the payment of income tax at a rate of 15% to 25%, depending on the amount of their income. This amount is annually adjusted by inflation.

A fixed rate of 27% is applied to legal entities domiciled in the country, no matter if they are local or foreign, in accordance with the tax reform enacted in November 2012.

Additionally, individuals and legal entities, nationals, and/or foreigners who are residents in the Dominican Republic are subject to tax payments from their income from investments and financial earnings generated abroad. For foreign individuals, this is triggered after the third year of residence in the Dominican Republic.

DIVIDENDS

A dividend is all distribution in cash made by a legal entity to its shareholders or partners but does not include the distribution made in shares or quotas in favor of its shareholder or partner. The Dividends from Dominican sources disbursed to individuals or corporations are taxed at a rate of 10% and are subject to withholding.

TAX ON TRANSFER OF INDUSTRIALIZED GOODS AND SERVICES – VAT TAX

The tax on the transfer of Industrialized Goods and Services (*Impuesto sobre Transferencia de Bienes Industrializados y Servicios, ITBIS*) or valued-added tax is levied on:

- The transfer of industrialized goods that have been submitted to some type of transformation process (industrialization), including imports;
- The import of industrialized goods; and
- The provision of services and leases.

Individuals, as well as legal entities that perform one of the activities enumerated above, are subject to the payment of said tax, which rate is currently 18%.

TAX ON ASSETS

Commercial entities must annually pay a 1% tax on all their assets, unless income tax is greater, i.e., only one (income tax or asset tax) is paid. Said payment can be made in two quotas, six months apart from one another, the first payment being due on the same date as the income tax.

8. **How comprehensive are the intellectual property laws of the Dominican Republic, and do the local courts and tribunals enforce these laws regardless of the nationality of the parties?**

The Dominican Republic recognizes and protects the right to the exclusive property of scientific, literary, and artistic works, inventions, trademarks, and other productions of the human intellect. This right has constitutional rank. The Industrial Property Law, No 20-00 of May 8, 2000, as amended, and Law No 65-00 on Copyright, of 21 August 2000, represent considerable legal and institutional progress and compliance with the Trade-Related Aspects of Intellectual Property Rights (TRIPS) of Marrakech 1995. These laws promote the effective protection of intellectual rights, contribute to the dissemination and transfer of technology, socio-economic and scientific benefits, and the development of the literary and artistic heritage of the country.

9. **If a commercial dispute arises, will local courts or will international arbitration offer a more beneficial forum for dispute resolution to foreign inventors?**

Arbitration is the preferred conflict resolution forum because of its confidentiality and efficient processes. Although the Dominican Republic has an adequate judicial system, judges may not have particular technical skills and experience on the subject at hand for a favorable result. Additionally, the court's resolution of a conflict usually takes much longer than arbitration.

Furthermore, the use of arbitration to settle conflicts that arise in commercial activities keeps growing. Due to this, the Law of Commercial Arbitration, No. 489-08 was enacted. This law overrules the articles of the Civil Procedure Code that previously reigned on the matter.

This law is applied to all arbitration that takes place in the Dominican Republic, whether parties are nationals or internationals.

Some subjects are not able to be arbitrated, including real estate matters, family, and public order matters.

10. **What advice can you provide for how best to negotiate or conduct business in the Dominican Republic?**

The Dominican Republic has a system of government which governs the freedom of enterprise, free competition, and circulation of foreign currencies, and where there is a general regulatory system that governs business, both nationally and internationally.

Although there are special laws for each commercial activity, it is advisable when doing business in the Dominican Republic to be advised and consult with a good law firm, which is characterized by an exercise that assures its nonparticipation in an act of corruption and that has dominion in the area for which the service is requested.

Ecuador

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Romero Arteta Ponce (RAP) has been recognized, nationally and internationally, as one of Ecuador's premier law firms for nearly seven decades. Each of our practice areas is highly accomplished, and our lawyers are recognized for their commitment to the representation of our clients' interests.

Our clients count on RAP to advise them on various aspects of their business based on a diverse knowledge of the law. Our firm services clients on both legal and commercial matters in the following practice areas:

- Oil and Gas: Refineries and Pipelines, Exploration and Exploitation of Hydrocarbons, and Hydroelectric Plants
- Corporate and Finance: Telecommunications, Cement, Aeronautics, Automotive, Concessions and Privatizations, Intellectual Property, International Business, Franchising, Real Estate, Immigration, Banking and Insurance, Foreign Investment, Mercantile and Trade, Tax, Foundations, Contracts, Personal Data Protection, Competence.
- Litigation: National and International Arbitration, Labor, Immigration

Each of our practice areas is regarded among the top in Ecuador.

Our lawyers have culminated their studies at the top universities in Ecuador and abroad and are constantly updating their knowledge through practice-focused seminars and workshops. Consistent with our traditions, our partners not only mentor new associates, but they teach at local universities.

Our services go beyond legal counsel. We focus on long-term relationships and client attention second to none. We believe that maintaining a true partnership is the most effective manner of handling our clients' legal issues and business transactions.

1. What role does the government of Ecuador play in approving and regulating foreign direct investment?

The Ecuadorian State guarantees and promotes foreign investments. Foreign investors have the same rights and obligations as Ecuadorian individual and institutional investors.

The Government has encouraged foreign investment by issuing new legislation with tax exemptions or reductions in order to encourage projects where the State works together with the private sector.

With respect to taxes, the State promotes the incorporation of new companies in the cities that are not considered the most important cities of Ecuador, applying these exemptions in income taxes for up to five years, for which there will have to be verification that they are industries that will have a labor demand and that there is a transformation of the raw material, among other requirements. In this same sense, the Ecuadorian State also seeks the participation of the private sector by establishing Public/Private Partnerships.

Public companies can be associated in order to fulfill their business goals and objectives. They can form associations, strategic alliances, and mixed economy societies with public or private sectors, at the national or international level, or other levels that are established in the Constitution of the Republic of Ecuador.

Foreign investment is very attractive in all activities legally permitted in Ecuador, whether commercial or industrial. The State has developed a special interest in investments in mining, and mainly in the hydrocarbons sector, has sought alliances with service companies with the signing of contracts of specific services with financing. The result has been positive; specifically, small fields have been improved, as well as other fields of large reserves have increased production. In addition, a reform modifying the Mining Law was issued, with the main objective of making it more attractive to foreign investment, resulting in the signing of concession contracts in two important areas.

Foreign investment can be clearly seen in the variety of international hotel chains that currently operate in Ecuador and with the increase of international airlines that offer their services with new frequencies between the main cities of Ecuador and other countries.

We have seen transfers of shares of important economic groups to groups of foreign investors.

The procedures for establishing a company in Ecuador have been modified, facilitating their processes with fewer requirements, making the process faster, more agile, and cost-effective.

Furthermore, to make foreign investment more attractive, the Organic Law on Human Mobility has been implemented, focusing on migratory issues for foreigners who need to visit or work in Ecuador. The law enables tourists, investors, and retirees to enter, with an objective which they can establish in Ecuador.

2. **Can foreign investors conduct business in Ecuador without a local partner? If so, how does the Ecuador government regulate commercial joint ventures between foreign investors and local firms (include information on common corporate structures)?**

In Ecuador, foreign investors have the full faculty to conduct business without it being necessary to have a local partner. The law of companies in Ecuador conditions that to constitute a company in Ecuador, the entity must consist of one shareholder who may be foreign or Ecuadorian. This requirement is applied as a general rule in the private sector. Projects that will be carried out by the Ecuadorian State in infrastructure works and others are made feasible through public bidding with the participation of an Ecuadorian partner as an offeror.

The public procurement law states: "In any of the contracting modalities provided for in this Law, the bidding companies, when submitting their offer, must present the list of their partners or shareholders to verify that the majority are not disabled to participate in public procedures. The proportion of the participation of the partners or shareholders that will constitute an inability to intervene in public processes will be defined in the regulation of application to this law."

There is flexibility so that foreign companies can establish a branch in Ecuador, in which case there is no stockholder formation since it is a direct participant of the parent company with the assignment of a legal representative and operating capital among other requirements.

The commercial Joint Ventures in our Ecuadorian legislation are not subject to specific regulation. Their agreements are based on the will of the parties. In case of controversies, the general rule excludes the jurisdiction of the Cortes and, instead, they go through mediation by national or international arbitration.

The foreign investor can freely and voluntarily repatriate profits generated in Ecuador, provided that the corresponding taxes are paid.

3. What laws influence the relationship between local agents and distributors and foreign companies?

In Ecuador, the local agents, distributors, and foreign companies can freely contract with anybody. There are some rules to follow in the Commerce Code, such as when the contractual relationship begins, the parties must establish royalties, forms of termination, and compensation. As to future disputes, they may be submitted to Ecuadorian jurisdiction, to a foreign jurisdiction, or to a third country if the local laws of the foreign company permit it.

4. How does the Ecuadorian government regulate proposed merger and acquisition activities by foreign investors, and are there any areas of the economy where they are prohibited (e.g., natural resources, energy or telecommunications)?

Under Ecuadorian law, foreign investors can invest in all activities that do not fall under the exclusive competence of the Ecuadorian State and activities that are reserved as a strategic sector (i.e., Hydrocarbons). In strategic sectors, the State has the power to delegate to the private sector.

Any acquisition by foreign investors must observe the regulations of the Organic Law of Regulation and Control of Market Power (LORCPM) and its regulation, which through the Superintendence of Control of Market Power regulates and controls operations that have certain characteristics.

PRELIMINARY SUMMARY ANTITRUST LAW OF ECUADOR

Antitrust Law (the Organic Law for the Regulation and Control of Market Power, LORCPM as abbreviated in Spanish) was published in the Official Register of Ecuador in October 2011, and the Regulation to the Law was published in the Official Register of Ecuador in 2012.

Ecuador enacted a law with nationwide jurisdiction, with legislation that is an essential step towards regulating a highly concentrated market. It includes chapters for controlling the abuse of dominant positions, restrictive agreements and practices, unfair competition, and control of concentrations.

Operations by Economic Concentrations and Authorization by the Superintendence for the Control of Market Power

In the abovementioned law, Article 14 defines when economic concentrations are formed, and more specifically, when a change in a takeover of control of one or more companies occurs, which is done through one of the following acts:

“Art. 14- Operations of economic concentration. For all purposes of this law, economic concentration is understood to be the change in control or taking of control of one or more companies or economic operators by performing actions such as:

- a) Merger between companies or economic operators.
- b) Transfer of all of the goods of a merchant.
- c) Direct or indirect acquisition of the property or of any interest in shares or capital participations or debt titles that grant any type of interest that can be converted into shares or capital participations, or to have any type of influence in decision-making, when such acquisition grants the purchaser control or substantial interest in them.
- d) Affiliation through a common administrator.
- e) Any other agreement or action that factually or legally transfers the assets of an economic operator to a person or economic group, or grants it the decisive control or influence in taking ordinary or extraordinary administration decisions of an economic operator.”

Previous Notification (Art. 15)

When economic concentration operations take place, according to the law, companies must comply with the notification procedure to the Superintendence for Control of Market Power, and in the event that the economic concentration grows, modifies, or reinforces its market power, the Superintendence may deny the operation or determine measures or conditions to authorize its operation.

Sanctions

If the operation is consolidated without previous authorization or before the authorization is issued, the Superintendence for Control of Market Power may order decentralization measures or end the control that an economic operator has over another, in addition to sanctions that may be imposed, which run from 8 to 12% of the business volume (Art. 18 and 79 of the Law).

To determine the sanctions, the business volume for the company is calculated for the fiscal year before the fine was imposed. To calculate the business volume, the following formula is used: Business volume = Total sales - IVA - ICE (local taxes). In the case of associations, unions, or groups of companies, the business volume is determined considering the business volume of all of its members.

Obligation to request authorization from the Superintendence (Art. 16)

The obligation to request authorization from the Superintendence is required when one of the following conditions is met in accordance with the description of concentration of Art. 14 of the Law:

- a) The total business volume in Ecuador of all the participants exceeds, in the accounting year prior to the operation, the amount that the Regulation Board has established in current Unified Basic Remunerations.
- b) If the combined market share of a product or service in the national market is 30% or more.

It will be understood that there is an acquisition when a company partnership is created and the economic operators contribute all or part of their business to the newly created entity (Art. 15 of the Regulation).

Previous Authorization. Art. 16.

Concentrated operations that require previous authorization in accordance with the above paragraphs shall be notified for their previous examination within a period of eight days counted from the date in which the agreement is concluded. The agreement is concluded when the Shareholders approve.

Authorization is not required

If the concentrated operations do not fulfill any of the above conditions (a or b), no authorization will be required. However, the Superintendence may request that it be notified.

Conclusion of Agreement (Art. 17 of the Regulation)

It will be understood that there is a conclusion of agreement in the following cases:

- a) In the event of a merger between companies, from the time when the General Board of Shareholders of at least one of the participating companies or the governing agency has agreed to carry out the merger operation.
- b) In the case of the transfer of all of a merchant's effects, from the moment the participating economic operators consent to carry out the operation and determine the form, period, and conditions in which it will be executed.

- c) In the case of the acquisition, direct or indirect, of ownership or any right over shares or capital participations or debt securities that give any type of right to be converted into shares or capital participations or to have any type of influence on the decisions of the person who issues them, when such acquisition grants the acquirer control of, or substantial influence over the person who issues them, there is an agreement from the moment the participants consent to carry out the act that gives rise to the economic concentration operation and determine the form, period, and conditions in which it will be executed.
- d) In the event that there is linkage through a common administrator, the concentration agreement exists from the time at which the administrators have been appointed by the General Board or by the governing organism.
- e) In the case of any other agreement or act that transfers in a factual or legal manner to a person or economic group the assets of an economic operator or grants control or determining influence in the adoption of ordinary or extraordinary administration decisions of an economic operator, there is an agreement from the moment the participants consent to carry out the act that gives rise to the economic concentration operation and determine the form, terms, and conditions under which it will be executed.

Periods for the authorization (Art. 21)

The Government Authority shall decide within a term of 60 days (not counting holidays or weekends). Such term may be extended one time for up to 60 additional days. That term begins the moment that the Authority considers that has all the information from the parties.

5. How do labour statutes regulate the treatment of local employees and expatriate workers?

According to the Ecuadorian Labor Code, there is no difference in treatment between Ecuadorian and foreign employees.

The employment relationship is given by the voluntary agreement of the parties to enter into an employment contract, which may be verbal or written. This contract will establish the rights and obligations to which the parties have mutually agreed, and what has not been stated will be based on what the law provides for. It will be mandatory for the employer to affiliate the employees to social security from the beginning of their employment relationship.

Any foreigner who wants to work in Ecuador must first comply with the Organic Law of Human Mobility; that is to have all current migratory requirements that allow him to work in Ecuador.

All agreements that are established between employer and employee must be legal and may not go against the law.

When an employer has two or more employees, it has the obligation to issue an internal work code, which is a legal document that must be approved by the corresponding authority, that serves to regulate labor relations between the contracting parties.

The employment relationship can be terminated by the causes established in the law and in the duly approved Internal Labor Regulations. When the employer ends unilaterally and in an untimely manner, he has to pay compensation to the employee, which is subject to the time of service and the salary received by the employee.

In cases of occupational diseases or accidents that the employee may encounter, specific rules must be in place. However, it will be the employer's obligation to give notice to the Ecuadorian Social Security Institute (IESS) within the time provided for it, in order to initiate the respective investigation.

The employer complies with the provisions issued by the labor authority and must proceed according to them; otherwise, he could be sanctioned according to the established norms.

6. How do local banks and government regulators deal with the treatment and conversion of local currency, repatriation of funds overseas, letters of credit, and other basic financial transactions?

In Ecuador, since 2000, the official currency is the United States dollar, which is why there are no conflicts of conversion with local currency.

The repatriation of funds abroad is governed by several legal provisions, which permit the withdrawal of capital, provided that they meet several requirements, which must previously be duly justified. For example: The capital inflow must be registered with the Central Bank of Ecuador and comply with the conditions and limits established by the Internal Revenue Service.

Currently there is a tax on the withdrawal of capital from the country, which is equivalent to 5% of the capital to be repatriated. There are cases in which this tax is not applied, but it would have to be on specific case to determine if the exemption would apply or not.

Letters of credit or any other international financial transactions that establish a payment to be made abroad, must be submitted to the Ecuadorian legislation

7. What types of taxes, duties, and levies should a foreign investment in Ecuador expect to encounter?

In the case of foreign investment in a company that is incorporated or domiciled in Ecuador, it is required that the company must pay 25% of income tax in Ecuador, unless its shareholders or foreign investors are domiciled in tax havens, in which case the income tax rate of the Ecuadorian entity could rise from 25% to 28%.

If dividends or profits are paid to foreign investors after income tax payments are made, whether the investor is a foreign corporation not domiciled in a tax haven or a natural person not resident in Ecuador, there will be no withholding or additional taxes.

When dividends or profits are distributed directly or through intermediaries to resident companies or established in tax havens or jurisdictions of lower taxation, the corresponding withholding tax must be made on the taxable income.

8. How comprehensive are the intellectual property laws of Ecuador, and do the local courts and tribunals enforce these laws regardless of the nationality of the parties?

The Ecuadorian legislation in matters of Intellectual Property is quite broad and includes the following legal bodies:

- Decision 486 of the Andean Community of Nations. Common Regime on Industrial Property.
- Decision 351 of the Andean Community of Nations. Common Regime on Copyright and Related Rights.
- Organic Code of the Social Economy of Knowledge, Creativity and Innovation (enforced since December 9, 2016).

- Regulations to the Organic Code of the Social Economy of Knowledge, Creativity and Innovation, published in the Official Register Supplement No. 9 of June 7, 2017.
- Decision 486 of the Cartagena Agreement, adopted by Ecuador in September 2000.
- Constitution of the Republic of Ecuador, published in the Official Register No. 449 of October 20, 2008, in effect since year 2008.
- Executive's Decree No. 118, issued on October 23, 2009.
- Ecuadorian Intellectual Property Institute's Resolution No. 3, published in the Official Register No. 203 of May 31, 2010. (New administrative tariffs).
- Ecuadorian Intellectual Property Institute's Board Resolution No. 006-2012, published in the Official Register No. 815 of October 23, 2012. (New administrative tariffs regarding administrative services for Patents, Industrial Designs, Plant Varieties and applications for three-dimensional Trademarks).
- Ecuadorian Intellectual Property Institute's Resolution No. 003-2014 CD-IEPI, published in the Official Register No. 326 of September 4, 2014. (New administrative tariffs).
- Ecuadorian Intellectual Property Institute's Resolution No. 001-2016 CD-IEPI, published in the Official Register No. 822 of August 22, 2016. (New patents administrative tariffs).

These cover Industrial Property and Intellectual Property issues such as patents, copyrights, ancestral knowledge, utility models, industrial designs, trademarks, trade names, commercial names, domain names, slogans, distinctive appearances, geographical indications, and plant varieties.

Ecuadorian legislation includes principles of intellectual property including time periods, duration of rights, limitations and exceptions of rights, registration procedures, priority claims, protection requirements, rights and limitations, compulsory licenses, well-known distinctive signs, and compliance.

Regarding compliance with laws regardless of the nationality of the parties, we point out that Decision 486 of the Cartagena Agreement includes the principle of "most favored nation treatment," which includes the provisions of the ADPIC Agreement, which allows OMC members to establish the principle of non-discrimination known as most-favored-nation treatment and whereby a country, as a general rule, should not discriminate between right holders of different trading partners.

Article 2 of Decision 486 states that “With respect to the protection of industrial property, any favor, privilege or immunity granted by a Member Country to nationals of another Member Country of the Andean Community, shall be made extended to nationals of any member of the World Trade Organization or of the Paris Convention for the protection of industrial property ... ”

Administrative and judicial authority on intellectual property issues does not differentiate on the basis of the nationality of the parties.

9. **If a commercial dispute arises, will local courts or will international arbitration offer a more beneficial forum for dispute resolution to foreign inventors?**

In accordance with the constitutional rules of Ecuador, the Judicial Function enjoys internal and external independence through its administrative, economic, and financial autonomy.

The judges are appointed through public competitions, in which the winners are vested as authorities for the different areas of specialization involving judicial matters.

At the moment, the buildings where the majority of judicial organisms are possess facilities and comfort for the expedited attention to the users.

The following judicial bodies are responsible for administering justice:

1. The National Court of Justice.
2. The Provincial Courts of Justice.
3. The Courts and Tribunals established by law.
4. The Courts of Peace.

The Council of the Judiciary is the governing body, administration, supervision, and discipline of the Judicial Function.

There is legislation such as the General Organic Code of Processes (COGEP), which allows oral processing of the trials and therefore the agility of these.

As far as arbitration is concerned, the Constitution of the Republic recognizes arbitration to be carried out in accordance with the law in public procurement, arbitration in law, following a favorable ruling by the Attorney General’s Office, in accordance with the conditions established by law. However, no international treaties or instruments may be concluded in which the Ecuadorian State cedes sovereign jurisdiction to instances of international arbitration, in contractual or commercial disputes, between the State and private parties or juridical persons.

In Ecuador there are courts that can make adequate decisions and as a common practice in our environment, foreign investors establish national or international arbitration in their contracts. This decision will be made by the investors.

10. **What advice can you provide for how best to negotiate or conduct business in Ecuador?**

If an investor has the intention of doing business in Ecuador, our legislation contains all the legal regulations focused on all related fields to do business in Ecuador.

The investor must previously confirm the necessary requirements for his possible investment turnover in a business and have all the detailed information so that he does not have unnecessary setbacks in Ecuador.

You should consider your immigration issue that is linked to the activity you will carry out in Ecuador and in this way, you can obtain a previous temporary residence.

In Ecuador, as in other countries of the world, laws and regulations are modified or eliminated. In this sense, the foreign investor must seek professional and adequate legal advice, located in a strategic position within the continent.

The local currency is the United States dollar, which provides security to investors.

In recent years we have also increased physical infrastructure, roads, communications, and a network of airports located in the capital cities of Quito, Guayaquil, Cuenca, and Manta.

El Salvador

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Recognized for its regional leadership, BLP is the law firm for conducting business in Central America, with over 150 lawyers providing service in 28 practice areas at ten offices strategically distributed in Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and a representation office in Spain.

BLP was founded on the conviction that legal advisers must become true business law partners of their clients. Since the firm's establishment in 2003, we have earned our clients' trust by using our expertise and capabilities to provide legal advice with sound business judgment. In doing so, the firm adheres to the highest international quality, reliability, and efficiency standards.

Seeking a broader presence in the international market, the representative office in Madrid, Spain, creates a portal to European economies and generates business opportunities between Central America and Europe. Our international capabilities enable us to bring our global clients closer to new investment opportunities in Latin America.

1. What role does the government of El Salvador play in approving and regulating foreign direct investment?

El Salvador promotes foreign direct investment through the Agency for Promoting Export and Investment in El Salvador (INVEST). Foreign investors are not restricted or limited in their ability to conduct business in El Salvador. However, certain activities, such as artisan fishing (small-scale maritime fishing) and the ownership of rural properties, are reserved for Salvadoran nationals by constitutional provisions. No single natural or legal person – whether national or foreign – can own more than 245 hectares (605 acres) of land. The Salvadoran Constitution stipulates there is no restriction on foreign ownership of rural land in El Salvador, unless Salvadoran nationals face restrictions in the corresponding country. Rural land to be used for industrial purposes is not subject to the reciprocity requirement.

The Foreign Investment Law ensures that both foreign and domestic investors are treated equally and offers a range of incentives to foreign investors. These incentives include tax exemptions, the ability to import capital goods duty-free, and the freedom to repatriate profits and capital without any restrictions. Another significant investment law in El Salvador is the Special Law for the Promotion and Development of Export Activities. This law provides tax incentives, financing opportunities, and technical assistance to companies involved in export activities. El Salvador also encourages investment through its Free Zones law, which grants tax benefits and other incentives to companies operating in designated areas within the country. These incentives include exemptions from import and export duties and tax exemptions on income and profits.

Furthermore, El Salvador's participation in various international trade agreements further stimulates investment in the country. For instance, the Central America-Dominican Republic Free Trade Agreement (CAFTA-DR) provides Salvadoran goods and services with access to the U.S. market. El Salvador has also entered into other free trade agreements, including the Mexico-Central America Free Trade Agreement (MCAFTA), the Association Agreement with the European Union, and the Trans-Pacific Partnership (TPP).

In recent years, the role of the government has been to promote the foreign direct investment in three major sectors by approving the legal framework and tax incentives it deems appropriate and transition the country's economy to non-regular sectors. Primarily, the "Ley de incentivos Fiscales para el fomento de las Energías Renovables en la Generación de Electricidad" grants tax incentives to encourage national and foreign investment in the renewable energy sector in El Salvador.

Next, the “Ley de Fomento a la Innovación y Manufactura de Tecnologías” aims to contribute to the economic growth and sustainable development of the country by providing the legal framework to promote the national and foreign investment in innovation and the manufacturing of technology developed within the national territory.

Finally, the Digital Assets Issuance Law or Ley de Emisión de Activos Digitales, in Spanish provides the legal framework required for nationals and foreigners to invest in economic activities related to the issuance, safekeeping, trading, buying and selling of digital assets in El Salvador. For a national or foreign person to engage in these activities, they must follow the registration process with the National Commission of Digital Assets (CNAD). According to this law, a digital asset is a digital representation that can be stored or transferred electronically, using a Distributed Ledger Technology system or similar technology, where records are linked and encrypted to protect the security and privacy of transactions. Digital assets can be owned, exchanged, transferred, traded, and promoted by individuals and legal entities, both national and abroad

2. **Can foreign investors conduct business in El Salvador without a local partner? If so, how does the El Salvador government regulate commercial joint ventures between foreign investors and local firms (include information on common corporate structures)?**

Foreign investors can conduct business in El Salvador without a local partner. Since the early 1990s, the Salvadoran government has promoted and protected foreign investment through the gradual elimination of legal limitations and restrictions.

Salvadoran environmental law requires the authorization of commercial and industrial activities that are potentially harmful to the environment and for the import or export of dangerous substances or materials. These requirements are applicable to locals and foreigners alike.

Regarding Free Zones, El Salvador offers several tax incentives to export-oriented manufacturing companies located in free zones or warehouses for inward processing. Free Zones are industrial parks considered outside the national territory for fiscal purposes, allowing the tax-free importation of raw materials or merchandise by companies located therein.

In addition to the aforementioned, according to the International Services Law, certain export-oriented services such as international distribution, international logistics operations, international call centers, information

technologies, research and development, repair and maintenance of marine vessels, repair and maintenance of aircraft, business processes, medical and hospital services, and international financial services can enjoy tax benefits. As a general rule, all these activities must be export-oriented, with the understanding that the service will be destined for or provided to a customer domiciled abroad or outside the local customs territory. A prior authorization from the Ministry of Economy is needed.

Now, regarding commercial corporations, the Commercial Code of El Salvador provides basically three types of corporations:

- 1) "Sociedad Anónima" (SA): These are stock corporations, registered associations of two or more (individuals or legal entities) whose liabilities for acts of the company are limited to the amount of their capital contribution and whose participation is represented by shares.
- 2) "Sociedad de Responsabilidad Limitada" (SRL): These are partnerships, registered associations of two or more persons, who are jointly and severally liable to the full extent of their personal assets, organized to do business under a commercial name.
- 3) "Sociedad de Acciones Simplificadas" (SAS): These are simplified stock corporations, with which it is intended to facilitate the incorporation of companies, since these companies may be incorporated by a single person (individual or legal entity) whose participation is represented by shares and the shareholders will respond up to the value of their contributions.

MINIMUM CAPITAL STOCK

SA: A minimum capital stock is required (\$2,000). For stock companies that will develop banking, insurance, or stock market businesses, other minimum capital stock requirements exist. The stock capital of the company can be fixed or variable.

SRL: Ownership interest is represented by the "quota," similar to a share of stock. Prior to transferring or selling a quota, the authorization of the remaining quota holders is required. Bylaws can establish equal or different categories of quotas.

SAS: Capital stock can be established freely from the minimum amount of \$1.

NUMBER OF SHAREHOLDERS

SA: Must have a minimum of two shareholders during its existence. There is no limit to the number of shareholders an entity can have.

SRL: At least two quota holders must incorporate the SRL. There is no limit to the number of quota holders these entities can have.

SAS can have only one shareholder, but does not have a limit to the number of shareholders it can have.

MANAGEMENT & REPRESENTATION

SA: The management lies in a board of directors, or a sole manager as determined by the articles of incorporation. Any member of the board of directors can bear a company's legal representation. Alternatively, legal representation may be delegated to a manager. The bylaws determine the governance of a company, including its management and representation. Directors are elected for a maximum period of seven years and can be reelected.

SRL: This type of entity provides a simpler management structure, since, instead of a board of directors, it is managed by at least one manager, who bears the company's legal representation. Managers are appointed by the quota holders. Additional managers can be appointed. If managers are not designated, the quota holders are by default in charge of the company's management.

SAS: The management can be through a board of directors, a sole manager, or any other type of administration that is decided in its incorporation. The legal representation has to be held by an individual that will be designated as established in its incorporation form.

TERM

In El Salvador, companies can be incorporated for a definite or indefinite term, as determined by their articles of incorporation.

FORMAL REQUIREMENTS

SA and SRL are incorporated by means of a public deed containing the articles of incorporation and the bylaws. Said public deed must be registered in the Registry of Commerce. Upon registration, the company's legal existence begins. Any amendment shall also be made by public deed and registered in the Registry of Commerce.

SAS are incorporated, modified, transformed, dissolved, or liquidated by means of forms provided by the Registry of Commerce, without the need for a public deed.

TRANSFORMATION

Any existing company may adopt the type of SAS either by means of transformation or merger utilizing a resolution of the general meeting or, because it established in its articles of incorporation such possibility, by registering the respective form in the Registry of Commerce.

FOREIGN CORPORATION BRANCHES

Foreign companies may conduct business in El Salvador through branches of their parent company provided that the requirements established in Commerce Code are duly met, including enough capital stock (at least US\$ 12,000.00) to undertake its activities, pursuant to a certificate granted by the Ministry of Economy, which attests that the branch has received enough funds. The branch must be registered in the foreign investment registry held by the Ministry of Economy. The branch office is not considered a separate legal entity from the company and the company is fully responsible and liable for the actions and activities of its branch office in El Salvador.

3. What laws influence the relationship between local agents and distributors and foreign companies?

The legal framework governing agency-representation or distribution contracts in El Salvador is primarily outlined in the Code of Commerce of El Salvador.

The fundamental nature of these contracts lies in the appointment of a representative agent or distributor, who may be an individual or a legal entity, to engage in the continuous agency-representation or distribution of specific products or services within the country. This appointment is made through a contractual agreement, with or without legal representation.

According to the applicable law, agency-representation or distribution agreements are consensual bilateral contracts that do not require any specific formalities to be valid and binding. They come into effect once both parties have reached an agreement on the terms and conditions that will govern their relationship.

The applicable law also provides various means by which the parties can establish the existence of a contractual relationship. Contractual agreements, whether public or private, constitute the typical documents evidencing that both parties have entered commercial commitments. For example, invoices, correspondence between the parties, testimonies, financial records, and other means recognized by law, including electronic communications exchanged between the parties, also confirm the existence of a contractual relationship, especially when a written agreement has not been formalized, giving rise to an oral agreement.

The termination of the contract is regulated by the Law, allowing either party to terminate the contract with a minimum notice period of three months, which must be provided in writing. In the event of termination, the distributor is entitled to receive the outstanding commissions generated during the term of the contract. Furthermore, if the principal terminates,

modifies, or refuses to renew the contract without justifiable cause, the distributor is entitled to compensation for any damages suffered.

According to the applicable law, any disputes arising from the agency-representation or distribution contract must be brought before the competent courts in the distributor's place of residence. However, the interpretation of jurisprudence has expanded this scope in cases involving international contracts. In this regard, the Constitutional Chamber of the Supreme Court of Justice of El Salvador has emphasized the significance of party autonomy and freedom of contract in international agreements.

4. How does the El Salvador government regulate proposed merger and acquisition activities by foreign investors, and are there any areas of the economy where they are prohibited (e.g., natural resources, energy or telecommunications)?

There are no restrictions or limitations for a foreign investor to be involved in merger and acquisition activities. There are no legal requirements or authorizations for foreign investments, which are allowed without restriction to the acquisition of shares owned by nationals or other foreign investors. There are no legal requirements to remit abroad the total amount of the foreign investment or the amounts received as dividends.

Merger between Salvadoran and foreign companies and vice versa is authorized with the obligation to register the Merger Agreement in the Commercial Registry being the responsibility of the authorizing notary to list the documentation of the foreign companies to be merged where it is evidenced that they have complied with the legislation applicable to the merger of companies in their country of origin.

Notwithstanding, Competition Law provides the regulation and requirements for the execution of mergers and acquisitions in El Salvador. The application of such law corresponds to the Superintendency of Competition, which is an autonomous governmental authority.

5. How do labour statutes regulate the treatment of local employees and expatriate workers?

The current status of labor laws and regulations in El Salvador deserves special consideration in this publication. As a general rule, labor laws and regulations, especially the Labor Code, as well as the specific chapters devoted to fundamental labor rights in the Salvadoran Constitution, are

endowed with particular permanency and duration. The primary reason for this is the political and social sensitivity to reforms of such legal instruments.

El Salvador has ratified most of the International Labor Organization's fundamental instruments (including Conventions numbers 87, 98, 29, 105, 100, 111, 138, 182, and 187), which have a preferential applicability over the internal Salvadoran laws and regulations.

In the last few years, El Salvador has approved new special laws regulating teleworking, granting employees the right to daycare for their children (in companies with over 100 employees), extending the obligation to provide lactation rooms, and reforming the Private Pension System.

Employees are entitled to a one-day weekly rest, legal holidays, 15 days of paid vacation after a full year of employment, and to a December Christmas bonus varying from 15 to 21 days of salary depending on the employee's seniority. Additional benefits can be granted to employees by employers and these additional benefits will acquire mandatory status for the employer as a custom of the company.

MINIMUM WAGE

A National Board of Minimum Wage fixes from time to time the minimum wage for individual employees. Currently, the minimum wage is US\$365.00 per month and is applicable to any employee working a full eight-hour day.

HIRING OF FOREIGN EMPLOYEES

Foreign employees can be hired subject to certain limitations and restrictions. No more than 10% of the employer's personnel can be foreign and no more than 20% of the total payroll can be used to cover foreign personnel's wages. Labor contracts with foreign employees must be presented to the Migratory Authorities in order to apply for a modification of the migratory status of said employees to temporary residents.

TAXES AFFECTING SALARIES

Salaries are subject to income tax which is withheld by the employer and paid to the Tax Authorities in the name of the employee. In addition, salaries are subject to a withdrawal of 7.25% for the Private Pension System and of 3.0% for the Social Security Institute. Employers must pay, based on the worker's salary, 8.75% for the Private Pension System and 7.5% for the Social Security Institute.

6. How do local banks and government regulators deal with the treatment and conversion of local currency, repatriation of funds overseas, letters of credit, and other basic financial transactions?

Historically, the Salvadoran Ley de Integración Monetaria (the “LIM”) has provided the regulatory framework for the recognition and use of local and foreign currency. Furthermore, Article 3 of the LIM provides that the US Dollar is—in coexistence with the El Salvador Colón—legal tender in El Salvador, having unrestricted payment effects in this country. El Salvador has had a dollarized economy since 2001.

On September 7, 2021, the Bitcoin Law went into force, whose fundamental purpose is to regulate and recognize bitcoin as legal tender in El Salvador and provide the general framework for its implementation and use. The LIM shall remain valid, enforceable, and coexistent with the Bitcoin Law.

There are no legal limits or requirements on/for local or foreign currency brought into the country or disincentives/incentives in the law to do so, except for the money transfer control/reporting requirements prescribed under the money-laundering provisions.

7. What types of taxes, duties, and levies should a foreign investment in El Salvador expect to encounter?

The Salvadoran tax system is based on Income Tax (Impuesto sobre la Renta), Value-Added Tax (Impuesto a la Transferencia de Bienes Muebles y a la Prestación de Servicios), and Real Estate Transfer Tax. There are also import duties and various minor indirect taxes primarily on the importation and sale of cigarettes, alcoholic beverages, etc. Municipalities also have their own taxes, which vary from one municipality to another, and which are calculated over the company’s assets.

Although each of the above-mentioned taxes is regulated by a specific law, the general rules and legal provisions regarding taxation in El Salvador are contained in a general legal body named Taxation Code (Código Tributario). Import duties and municipality taxes are not subject to these general provisions.

INCOME TAX

El Salvador taxes its citizens, residents, and non-residents on their income earned in the country and on other Salvadoran-source income. The income tax for individual persons is established in a gradual withholding rate, depending on the amount of income, with a maximum rate of 30% of the net income. The income tax rate for companies is 30%, and this rate is

applicable to the total amount of the company's revenues. There is a reduced income tax rate of 25% for companies that obtain taxable income equal to or less than 150,000 United States dollars (USD) in the fiscal year. Dividends remitted or credited to shareholders are subject to a 5% Withholdings tax (25% if paid to a tax haven as considered by the Salvadoran tax administration).

Income tax for companies is based on the principle of territoriality, and, by general rule, taxes are paid on goods located, activities realized, and capital invested in El Salvador as well as on services rendered or utilized in the country. Nevertheless, there is a special rule regarding securities and financial instruments, since such income is considered to be obtained in El Salvador if the issuing entity is domiciled in El Salvador.

Since Bitcoin is recognized as legal tender in El Salvador, transactions involving its purchase or sale are treated as currency exchanges rather than the sale of a digital asset. Consequently, these transactions are not subject to the 10% capital gains tax.

A 1.75% tax is applied to gross revenues accrued. This tax is paid monthly as an advance payment that is applied against the income tax for companies at the end of the year.

VALUE-ADDED TAX

The Value-Added Tax (VAT) is a general tax that affects commercial activities involving the transfer or sale of movable goods and the rendering or use of services within the national territory. The VAT also affects the import and export of movable goods and services. Real estate transfers are excluded from VAT. VAT is levied at a rate of 13% over the taxable amount. As a general rule, the taxable amount is the price or remuneration agreed upon by the parties. For imports, the taxable amount is the customs value. For exports there is a rate of 0%. Foreign-source income is not subject to VAT.

VAT paid by a registered taxpayer company on its purchases (tax credits) is credited against VAT charged to its customers (tax debits) on a monthly basis.

VAT returns are filed on a monthly basis within the first ten working days of each month following the period under taxation.

REAL ESTATE TRANSFER TAX

A 3% tax is applied to transfers of real estate property. This tax is applied to the amount by which the value of the real estate exceeds USD 28,571.43.

IMPORT DUTIES

The legal structure of customs and duties is based largely on International Treaties of Central American scope such as the Custom Central American Code (Código Aduanero Uniforme Centroamericano). Import-duty rates are established in a Central American Custom System and vary depending on the kinds of goods imported.

All duties for import are ad valorem and are applied at the cost, insurance, and freight (CIF) value of the merchandise. The duty is common for all the countries in Central America.



How comprehensive are the intellectual property laws of El Salvador, and do the local courts and tribunals enforce these laws regardless of the nationality of the parties?

The Intellectual Property is regulated through the Trademark Act (LMOSD by its acronym in Spanish) enacted in 2002 and the Intellectual Property Law which regulates all issues related to patents and was enacted in 1993. The Salvadoran legal system is based on the registration of trademarks and patents. Once the registration is obtained, the owner of the mark or patent can initiate legal actions against infringements by third parties regardless of the nationality of the parties.

The Trademark Act establishes the process to register trademarks, trade names and slogans, and opposition proceedings. It also establishes the circumstances in which the cancellation or nullity action proceeds, which are issues that are developed before Civil/Commercial Courts. The Intellectual Property Law regulates the protection of copyrights, industrial designs, utility models, and patent registration. This Law also establishes the cases in which violations of the different IP assets can be brought before the courts.

The Penal Code establishes the following crimes related to Intellectual Property (which the Criminal Courts are responsible for): Violation of Copyright and Related Rights, Aggravated Violation of Copyright and Related Rights, Violation of Effective Technological Measures, Violation of Information on Rights Management, Violation of the Law on Satellite Signals, Violation of Invention Privileges, Violation of Commercial Distinctives, Commercial Infidelity, Revelation or Disclosure of Industrial Secrets.

9. **If a commercial dispute arises, will local courts or will international arbitration offer a more beneficial forum for dispute resolution to foreign inventors?**

In El Salvador, proceedings in local courts not only may last many years, but also judges may not have the necessary experience that foreign investors need in their cases and in their specific matters.

Since El Salvador is a member of the International Centre for Settlement of Investment Disputes (ICSID Convention) and has signed the convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958 New York Convention) and the Inter-American Convention on International Commercial Arbitration (The Panama Convention), awards issued in arbitration may be enforced in the country without any problem.

Considering the aforementioned, international arbitration offers a more beneficial forum for dispute resolution to foreign investors since the arbitrators that will be conducting and reviewing the case can be selected based on their experience in the specific matters of the case. It is also important to mention that arbitration is much more flexible regarding process timings and the resolution time is much shorter.

10. **What advice can you provide for how best to negotiate or conduct business in El Salvador?**

The most important recommendation to achieve a successful negotiation, as well as to achieve the establishment of a prosperous business in El Salvador, is that the investor must be fully aware of the local environment in the country, such as national security, political environment, economic incentives, openness to foreign investors, rights of nationals and foreigners over property, government permits, and tax matters, among others.

It is very important to be accompanied by a serious legal and tax firm with a good reputation and extensive experience on the proposed investment to provide advice on government regulations, administrative procedures, tax and municipal matters, customs, real estate, and labor, among other matters, and for the investor to make a comprehensive analysis of all the risks, benefits and incentives that El Salvador offers for businesses.

Guatemala

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Marroquín, Pérez y Asociados, S.C. is a law firm based in Guatemala City, Guatemala. Right from the start, we have been dedicated to providing the highest quality legal services. Founded on principles of excellence, integrity, and trust, the firm has established itself in our jurisdiction as a law office with values, representing both local and international clients.

MISSION

The mission of Marroquín, Pérez y Asociados, S.C. is to provide professional and customized service through which the client receives comprehensive advice within the current positive law, addressing and meeting professional or business needs.

Our clients appreciate our commitment to excellence, which we continually seek to achieve through ongoing professional preparation and experience.

1. **What role does the government of Guatemala play in approving and regulating foreign direct investment?**

It is a fundamental obligation of the government to protect foreign direct investment and create the appropriate conditions and mechanisms for its promotion and development. Guatemala has made international commitments regarding investments and it is recognized that currently nineteen (19) bilateral investment treaties are in force with different countries around the world. Guatemala also has laws that are related to the promotion and protection of national and foreign investments, among which we can mention: Law for the Promotion and Development of Export and Maquila Activity; Law of Incentives for the Development of Renewable Energy Projects; and the Law of Alliances for the Development of Economic Infrastructure.

Regarding national specific regulation, Guatemala's Congress issued a law that regulates foreign investment. Such law establishes the terms and politics directed to promote foreign capital investment, primarily to create jobs, development of diverse productions sectors, and strengthen national investment, creating conditions that guarantee its protection.

2. **Can foreign investors conduct business in Guatemala without a local partner? If so, how does the Guatemalan government regulate commercial joint ventures between foreign investors and local firms (include information on common corporate structures)?**

Foreign investors can conduct business in Guatemala without a local partner. The Guatemalan Constitution recognizes foreigners' right to investment within the country's jurisdiction, as well as the exploitation of said investment. Foreign persons are treated equally with nationals in terms of investment and are subject to the same obligations as Guatemalan investors, save and except the limitations established in the Constitution, which revolve around land ownership or lease near Guatemalan borders, rivers, lakes, and shores.

Guatemalan Commercial Code regulates commercial law applicable to merchants, individuals, or social (e.g., corporations) on any type of business. Our legislation does not differentiate between foreigners and Guatemalans. Joint Ventures are not specifically regulated by said Code but are not prohibited either. It is common for foreign investors to choose to create a joint venture with local businesses. This can occur either due to a legal requirement in which the cooperation of the foreign investor with a

local company is required, to an economic decision in which the foreign investor intends to rely on the experience of the local businessman, or because the operation exceeds its economic capabilities and the cooperation of the local businessman is essential.

3. **What laws influence the relationship between local agents and distributors and foreign companies?**

The laws that influence the relationship between local agents and distributors and foreign companies are the following:

- Constitución Política de la República de Guatemala. (Political Constitution of the Republic)
- Código de Comercio de Guatemala, Decreto 2-70 (Commerce Law).
- Ley de Inversión Extranjera, Decreto 9-98 (Foreign Investment Law)
- Ley del Organismo Judicial, Decreto 2-89 (Judicial Body Law)
- Ley de Propiedad Industrial, Decreto 57-2000 (Industrial Property Legislation)
- Código de Bustamante o Código de Derecho Internacional Privado (Private International Law)
- Ley de Actualización Tributaria, Decreto 10-2012 (Tax Law)
- Ley de libre negociación de divisas, Decreto 94-2000 (Foreign Exchange Free Negotiation Law)

In discussion at Guatemalan Congress, Ley de Competencia, faced some important opposition from Guatemalan corporations.

4. **How does the Guatemalan government regulate proposed merger and acquisition activities by foreign investors, and are there any areas of the economy where they are prohibited (e.g., natural resources, energy or telecommunications)?**

Guatemala's legislation does not make any difference between foreign and national investors in matters of commerce and economy. Guatemala is open to foreign investment and avoids creating specific requirements for foreign investors. Its intention is to receive all investors who wish to develop the national economy.

In matters of natural resources, energy, telecommunications, and others, specific regulations and requirements are demanded to be complied with by all.

5. How do labour statutes regulate the treatment of local employees and expatriate workers?

LOCAL EMPLOYEES

Guatemalan labor legislation consists of a set of laws and regulations related to specific matters. These are established by the Guatemalan government and contemplate matters such as employment, hiring, working conditions, wages, benefits, job security, and health, among other labor rights and obligations.

The Labor Code and the individual employment contract reflect the rights, obligations, and conditions under which employers and employees are governed. Employees in Guatemala have the minimum social rights established in the Constitution and in multiple international treaties on labor matters to which Guatemala has adhered.

Minimum rights include:

- a) Working hours:
 - I. During 6:00 a.m. and 6:00 p.m., it is considered daily time and may not exceed 8 hours per day and 44 hours per week.
 - II. During 6:00 p.m. of one day and 6:00 a.m. of the next day, it is considered nighttime and may not exceed 6 hours per day and 36 hours per week.
 - III. Any work executed in between those terms may not exceed 7 hours per day and 42 hours per week; but if such work is executed during 4 or more hours of nighttime, then nighttime rules must be applied.
- b) Minimum wage settled by Government each year: For 2024, for agricultural employees it is Q 3,516.86 per month, for non-agricultural employees it is Q.3,634.59 per month; and for Manufacturing employees employed by "maquilas" it is Q. 3,343.01 per month.
- c) Vacations for 15 working days once an employee reaches 1 year of continuous work.
- d) Compensation must be paid once the employee is fired without justified cause.

- e) **Mandatory Bonus:** Employees have the right to earn 2 bonuses: The first is given in June and another one in December. They are mandatory and must be equal to a salary per bonus.
- f) **Maternity leave:** a pregnant employee has the right to 30 days of paid leave before birth and 54 days of paid leave after birth. Upon resuming work, she has the right to 1 hour of paid leave for 10 months.

EXPATRIATE WORKERS

A company is required to have Guatemalans as 90% total of its employees and 85% of salaries total paid to Guatemalan employees. Ten percent (10%) may be expatriate workers, and they may earn a maximum of 15% of total salaries, unless there is evidence produced before administrative authorities, in regard to the absence of Guatemalan professional or technical personnel for a specific sector.

Expatriate workers must enter legally to Guatemala and file a petition for a special visa issued by immigration authorities. Once a residence application is filed, the foreign employee has to ask the Ministry Office of Labor for authorization to formalize the contract.

6. How do local banks and government regulators deal with the treatment and conversion of local currency, repatriation of funds overseas, letters of credit, and other basic financial transactions?

CONVERSION OF LOCAL CURRENCY

The Guatemalan system regulates a free foreign exchange.

REPATRIATION OF FUNDS OVERSEAS

As long as supporting documentation is provided, money entering Guatemala would have no problem.

LETTERS OF CREDIT

Commercial Code and the financial system recognizes letters of credit, regulated mainly by the uniform rules and uses relating to documentary credits of the International Chamber of Commerce. Investors may be able to use such letters of credit in any negotiation.

BASIC FINANCIAL TRANSACTIONS

The Superintendencia de Bancos is the national entity that regulates all financial transactions, banks, and any company that is dedicated to financial intermediation. Within said entity, a specific department called Intendencia de Verificación Especial (or Special Verification Intendancy)

has been created. They are in charge of overseeing all major transactions performed in banks and are empowered to require supporting evidence for all financial transactions.

7. What types of taxes, duties, and levies should a foreign investment in Guatemala expect to encounter?

Direct Taxes: These are those that directly tax the assets and income of taxpayers, among which are:

- a) Impuesto Sobre la Renta (Income Tax): Regulated by Decree number 26-92 of the Congress of the Republic of Guatemala. It is levied on income or profits obtained in the national territory, resulting from the investment of capital, labor or the combination of both by any individual, legal entity, national or foreign, domiciled or not in the country. They are determined according to their origin: a. Lucrative Activities; b. Labor Income; and c. Capital Income.
- b) Impuesto Único sobre Inmuebles (Single Real Estate Tax): Regulated by Decree 15-98 of the Congress of the Republic of Guatemala. It is the contribution that Guatemalan owners of, rural or urban real estate provide to the State; most of the collected amount is assigned to the municipalities; most of them already collect and administer it; others through the Directorate of Cadastre and Appraisal of Real Estate of the Ministry of Finance. Its payment is made quarterly or annually.
- c) Impuesto sobre Circulación de Vehículos Terrestres, Marítimos y Aéreos (Tax on Circulation of Land, Maritime and Air Vehicles): Regulated by Decree 70-94, the circulation of vehicles in national territory, airspace and waters generates a tax that must be paid by the owners of the vehicles. These funds are mainly designated for the country's municipalities. The payment period is from January 1 to July 31 of each year.

Indirect Taxes: These taxes are levied on the consumption of goods and services. They are called indirect because they are transferred in each link of the productive chain (from importer to products, from this to distributor, and from this to the final consumer who will be the real taxpayer).

- a) Impuesto al Valor Agregado (Value Added Tax): Regulated by Decree number 27-92 of the Congress of the Republic of Guatemala, which establishes the payment rate, being 12% of the value of each good or service.

- b) Impuesto a la Distribución de Petróleo Crudo y Combustibles Derivados del Petróleo (Tax on the Distribution of Crude Oil and Fuels Derived from Petroleum): Regulated in Decree number 38-92 of the Congress of the Republic of Guatemala, the taxpayer complies with the payment of the tax at the moment in which he consumes crude oil and fuels in the regulated service stations. The purpose of the collection of said tax is the maintenance and improvement of the transportation service and road infrastructure.

8. **How comprehensive are the intellectual property laws of Guatemala, and do the local courts and tribunals enforce these laws regardless of the nationality of the parties?**

The intellectual property laws of Guatemala are comprehensive of the more important principles and international treaties. Guatemala is an active member of the World Intellectual Property Organization (WIPO).

Guatemala has an Intellectual and Industrial property scheme that complies with international organizations and treaties such as the Paris Convention, PCT, and TRIPS, among others. In the year 2000, new legislation was passed, based on recommendations of WIPO, which completely modified the [at the time] existing intellectual property regulations. This legislation also reformed the basis of free trade treaties with the United States and the European Union.

The competent authority in the Republic of Guatemala is the Intellectual Property Registry Office, entrusted with the registration of all Intellectual Property, which requires said formality and copyright and related rights.

In Guatemala, first instance civil courts, mainly in oral proceedings, are the competent authority for litigation.

9. **If a commercial dispute arises, will local courts or will international arbitration offer a more beneficial forum for dispute resolution to foreign inventors?**

If a commercial dispute arises, Guatemalan civil courts could be competent unless parties have agreed differently in their contract or agreement. In our experience, civil courts will offer a beneficial forum and our Law Firm has an important civil and commercial litigation practice; in several international contracts, arbitration at a tribunal located not in the domicile/residence of either party, is commonly regulated.

10. **What advice can you provide for how best to negotiate or conduct business in Guatemala?**

The Guatemalan Constitution recognizes foreigners' full right of investment within the country's jurisdiction. Foreigners are treated equally as nationals in terms of investment and are subject to the same obligations as Guatemalan investors.

Business entities in Guatemala are divided into two main categories: Those which completely limit investor liability and those which do not. Because of the obvious benefits limited liability organizations offer, other company schemes are rarely used. Some foreign investors have also chosen to invest in Guatemala by means of establishing a branch or local office of a foreign entity. It is worth considering, but this is usually only done upon legislation or government official's requirement; this way of doing business in Guatemala extends the liability for the management in Guatemalan territory and does not limit any liability related to its local operation in any way for its main office legitimately incorporated abroad.

Guatemalan business entities that completely limit liability are the Corporation (or Sociedad Anónima) and the Limited Liability Partnership (or Sociedad de Responsabilidad Limitada).

Honduras

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Recognized for its regional leadership, BLP is the law firm for conducting business in Central America, with over 150 lawyers providing service in 28 practice areas at ten offices strategically distributed in Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and a representation office in Spain.

BLP was founded on the conviction that legal advisers must become true business law partners of their clients. Since the firm's establishment in 2003, we have earned our clients' trust by using our expertise and capabilities to provide legal advice with sound business judgment. In doing so, the firm adheres to the highest international quality, reliability, and efficiency standards.

Seeking a broader presence in the international market, the representative office in Madrid, Spain, creates a portal to European economies and generates business opportunities between Central America and Europe. Our international capabilities enable us to bring our global clients closer to new investment opportunities in Latin America.

1. **What role does the government of Honduras play in approving and regulating foreign direct investment?**

The Honduran Government has acknowledged that foreign direct investment is vital for the generation of economic growth and employment for Hondurans. The principal laws that promote investment in Honduras are:

- A. Law of Promotion for the Generation of Energy with Renewable Resources;
- B. Law and Regulations for the Defense and Promotion of Competition;
- C. Law and Regulations for the Promotion of Public-Private Partnerships;
- D. Law and Regulations for the Promotion and Protection of Investments;
- E. Law of Representatives, Distributors and Agents of National and Foreign Companies;
- F. Law for the Generation of Employment, Promotion of Entrepreneurship, formalization of Businesses and Protection of the Investors' Rights.

2. **Can foreign investors conduct business in Honduras without a local partner? If so, how does the Honduran government regulate commercial joint ventures between foreign investors and local firms (include information on common corporate structures)?**

Foreign investors may conduct business in Honduras and create corporate entities without the need to have a local partner. A Honduran corporation may be wholly owned by a foreign parent company. Foreign entities can also establish branches in Honduras with no need to partner with a local investor. The Honduran Commercial and Tax Code does state that for tax purposes, these entities need to appoint a legal representative who is a resident of Honduras with broad powers to carry out all the legal acts and businesses to be conducted in the national territory.

The Honduran government is generally open to foreign investment establishing only very few exceptions. For reasons of social interest, the Government may reserve the right to limit the exercise of certain basic industries or services to Honduran nationals.

Some examples of restrictions on foreign investors are:

- A. The Constitution of the Republic limits foreign participation in the direction, intellectual, political, and administrative orientation of radio or television stations, delegating these functions exclusively to Hondurans by birth.

- B. The Fisheries Law establishes that only Honduran residents and legal entities in which at least 51% of the capital belongs to Hondurans will be granted permits for exploitation or profit purposes, as well as fishing licenses.
- C. The Ground Transportation Law of Honduras establishes that ground transportation subject to a fee or payment in any of its modalities is a public service of the State rendered only by the Executive Power or by an authorized Honduran natural or legal person.

The main Honduran law that refers to the commercial joint ventures between foreign investors and local firms is "The Public-Private Alliance Promotion Law" which establishes that the parties within a Public-Private Alliance model can be organized as joint ventures, legal entities, whether for profit or not, participation contracts, management contracts, trusts, or any other form or modality that is suitable for the execution of works and/or provision of required services. The Public-Private Alliance Promotion Law states that the distribution of risks and costs must be agreed between the parties according to what best suits the needs of the alliance; therefore, the parties can freely agree to the terms and conditions of commercial joint ventures between foreign investors and local firms. Said law establishes the following basic and mandatory content that must be included in all Public-Private alliance contracts:

- Purpose of the contract and general conditions;
- Term of validity of the alliance;
- Project execution schedule;
- Rights and obligations of the parties;
- Allocation of risks among contracting parties;
- Required guarantees;
- Quality of service standards and service, work, or product management indicators;
- Authority to subcontract;
- Economic rebalancing clause;
- Stipulation of penalties in case of breach of contractual obligations;
- Establishment of assumptions and grounds for termination of the contractual relationship.

3. What laws influence the relationship between local agents and distributors and foreign companies?

The Honduran legislation regulates all representation, agency, and distribution agreements under the same law and makes no distinction between them in its application. The main legal bodies that refer to the relationship between local agents and distributors and foreign companies are:

- A. The Law on Representatives, Distributors and Agents of National and Foreign Companies (Decree Law 549).
- B. The Regulation of the law on Representatives, Distributors and Agents of National and Foreign Companies.
- C. Commercial Code of Honduras.
- D. The Dominican Republic, Central America and United States of America Free Trade Agreement (DR-CAFTA).
- E. The Implementation Law of the Dominican Republic, Central America and United States of America Free Trade Agreement.
- F. Law and Regulations for the Promotion and Protection of Investments.

The main purpose of the Decree Law 549 is to regulate the commercial and contractual relations established or to be established between national and foreign companies and natural or legal persons engaged in the country to represent them, to distribute their products, or promote purchase orders of their merchandise as to ensure the permanent supply of products or goods in appropriate conditions for the consumer.

The DR-CAFTA and its implementation law, among other topics, refers to the relationship between local agents and distributors and companies according to the nationality of its parties. The regulations contained in both documents are intended to substitute more restrictive regulations prescribed by the Decree Law 549.

The Decree Law 549 defines a grantee as a natural person or legal entity whether by contract or by the actual performance of the service that represents, distributes, or procures as an agent the products or services of a national or foreign grantor in an exclusive or non-exclusive way and in all or part of the national territory. The DR-CAFTA specifically stated that this definition of grantee is the same one recognized in the treaty and added that the definition also includes "... a person that is a party to the treaty."

Also, according to said legislation, any relationship of representation, distribution, or agency must be governed by a contract or agreement which is defined as that by which a natural or national legal person is

bound with another, exclusively or not, to represent him in business, to lend him agency services or distribute its goods or products in the national market and that although it is not celebrated with the formalities that the law prescribes, its existence will be presumed.

The DR-CAFTA defines distributor as a person in representation of a party who is responsible for the distribution, agency, concession, or representation in the territory of that party, or merchandise of another party. This definition is not included in the Decree Law 549 therefore the DR-CAFTA is considered a complement of the law on that matter among others.

According to the Honduran law and the DR-CAFTA, these are the requirements to be a grantee:

- A. To be a Honduran national or Honduran corporation (it's considered a Honduran corporation if its capital stock is composed of a predominantly Honduran investment at a rate of not less than 51%)
- B. To be affiliated to the Chamber of Commerce

Among the most relevant provisions on the subject, the Decree Law 549 and the free trade agreement (DR-CAFTA) regulate situations such as the formalities that apply to the referred contracts, exclusivity, obligations of the parties, payment of commissions, dispute resolutions, registry, etc.

In line with the above, it is compulsory to register all representation, distribution, and agency contracts in the Secretariat of Economic Development, which authorizes the following public registries: registry of representatives, registry of agents, registry of Distributors, and a mixed registry of distributors and representatives registered under the DR-CAFTA. The registry requires that when the agreement is modified with respect to its jurisdiction, products, exclusivity condition, and term, a new license and registration should be obtained.

The Decree Law 549 establishes that parties may solve their disputes in the first instance by conciliation. In the absence of a contrary agreement, or even if there was a partial agreement, the dispute about the part that has not been resolved will be submitted to arbitration according to what is established in the Law for the Protection and Promotion of Investments. The DR-CAFTA also provides that any conflict that arises out of the interpretation or application of a written representation, agency, or distribution contract will be resolved according to what is established in the contract, or in the absence of a contrary agreement, following what is established in the Treaty.

The payment of a commission is not specifically contemplated in the Decree Law 549; instead the Commercial Code establishes that if no special agreement is made, the agent will receive a commission that is proportional to the amount of business that is made by its intervention, according to the custom and usage in that place.

Exclusivity in a representation, agency, or distribution agreement is permitted according to the Decree Law 549 and the DR-CAFTA, but it has to be expressly agreed in the written contract in order to be valid; otherwise it will be considered a non-exclusive agreement.

4. How does the Honduran government regulate proposed merger and acquisition activities by foreign investors, and are there any areas of the economy where they are prohibited (e.g., natural resources, energy or telecommunications)?

The Honduran government regulates mergers and acquisitions by foreign investors specifically through the Law for the Defense and Promotion of Competition and the Commercial Code.

The Law for the Defense and Promotion of Competition introduces the subject of mergers and acquisitions through the figure of “economic concentration,” defining it as the taking or changing control in one or several companies through shareholding, management control, merger, acquisition of property or any right over shares, equity or debt securities that cause any type of influence in corporate decisions. Any act or acts by virtue of which social shares, trusts, or assets that are made between suppliers, customers, or any other economic agent are grouped are considered economic concentration, as well.

For this purpose, Law and Regulations for the Promotion and Protection of Investments guarantees national or foreign investors the right to participate without limit in the acquisition of capital of companies, associations, and other entities or national negotiations. Despite this, the competition law prohibits economic concentrations by merger or acquisition of property or any rights in shares or capital participation whose purpose is to restrict, diminish, damage, or impede free competition.

In order for the state to verify that economic concentrations will not have a negative impact on free competition, the Commission for the Defense and Promotion of Competition must be notified.

Once notified, the Commission for the Defense and Promotion of Competition must define which concentrations must be approved according to the following criteria:

- A. Amount of assets
- B. Participation in the relevant market
- C. Turnover

According to the Law and Regulations for the Promotion and Protection of Investments, all national or foreign investors may invest in all economic activities without previous authorization from the Honduran government. However, the law establishes the following exceptions:

- A. The Constitution of the Republic prohibits foreign ownership of land within 40 kilometers of international borders and shorelines except for the acquisition of lands located in touristic zones designated for the development of tourism projects or construction of individual houses with previous approbation from the Tourism Secretariat.
- B. The Fisheries Law establishes that only Honduran residents and legal entities in which at least 51% of the capital belongs to Hondurans will be granted permits for exploitation or profit purposes, as well as fishing licenses.
- C. The Ground Transportation Law of Honduras establishes that ground transportation subject to a fee or payment in any of its modalities is a public service of the State rendered only by the Executive Power or by an authorized Honduran natural or legal person.
- D. Prior authorization from the government will be required for both foreign and domestic investors in the following areas:
 - Health services provided by the private sector
 - National security
 - Telecommunications
 - Generation, transmission, and distribution of electrical energy
 - Air transport
 - Hunting, fishing, and agriculture
 - Exploitation of forests
 - Research, exploration, and exploitation of mine sites, hydrocarbon quarries, and other associated substances
 - Financial and insurance services
 - Educational services provided by the private sector

5. How do labour statutes regulate the treatment of local employees and expatriate workers?

The Constitution of the Republic, as well as the Law on Migration and Foreigners, establish that foreigners enjoy the same civil rights as Hondurans with certain restrictions established for reasons of public order, security, interest, or social convenience.

The main legal body in labor matters is the Labor Code where the recruitment of national and foreign personnel subject is expressly regulated. In accordance with said Code, the hiring of foreign personnel is permitted as long as they do not make up more than 10% of the total workers of the company. However, this condition may be subject to modification prior to authorization from the Ministry of Labor and Social Security, only in case there is a lack of Honduran technicians in a given activity or when there are cases of authorized immigration controlled by the Executive Power. The authorization for hiring foreign personnel in a higher percentage than permitted by the law will be granted for a maximum duration of five years.

Likewise, the Labor Code and the Law of Migration and Foreigners mandate that every foreign worker must have a special work permit issued by the National Institute of Migration and a work card issued by the Ministry of Labor and Social Security. In compliance with the local laws and regulations, it's the employer's responsibility to obtain said permits, as well as to guarantee the foreign employees their necessary living means.

Apart from the legal bodies previously stated, the following laws prescribe obligations and grant rights for both employers and employees:

- A. The Code of Childhood and Adolescence
- B. The Minimum Wage Law
- C. The Social Security Law
- D. The Law of the Seventh Day and the Thirteenth Month
- E. The Labor Inspection Law

6. How do local banks and government regulators deal with the treatment and conversion of local currency, repatriation of funds overseas, letters of credit, and other basic financial transactions?

The Honduran government regulates the conversion of national to foreign currency, bills of lading, foreign exchange, and exports, among other financial transactions through the following regulations:

- A. The Monetary Law
- B. The Law of the Central Bank of Honduras
- C. The Law and Regulation of the National Banking and Insurance Commission
- D. The Financial System Law
- E. The Law of Deposit Insurance in Financial Institutions
- F. The Insurance and Reinsurance Law
- G. The Stock Market Law
- H. The Financial Balance Law
- I. The Special Law against Money Laundering
- J. The Law for Repatriation of Capital (and their respective regulations)

The public and private institutions responsible for conducting basic financial transactions in Honduras are:

- A. Central Bank of Honduras
- B. The National Commission of Banks and Insurance
- C. Institutions of the Financial System
- D. Banks authorized by the National Banking and Insurance Commission

The Law for the Repatriation of Capitals establishes that natural persons or corporations that repatriate capital in foreign currency may deposit or convert it into national currency in any Honduran institution authorized by the National Banking and Insurance Commission for those means. The Central Bank of Honduras is the government entity which determines the foreign currencies that can be deposited in Honduran financial institutions. As a complement to the previously stated law, the Investment Law also permits the opening of accounts in foreign currency in the banks of the national system; nevertheless, this will only be allowed on free convertibility currencies.

The Law on Income from Foreign Exports and its regulations, prescribes that all natural or legal persons dedicated to the export of goods, must declare in advance to the Central Bank of Honduras each export they

make by describing the amount, the value and destination of the goods to be exported, as well as the probable date and currency in which the payment will be received.

It is important to mention that the source of funds is susceptible to investigation for tax and anti-money laundering purposes. According to the Investment Law, any bank, exchange house, institution, or agency that is authorized by the Central Bank of Honduras for the purchase and sale of foreign currency must attend the investor without discrimination as to whether it is or is not its client, the class or amount of the deposits, or operations that it realizes. In case one of the previously mentioned institutions neglects without a just cause to sell to the authorized investor, foreign currency, or currency of free convertibility in the national money market, the Investment Law establishes a protection mechanism to the investors through the direct denunciation to the Central Bank.

7. What types of taxes, duties, and levies should a foreign investment in Honduras expect to encounter?

As of January 1, 2017, a new Tax Code entered into force in Honduras. This tax code did not create new taxes, duties, and levies for local and foreign companies; however, one of the most relevant and important changes of this code is that the Honduras tax system changed from a worldwide tax system to a territorial or local tax system whereby only income generated in Honduras will be taxed. Income received by persons or companies domiciled outside Honduras will be considered as being from a Honduran source if it arises from services or actions that benefit persons or companies located in Honduras, including fees, interests, and royalties. The main taxes that all domestic or foreign investors are obliged to pay in accordance with the Honduran legislation are:

COMPANY INCOME TAXES

- Company profits are taxed at a rate of 25%.
- Solidarity Tax: The tax rate is 5% calculated over the gross income above USD 43,956 and is applicable only to taxpayers opting for taxes on income from lucrative activities (25% income tax regime), with the exception of special regimes of exportation and tourism.
- Alternative Minimum Tax: legal entities and individuals resident in Honduras must pay 1.5% of gross income equal to or in excess of L. 10 million when the tax that otherwise would apply is lower than 1.5% of reported revenue. The rate is reduced to 0.75% for individuals or legal entities that produce or market the following products or services:

production and distribution of cement; public services provided by state-owned entities; pharmaceutical products marketed for human use at the level of producer or importer; and the bakery industry.

- A 1% of the gross income tax installment applies to taxpayers that meet the following conditions:
 - During open tax periods, they have reported operating losses in two consecutive or alternate tax periods.
 - In the prior tax period, they derived gross income equal to or greater than L. 100 million (approximately USD 4,395,604). The income tax installment is a tax credit that may be applied against income tax, asset tax, or the temporary Solidarity Contribution Tax on the filing of the year-end tax return. Companies operating under the following special regimes are exempt from income tax, sales tax, customs duties, and certain municipal taxes:
 - I. Free Trade Zone;
 - II. Industrial Processing Zone (Zona Industrial de Procesamiento, or ZIP);
 - III. Temporary Import Regime (Régimen de Importación Temporal, or RIT);
 - IV. Agroindustrial Export Zone (Zona Agro-Industrial de Exportación, or ZADE);
 - V. Free Tourist Zone (Zona Libre Turística, or ZOLT).

ASSET TAX

The taxable base for the asset tax will be the resulting difference of the assets reflected in the taxpayer's statement of financial position minus a deduction of L. 3,000,000 (USD 131,868), minus the doubtful accounts provisions, payable loans, the accumulated depreciation permitted by the Income Tax Law, and the revaluation of fixed assets, as long as such are not disposed of, and the values from registered investment expansions, such as projects or fixed assets in progress that are not in operation. Income tax may be credited against asset tax.

If the income tax equals or exceeds the asset tax for the tax year, no asset tax is due. If the income tax is less than the asset tax, the difference is payable as asset tax. In such circumstances, the asset tax represents a minimum tax for the year.

CAPITAL GAINS TAX

The tax involved is 10%, which is calculated on the net profit of the transaction. Net profit is calculated by deducting the cost of the property plus any related expenses from the sales price.

PERSONAL INCOME TAX

Individuals residing in the country and receiving income from labor under a dependency relationship are subject to a progressive tax rate as shown below:

FROM	TO	MARGINAL RATE ON EXCESS
L 0.01	L. 141,000.00	0%
L. 141,000.01	L. 215,000.00	15%
L. 215,000.01	L. 500,000.00	20%
L. 500,000.01	Over	25%

BRANCH PROFITS TAX

Branches of foreign companies are subject to the same tax rates as Honduran companies.

ADDED VALUE TAX (VAT)

Services and goods are subject to a 15% added value tax; and 18% on alcoholic beverages, tobacco, and first-class air tickets.

TAX ON FINANCIAL TRANSFERS

Tax on checks, debit or credit cards and transfers checks, transfers and debit or credit card payments pay 0.30% on the operation base. This tax is non-refundable and the bank will charge it to the company bank account.

- It also applies to the mobile communication that pays a rate of 1%. The industry of extraction of minerals to the protection of the environment pays 5% of the exports FOB (Free on Board). The contribution of the fast food sector under any franchise will pay 0.5% of the monthly sales.

MUNICIPAL OFFICE TAXES

Tax is paid according to a table and total assets. There are different tables for every city.

- **Tax on Industry and Commerce:** Tax paid by any natural person or merchant, whether social or individual, for its commercial, industrial, mining, agricultural, public and private services, electronic communication, urban development, casinos, saving institutions and loan banking, insurance, and all those that obtain profits.

- **Real Estate Tax:** The one that falls on the value of real estate assets located in the municipality, i.e., in Tegucigalpa, the table varies depending if the company is industrial, commercial, or other. The real estate pays a rate up to L. 3.50 per every thousand for Urban Real Estate and up to L. 2.50 per thousand for Rural Real State.
- **Personal or Neighborhood Tax:** Tax that falls on the annual income that natural persons receive within each municipality, whether or not they have domicile in it.

MUNICIPAL REGISTRATION TAX

All industrial or commercial businesses are required to have an annual license to operate. This tax is paid on the total gross income of a company or individual which exceeds L. 500,001. The amount is L0.40 per thousand to L 30,000,000 and L 0.40 per thousand over this.

SOCIAL SECURITY TAX

These are payments that are made monthly by employers and employees on the payroll of companies for the purpose of guaranteeing the functioning of the worker social security system benefits at the national level. The table is as follows:

FROM THE COMPANY	FROM THE EMPLOYEE
7.20% of the salary	3.50% of the salary

In 2016, the law of Social Protection establishes a new pension plan and directs 3% of the current contributions of RAP (1.5% employer and 1.5% employee) and 3% of the IHSS (1.5% employer and 1.5% employee) to the pension fund. There is also a solidarity contribution of 0.5 % from the State.

PENSION TAX

These are payments that are made monthly by employers and employees on the payroll of companies for the purpose of guaranteeing the functioning of the employee pension system and retirement benefits at the national level. The table is as follows:

FROM THE COMPANY	FROM THE EMPLOYEE
1.5% of salary	1.5% of salary

Also, the social security has a special education tax called INFOP Tax which is 1% of the total amount that the company pays (this applies to companies with more than five employees).

TAXES FOR THE DISPOSITION OF PROPERTY

For the property sales, which will be valued at the market price, the previous owner pays 1.5% of the value of the transaction. For the transfer of immovable property or rights and values carried out with a non-resident, the buyer must withhold 4% of the transfer value.

RATE OF TOURISTIC EVENTS

The individuals pay a tax of 4% for daily accommodation in hotels, car rentals, and tour operators.

WITHHOLDING TAXES

Royalties, leasing of movable and immovable property, public entertainment shows, mining royalties, fees and commissions, videos and films, salaries, services, and fees paid to foreign corporations for work done in Honduras are subject to a 25% income tax withholding rate. Dividends, interest, commissions, air, sea and land transport, reinsurance, branch remittance tax, and other, paid to foreign recipients are subject to a 10% withholding tax.

INTEREST INCOME

Banks will withhold 10% income tax on interest income. Loans given by local companies to its stockholders, related parties, headquarters, or residents/companies located in tax havens are subject to a 10% income tax withholding. If the loan is made by a foreign company or a, income tax will be withheld at the rate of 10%.

In line with the commitment of the Honduran government to encourage and develop public or private investment, a number of incentives exist

- A. Exportation and Draw Back Activities: Some incentives such as exemption of importation taxes, income and value-added taxes for industrial and commercial outfits established under the incentive to exportation, and draw-back incentive law do exist.
- B. Free Trade Zone and Touristic Zone: Companies operating in Free Zones or under the Law of International Services are tax-exempt on profit derived from sales to foreign countries for the next 10 years after the companies have been approved by the Ministry of Economy and Commerce. Income tax will be free from 10 to 20 years; Municipal income tax for 10 years.
- C. Investment in Renewable Energy Sources: Ten years of exemption of importation, twelve years of income tax, and ten years of income and value-added taxes exist by way of the Incentives for development of renewable energy projects.

- D. For projects under the modality of public-private alliance (APP): Each project will have its own benefits and exemptions, such as the Government Civic Center and the “Palmerola International Airport” which were contracts signed under the public-private modality, by means of which these projects of taxes and rights are exempted.
- E. For investment projects as a priority interest: According to the Law for the Promotion and Protection of Investments, they may enjoy tax benefits if the Executive Branch, through SEPLAN, declares the investment project as a priority interest and establishes the following incentives:
- Amortization of the pre-operative expenses incurred within a period of five years.
 - Normal and accelerated depreciation.

KEY TAX POINTS

- Companies and individual residents in Honduras must pay Alternative Minimum Tax of 1.5% of gross income equal to or in excess of L,10 million when the tax that otherwise would apply is lower than 1.5% of reported revenue.
- Transfer Pricing (TP) policies are applicable in Honduras. If the Company does not have a TP study, the government is entitled to determine differences between related party transactions and a transaction done by independent parties. If a difference is detected, this would not be deductible for income tax purposes and a 15% or 30% tax would be paid on the difference.
- No restrictions are imposed on foreign trade operations or foreign currency transactions.
- Losses incurred in any given year can be taken as a valid deduction only for the current year. There is no carry forward of losses. Companies engaged in agriculture, manufacturing, mining, and tourism may carry forward net operating losses for three years, however, certain restrictions apply. Net operating losses may not be carried back.
- Foreign sourced income is not subject to income tax.
- Honduran law does not allow the filing of consolidated income tax returns or provide any other tax relief to consolidated groups of companies.
- No restrictions are imposed on foreign trade operations or foreign currency transactions.

8. **How comprehensive are the intellectual property laws of Honduras, and do the local courts and tribunals enforce these laws regardless of the nationality of the parties?**

The efforts to protect the universally recognized right to intellectual property and free competition are reflected through the Copyright and Related Rights law and the Industrial Property Law, these being the primary rules in charge of its regulation in Honduras. However, the Law for the Defense and Promotion of Competition, among others, establishes guidelines on intellectual property with attention to national and foreign investors; therefore, these laws are applicable regardless of the nationality of the parties.

Among the primary objectives of these norms are those to prevent acts that infringe industrial property or that constitute unfair competition; thus, all the rules dictated in matters of intellectual and industrial property are aimed at avoiding such situations for local and foreign entities with no distinction.

The Office of Intellectual Property is the entity responsible for keeping the register of trademarks, patents, distinctive signs, copyrights, and related rights, and will not grant any of these when their content or form infringe morality or good customs, or if they contravene the laws regardless of the nationality of the applicants.

Likewise, in the case of disputes concerning intellectual property and unfair competition, in addition to the administrative appeals process before the Trademark Office, the Civil Procedure Code establishes specific judicial procedures for the resolution of any controversy in such matters. According to the principles governing procedural rules in Honduras, the right of access to justice for the protection of Intellectual Property Rights is in no way restricted or limited for any foreign person or entity, which is afforded the same rights as Honduran persons or entities.

9. **If a commercial dispute arises, will local courts or will international arbitration offer a more beneficial forum for dispute resolution to foreign inventors?**

In case of disputes, Honduran legislation dictates specific rules regarding alternative methods of conflict resolution. The decision to go to local courts or international arbitration will depend on the terms agreed by the parties and that are reflected in the corresponding agreements that regulate the relationship between the parties. For disputes arising between investors,

they may settle their resolution through arbitration in accordance with the provisions of the Conciliation and Arbitration Law.

The Law for the Promotion and Protection of Investments, and its regulation, establishes that investors are guaranteed the full recognition of international arbitration awards issued in accordance with the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), the Inter-American Convention on International Commercial Arbitration (Panama Convention), the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention), and the reciprocal investment protection treaties approved and ratified by the State of Honduras. Nevertheless, Honduran authorities have complained about the ICSID Convention, which means that after August 2024, Honduras will not be part of such convention and will not have access to ICSID arbitration processes.

The law also establishes that the choice of law of a foreign jurisdiction is valid in contracts signed in Honduras between foreign and domestic investors, or between investors and the Government. Insofar as international treaties do not contravene this, disputes arising in connection with the application of the Law for the Promotion and Protection of Investments between natural persons or corporations and national or foreign holders of an investment and the Government shall be resolved if possible through negotiation, conciliation, or mediation.

10. **What advice can you provide for how best to negotiate or conduct business in Honduras?**

The most important recommendation to achieve a successful negotiation, as well as to achieve the establishment of a prosperous business in Honduras, is that the investor must be fully aware of the local environment in the country, such as national security, political environment, economic incentives, openness to foreign investors, rights of nationals and foreigners over property, government permits, and tax matters among others.

It is very important to request the services of a legal and tax firm with a good reputation and with extensive experience on the proposed investment to provide advice on government regulations, administrative procedures, tax and municipal matters, customs, real estate, and labor, among other matters.

It is also recommended that the investor makes a comprehensive analysis of all the risks, benefits, and incentives that Honduras offers for businesses, and this can be done by means of the online resources that some private entities such as AMCHAM (www.amchamhonduras.org), ANDI (www.andi.hn), and COHEP (www.cohep.com) can offer.

It is essential to acquire as much knowledge as possible and to stay updated throughout the entire process of investment on the legislation referred to investments, legal procedures required to operate in Honduras, and the incentives granted to investors among other important topics.

Mexico

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1. What role does the government of Mexico play in approving and regulating foreign direct investment?

The regulation and approval of Foreign Direct Investment (“FDI”) in Mexico is entrusted to the federal government. Various governmental agencies, mainly the Ministry of Economy and its specific directorates: the General Department of Foreign Investments; the National Registry of Foreign Investments; and the National Foreign Investment Commission review and monitor FDI into Mexico. Additionally, Mexico is a party to various investment treaties and free trade agreements to facilitate the participation of foreign individuals and companies in the economic activities of the country.

Mexico’s strategies regarding FDI have evolved over time, shaped by the economic policies and the development of laws in accordance with the priorities of the government. The main legal framework of FDI is contained in (i) the Constitution; (ii) the Foreign Investment Law; and (iii) its regulations. FDI is an activity reserved to be legislated by the federation. Recent government policies have included conservative measures and amendments to specific laws, restricting or prohibiting FDI in certain strategic economic sectors such as electricity production, oil extraction, or gasoline production. However, despite controversy and legal challenges, the Foreign Investment Law generally promotes open access to foreign investment across most commercial activities.

The government, through the Ministry of Economy and the Ministry of Finance and Public Credit, tends to issue tax and administrative incentives to potential investors for the promotion and development of FDI in the country, acknowledging the importance of the FDI for employment and economic progress in the country. A recent example is the issuance of incentives in 2023 to carry out economic activities in the south of the country near the Isthmus of Tehuantepec, supporting the development of communities residing near the route of the Transisthmian railway, which is a prioritized infrastructure project for the executive branch, which will be in office until October of this year (2024).

Due to the nearshoring opportunities for Mexico, as a strategic neighbor of the United States, M&A transactions have been importantly active and rising in Mexico. The trending targets in Mexico are manufacturing companies, agro-industries, pharmaceutical, electronic, automotive, financial, digital industries, telecommunications, logistics, and infrastructure.

According to Bloomberg, in the year 2023, Mexico surpassed China in the number of exportations into the United States of America, and Mexico became the second largest recipient of foreign direct investment in Latin America. FDI has consolidated as one of the primary resources to finance the economic growth of the country, representing the source of jobs and transfer of technology aiding such positive results in a globalized economy

2. **Can foreign investors conduct business in Mexico without a local partner? If so, how does the Mexican government regulate commercial joint ventures between foreign investors and local firms (include information on common corporate structures)?**

As a general rule (excepting some economic activities contemplated by foreign investment laws), foreign investors are allowed to conduct business in Mexico without a local partner, either through a: i) branch (sucursal), ii) representative office (oficina de representación), or iii) a subsidiary (Mexican entity). The principal characteristics of such vehicles are the following:

REPRESENTATIVE OFFICES & BRANCHES

Both branches and representative offices do not require foreign investors to incorporate a new legal entity in Mexico and can carry out certain activities through their corporate entities incorporated abroad.

To conduct business in Mexico through a branch and representative offices, it is required to obtain authorization from the Directorate General of Foreign Investment.

Representative offices do not engage in commercial transactions and generally aim to provide information, promotion, and advisory services regarding the activities, products, or services offered by the foreign parent company. For foreign investors, and from a tax perspective, such a vehicle has interesting outcomes, as it solely acts as a link between the foreign company and their Mexican clients without engaging in commercial activities and is not subject to Mexican tax obligations.

Branches do not have independent legal personality from the entity that establishes it; therefore, the foreign entity will be directly responsible for all the obligations and commitments of its branch in Mexico. Since branches create a permanent establishment (*establecimiento permanente*), such entity shall pay taxes for any income attributable to the permanent establishment in accordance with the Income Tax Law; hence, foreign investors avoid choosing such vehicle. Also, the permanent establishment may be subject to other taxes such as the value-added tax law.

For a foreign entity to conduct business acts in Mexico, it must:

- i. Obtain authorization from the Ministry of Economy to register its bylaws and notarize such authorization.
- ii. Notarize the foreign company's incorporation documents.
- iii. Register the notarized instrument before the Public Registry of Commerce.

MEXICAN SUBSIDIARY WITH FOREIGN EQUITY

To incorporate a new company ("NewCo") in Mexico, investors must consider the following steps: i) the NewCo's name must be approved by the Ministry of Economy; ii) NewCo's bylaws must include a clause admitting foreigners; iii) your local legal advisors will confirm if the economic activity intended to be performed in Mexico is not subject to foreign investment restrictions or limited percentages of participation; iv) the NewCo's bylaws must be notarized and registered before the Public Registry of Commerce; and v) the NewCo must be registered before the Federal Taxpayer Registry and the National Registry of Foreign Investment.

Under the Mexican Constitution, foreign investors will be considered as Mexicans in connection with any participation, goods, rights, and concessions they may hold in the NewCo, and any rights and obligations arising from agreements of which NewCo is a part.

The three most commonly used vehicles for incorporating a NewCo are: i) a *Sociedad Anónima*, comparable to U.S. corporations and incorporated by shareholders whose liabilities are limited to their capital stock contributions; ii) a *Sociedad de Responsabilidad Limitada*, compared to a Limited Liability Company in the U.S. whose liabilities are limited to their capital contributions; and iii) a *Sociedad Anónima Promotora de Inversión*, which is a *Sociedad Anónima* with some specific rules provided in the Securities Market Law.

In connection with private joint venture agreements, it is important to note that there is no specific Mexican regulation about their terms, except for certain joint ventures that operate as participation associations under certain commercial and tax rules. In case of public joint venture agreements (where private companies and the government participate in turnkey infrastructure projects), there are specific statutory regulations, requirements and procedures that should be observed. Additionally, for the case of acquisition of ongoing businesses or certain joint ventures or strategic transactions, it is also important to consider antitrust law provisions to evaluate the need of a merger control filing to obtain clearance prior to closing.

In conclusion, the Mexican laws allow foreign investors to conduct business in Mexico without a local partner; however, there are certain limitations and regulations that should be considered by the investors, depending on the activities to be performed in Mexico.

3. **What laws influence the relationship between local agents and distributors and foreign companies?**

The relationship of agents, distributors, and foreign companies must be analyzed considering the following legal aspects:

- **Business considerations:** The contractual and business structure regarding territory, exclusivity, volumes and sales goals, prices, market, delivery terms, and product warranties, among other business terms.
- **Employment:** Special provisions to delimit the independent relationship between the parties and avoid that a party becomes jointly liable with respect to the employment and social security liabilities of the other party in connection with its own relationships with employees, agents, and subcontractors.
- **Intellectual Property:** Determine whether there will be trademarks, trade secrets, or other IP rights involved and the need of granting licenses; access to know-how or good-will; marketing strategies; development of new brands, products, or designs.
- **Foreign trade:** In connection to import/export transactions, determine the liabilities and responsibilities of each of the parties; importer/exporter of records; permits and licenses; duties and taxes; terms of delivery (possible use of Incoterms); and insurance, transportation, compliance with non-tariff regulations and restrictions (such as labeling requirements), among others.
- **Regulatory:** Assess those permits and licenses applicable to the products and activities to be performed and clearly identify the party that will be responsible to obtain and maintain each of them.
- **Foreign investment:** Review of any possible restriction or limitation to foreign investment.
- **Tax:** Analysis and assessment of tax impacts at all levels (federal, state, and municipal); tax invoicing; tax deductions of expenses; tax joint liabilities; withholdings.
- **Anti-corruption:** Verify compliance and acceptance of anti-corruption policies.

- Antitrust: Evaluate if exclusivity, non-compete, and other vertical restrictions are compliant with economic competition laws.
- Consumer protection: The applicability of consumer protection laws should be considered. Parties should address these in the warranty policies.

4. **How does the Mexican government regulate proposed merger and acquisition activities by foreign investors, and are there any areas of the economy where they are prohibited (e.g., natural resources, energy or telecommunications)?**

In Mexico, the main regulatory framework that is relevant for merger and acquisitions (M&A) by foreign investors is composed by the Foreign Investment Law, the Federal Economic Competition Law, the General Law of Business Entities, the Securities Market Law, and the industry-regulatory laws that may be applicable. The Mexican government welcomes foreign investment and encourages M&A activities as a means of fostering economic growth and development. However, as classified below, certain economically strategic activities are subject to restrictions or prohibitions to safeguard national interests and security; therefore, foreign investment in such cases is either restricted or not permitted at all.

Strategic activities that are forbidden to foreign investment participation:

- i. Exploration and extraction of oil and/or other hydrocarbons,
- ii. Postal service, telegraphy, and radiotelegraphy,
- iii. Control of national electricity system, transmission and/or distribution of electricity,
- iv. Radioactive minerals extraction or any activity related to these,
- v. Coinage, and
- vi. Supervision, control, and surveillance of ports, airports, and heliports.

Strategic activities where foreign investment is restricted:

- i. Cooperative companies for production are limited to receive 10% of equity from foreign investment.

- ii. The following activities are capped with a limit of not more than 49% of foreign investment:
- Firearm and explosives industries,
 - Printing and publishing of national newspapers,
 - Equity representing agrarian land or for agricultural use,
 - Freshwater fishing and fishing within the coastal and economic exclusion zone,
 - Port administration,
 - Port piloting services of vessels to perform inland navigation transactions,
 - Shipping companies dedicated to commercial exploitation of vessels for inland navigation and coastal shipping, except for cruises,
 - Supply of fuels and lubricants for vessels, aircraft, and railway equipment,
 - Broadcasting, and
 - Domestic air transportation and specialized air transportation.

In addition to sector-specific regulations to be considered upon the target company to be acquired (banking, tourism, aeronautic market companies), foreign investors engaging in M&A activities in Mexico must comply with antitrust laws and regulations enforced by the Federal Economic Competition Commission (“COFECE” by its acronym in Spanish) and the Federal Telecommunications Institute (“IFT” by its acronym in Spanish). The competent antitrust authority assesses the potential impact of certain mergers and acquisitions based on certain economic thresholds. In case the transaction requires to be notified for antitrust clearance, the parties cannot close the transaction until a favorable resolution (conditioned or unconditioned) is issued. Also, competition compliance measures and safeguards must be considered, especially regarding the information exchange among the parties during the negotiation phases of the transaction and the avoidance of “gun-jumping” clauses that could grant the acquirer certain control prior to antitrust clearance.

Overall, while Mexico welcomes foreign investment, particularly in sectors crucial for economic development, certain industries are subject to oversight or certain restrictions to protect national interests and promote fair competition. Investors considering M&A activities in Mexico should carefully review applicable laws and regulations to ensure compliance and mitigate potential risks.

5. How do labour statutes regulate the treatment of local employees and expatriate workers?

Labor and employment laws and regulations in Mexico provide foreign investors with clarity when assessing salary levels and employment conditions offered within a particular industry or region, enabling them to maintain competitiveness. For foreign investors operating in Mexico, comprehension of the Federal Labor Law (FLL) and its special regulations is material. These laws are not merely administrative formalities but are deeply rooted in public order, designed to uphold the constitutional rights of both workers and employers.

The FLL also regulates the dynamics of potential conflicts between employees and employers, whether individual or collective disputes. The FLL seeks to foster equality and safeguard the interests of all parties involved, emphasizing the conciliatory phase as a pivotal mechanism for dispute resolution.

An amendment to the FLL, passed on April 23rd, 2021, has brought significant changes to corporate structures and commercial relationships, particularly concerning the widespread practice of outsourcing as a means of hiring employees. This amendment entails a general prohibition on employers engaging subcontractors to provide services related or identical to the stated corporate purpose of the legal entity, as well as its economic activities. However, the Federal Government has approved exceptions to this rule, allowing for the utilization of specialized service providers that are required to be registered and compliant with quarterly obligations and reporting.

Foreign and local employers must respect statutory benefits provided by the FLL and must be included in employment agreements, based on the following requirements:

- The daily salary must not be lower than the minimum wage stated in the FLL with an inflationary annual increase.
- A year-end bonus equivalent to at least 15 days of daily salary shall be paid to the employees.
- Employees are entitled to 12 mandatory vacation days annually, with an additional two-day increment related to the anniversary of their employment for the first six years. After this period, the same number of days will increment every five years.
- Vacation Premium of 25% related to the salaries to be received on their vacations.

- 10% profit sharing benefit, calculated with the taxable income of the employer. The profit-sharing amount payable to each employee is capped to the most favorable result for the employee of the following two options: (i) three months of the employee's salary, or (ii) the average of the profit sharing received during the preceding three years.
- Official holidays such as Labor Day, Independence Day, Christmas, and New Year's Eve are among those recognized in the FLL.
- A maximum 48-hour weekly shift and overtime system compensation.
- Registration to the Mexican Social Security, Housing Fund and the National Workers' Welfare Fund Institute.

It is important to mention that these are minimum rights, although employers have the ability to grant additional or higher benefits and better working conditions to become more attractive and competitive in their own respective industries.

Regarding employees that are to be relocated to Mexico, the FLL refers to the Immigration Law to provide clarity on the requirements employers must fulfill. These requirements include:

- An employer must not have more than 10% of foreign employees in its workforce; this excludes general managers, directors, and manager-level officers.
- The employer must be registered and receive an employer certification from the National Immigration Institute.
- Expatriates should have an appropriate working visa; and
- The employer and the foreign employee must closely keep control of the due renewal of the worker visas and of the filing of notices to the National Immigration Institute.

A secondment agreement must be settled between the host Mexican entity and the foreign entity in case of hiring of expatriates. This agreement includes, among other provisions:

1. Expatriate's conditions.
2. Nomination of entity that will assume tax costs.
3. Benefits that the expatriate will maintain with the original employer.

Expatriates working for a Mexican subsidiary must be directly hired with the same conditions as national employees.

Tax effects applicable to the salaries and benefits paid to the expatriates must be analyzed on a case-by-case basis, considering international tax treaties and the employee's tax residency.

In 2019, two very crucial amendments were made to Mexico's Federal Labor Law which is pivotal for foreign investors to take into consideration when moving into our country. The first amendment is the transformation of the traditional justice system under the government's executive branch to the oral justice system under the judicial branch. This amendment to the FLL introduces guiding principles that are the foundation of the Mexican oral trials system and applies them to the FLL to create a more efficient and equal system differing from the bureaucratic system which, in some cases, was unable to provide adequate protection to employers.

The second amendment to the FLL arises from the International Labor Organization's 87th and 98th Conventions and as a condition to join the new USMCA. This induced the Mexican Government to make changes regarding the employee's freedom of association and collective bargaining, as well as the procedures to follow for the employee's right to elect, through an established voting procedure, their workers union representative.

The 2020 Covid pandemic in many ways induced countries to look at work in a different manner. In 2021, Mexico officially introduced remote working as a condition into the FLL in which new obligations were raised for employers, such as assuming the proportional cost of the electricity bill, as well as the Internet bill for those employees that are in remote working conditions.

6. How do local banks and government regulators deal with the treatment and conversion of local currency, repatriation of funds overseas, letters of credit, and other basic financial transactions?

The Mexican Central Bank (Banco de Mexico) regulates the Mexican banking system and is responsible for implementing monetary policies to ensure the effective payment system. Mexican banking institutions are privately owned, and foreign investment is allowed.

The National Banking and Securities Commission (CNBV) is a government agency that reports to the Ministry of Finance and Public Credit (SHCP, for its acronym in Spanish) in charge of supervising and regulating banks and financial institutions and their legal performance in accordance with the financial regulations.

The Mexican Central Bank also sets and publishes the official exchange rate for the payment of the legal obligations specified in foreign currency but payable within Mexico. The Mexican local currency (Peso) is freely convertible into all other currencies with no restrictions on remittance of profits or the repatriation of capital abroad. All currencies may be freely transported or traded. However, certain reporting requirements apply to travelers and financial transactions.

REPATRIATION OF FUNDS OVERSEAS

Mexico does not have any exchange control or limitations on remittances in foreign currency when a repatriation of funds is made overseas, including repatriation of capital investments, payments of intercompany loans or payment of dividends.

The General Law for Business Entities in Mexico states that these entities must form a legal reserve fund setting aside at least 5% of yearly profits until an amount equal to 20% of the capital stock of the entity is reached.

BASIC FINANCIAL TRANSACTIONS

Mexican banks offer different types of credit oriented toward consumption and productive activities.

The basic financial transactions offered by the banking institutions for households are credit cards, mortgage loans, credits for the purchase of durable consumer goods, and automobile loans. Meanwhile, companies apply for credits, working capital loans (*crédito de habilitación o avío*), fixed asset loans (*crédito refaccionario*), revolving credits, and asset-based lending facilities, among others.

The common securities requested for the banking institutions can be constituted through mortgages, pledges (including the modality of non-possessory, a.k.a. floating-lien pledge), corporate guaranties, or guaranty trusts.

LETTERS OF CREDIT

Letters of Credit are commonly used in Mexico. Its purpose is to facilitate foreign and domestic trade, eliminating mistrust and risk between the buyer and the seller.

The most common Letters of Credit are:

- Import: a typical payment instrument in foreign trade.
- Domestic: a payment instrument in commercial transactions.

- **Export:** a payment instrument received by the exporter/seller/beneficiary through a confirming bank with the commitment to honor the payment in its favor, against the presentation of documents related to the sale of goods or services.
- **Stand-by:** to guarantee different obligations (commercial, financial, or services obligations) in which the applicant might not fulfill the commitments acquired.
- **Contractual Guarantees (bonds):** the bank guarantees and supports the participation of companies in international public tenders, or tenders for the award of contracts, sale of goods, or provision of services.

Demand Guarantees and other financial figures under the International Chamber of Commerce (ICC) rules are also implemented in sophisticated transactions.

7. What types of taxes, duties, and levies should a foreign investment in Mexico expect to encounter?

Mexico has proven great openness to foreign investors through several mechanisms and incentives established to attract foreign direct investment. However, when investing in Mexico, investors must take into consideration some aspects and regulations to have a successful landing.

Mexico has different levels of taxation which will apply to branches and Mexican companies: (i) Federal taxes; (ii) State taxes; and (iii) Municipal taxes, as well as local regulations, incentives, and legal framework which shall be considered when choosing a location in Mexico.

In general terms, a resident in Mexico for tax purposes shall comply with: (i) issuance of tax receipts; (ii) accounting records; (iii) tax returns; and (iv) the tax registration before the taxpayer's registry.

The general taxes on the federal level are the following: (i) income tax; (ii) value-added tax; and (iii) special tax on products and services. However, it is important to mention that in some cases the rates may vary and other taxes may apply; therefore, it is important to analyze the particular situation and determine the applicable taxes.

- Corporate income tax – 30%.
- Distribution of dividends income tax – 10% to individuals and foreign entities (assuming the profits to be distributed have already paid the corporate income tax). Notwithstanding the foregoing, depending on the nationality of the shareholder, it is important to consider if a tax treaty may apply.

- Value-Added tax – 16% (or 8% within the border region in case the required certification is obtained).
- Regarding taxes applicable on the State and Municipal level, their applicability should be assessed on a case-by-case basis, depending on the location where the operations are to be carried out and where the company registers its tax address.

Income Tax: The income is attributable to the operations in Mexico, Mexican permanent establishments, and sources of income. The tax basis is the profit obtained in the fiscal year, which is calculated by subtracting the authorized deductions from the taxable income of the entity. The profit-sharing contributions to employees have a deductible effect in the annual profit, among several other activities. The tax rate is 30% under the general regime. The annual tax return shall be filed within three months after year-end.

Value-Added Tax: The activities performed in Mexico will be subject matter of such tax, such as: (i) transfer of goods, (ii) render of independent services, (iii) grant the use or enjoyment of goods, and (iv) import of goods or services. The Value Added Tax triggers on a cash flow basis, except in some cases. The general tax rate is 16%; nonetheless, exports of goods and certain services are taxed with the 0% rate, as well as other specific taxable acts/activities through the obtention of specific authorizations. Some other activities are exempted, and entities located on the border may apply for the reduced rate of 8%.

Also, Mexican entities may comply with several procedures of related to tax compliance, such as filings and notices before tax authorities. One of the most recent and important obligations to comply with is related to the identification of the controlling beneficiary (ultimate beneficiary owner). All Mexican entities must gather and file– upon request– certain information about the ultimate beneficiary owner(s) of the Mexican entity. Such information may be requested (i) by tax authorities during an audit or as an independent procedure, (ii) by a notary public during an incorporation procedure, mergers, or other contractual structures, etc., or (iii) by financial institutions (i.e., for the opening of bank accounts).



How comprehensive are the intellectual property laws of Mexico, and do the local courts and tribunals enforce these laws regardless of the nationality of the parties?

Mexico has a comprehensive set of intellectual property laws that cover several aspects of intellectual property rights, including patents, trademarks, copyrights, trade secrets, and plant varieties. These laws are intended to protect the rights of inventors and innovators, and to promote innovation, creativity, and economic development.

The main Intellectual Property laws in Mexico are the following:

- i. The Federal Law for the Protection of Industrial Property and its Regulation.
- ii. The Federal Copyright Law and its Regulation.
- iii. The Federal Law of Plant Varieties and its Regulation.

The Intellectual Property legal system in Mexico follows the general international rules. Mexico has subscribed and adhered to the main international treaties on this subject matter, such as:

- The Paris Convention for the Protection of Industrial Property.
- The Universal Copyright Convention.
- The Lisbon Agreement for the Protection of Appellations of Origin.
- The Berne Convention for the Protection of Literary and Artistic Works.
- The Patent Cooperation Treaty (PCT).
- The Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks.
- The Strasbourg Agreement Concerning the International Patent Classification.
- The Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks.
- The Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs.
- The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).
- The United States–Mexico–Canada Agreement (USMCA).

In connection with enforcement of intellectual property, Mexican laws offer several procedures and remedies for the prosecution of intellectual property rights, including administrative, civil, and criminal penalties for infringement. The enforcement is not only vested in the Mexican Institute of Intellectual Property, but also in specialized courts, such as the Federal Court on Administrative Affairs and Jurisdictional Federal Courts (District and Circuit Courts). The intellectual property rights holders can seek injunctions, damages, and other remedies through the court system to enforce their rights and legitimate interests.

Under the Mexican legal framework, intellectual property rights are enforced regardless of the nationality of the parties involved. The origin of intellectual property rights does not impact the impartiality of the authorities that resolve the disputes.

Nowadays, the percentage of foreign entities that register and protect some intellectual property rights in Mexico, such as patents, are far greater than Mexican entities or individuals, so Mexican tribunals enforce intellectual property laws without discrimination based on the nationality of the parties involved.

Therefore, whether it is a Mexican or foreign entity, or individual person, the Mexican courts are committed to endorse intellectual property rights and provide impartial resolutions in cases involving infringement or disputes over intellectual property.

9. **If a commercial dispute arises, will local courts or will international arbitration offer a more beneficial forum for dispute resolution to foreign inventors?**

Regarding international M&A and sophisticated commercial or multi-jurisdictional transactions, it is usually advisable to elect arbitration as the dispute resolution process. It is important to verify that all parties involved are located or do business in countries that recognize the validity and enforcement of arbitral awards. For other types of commercial disputes, several topics must be analyzed to determine if an arbitration provision is the best choice, and if the type of dispute can be subject to arbitration (in Mexico, for example, trademark and patent disputes must be resolved by governmental authorities). Contracts involving credit instruments or securities on financial transactions will generally require the use of local laws and courts for enforcement.

Mexico is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, also known as the “New York Convention” and the Inter-American Convention on International Commercial Arbitration.

Based on the above, the parties on a commercial agreement can validly introduce an arbitration clause either following the rules of an arbitral institution (such as ICDR, ICC, among others) or electing an ad hoc procedure.

Some advantages of electing arbitration for the resolution of potential disputes arising or relating to an international commercial transaction are:

- Flexibility and broader alternatives for interim measures that may be required during the arbitration process,
- Possibility to elect arbitrators with reputation, expertise, and knowledge of the type of dispute, who must fulfill independency, impartiality, and ethical principles,
- Possibility to agree on confidentiality terms of the arbitration process and arbitral award,
- Less formalities for the enforcement of an arbitral award compared to the formalities required for the enforcement of a foreign court judgment,
- Rich experience with international and national arbitral institutions and arbitrators on M&A disputes, and
- Mexico recognizes the enforceability of national and foreign arbitral awards.

The arbitration experience has become more sophisticated over time. It is not necessarily true that an arbitration process will be highly expeditious and inexpensive, but the advantages and the usual complexity of M&A or certain commercial disputes make the election for arbitration worthwhile.

10. **What advice can you provide for how best to negotiate or conduct business in Mexico?**

It is always important to understand the customs, cultural traits, and particular economic and social conditions of the location where a business is intended to be carried out. In this sense, having references or the support of reliable consultants (such as financial, tax, and legal advisors) who know and have experience on how to do business in Mexico and its different regions, could be decisive to getting a soft-landing or the best of a negotiation, especially

in joint ventures with other partners. A reputable brokerage firm will be of high relevance for searching real estate for acquisition or lease.

It should also be considered that the timeframe to accomplish certain milestones, such as incorporation of Mexican entities, registration for tax purposes, opening of bank accounts, obtaining governmental permits and approvals, and anti-money laundering regulatory requirements, among other procedures, do not always occur with the same speed as in other countries. This circumstance must be taken into account when working on the business plan and project schedule. Nevertheless, the Mexican government often makes sustained efforts to improve and speed up processes.

Mexico will continue to be privileged by its proximity to the United States market, its framework of multiple trade treaties, and the nearshoring trends of the most recent years. Financial and business analysts anticipate that despite the typical uncertainties due to federal elections of year 2024, there is familiarity with the political options in Mexico and, therefore, stable scenarios are expected for investment opportunities in the country.

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Recognized for its regional leadership, BLP is the law firm for conducting business in Central America, with over 150 lawyers providing service in 28 practice areas at ten offices strategically distributed in Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and a representation office in Spain.

BLP was founded on the conviction that legal advisers must become true business law partners of their clients. Since the firm's establishment in 2003, we have earned our clients' trust by using our expertise and capabilities to provide legal advice with sound business judgment. In doing so, the firm adheres to the highest international quality, reliability, and efficiency standards.

Seeking a broader presence in the international market, the representative office in Madrid, Spain, creates a portal to European economies and generates business opportunities between Central America and Europe. Our international capabilities enable us to bring our global clients closer to new investment opportunities in Latin America.

1. **What role does the government of Nicaragua play in approving and regulating foreign direct investment?**

In Nicaragua, there are no limitations on foreign investment. Current regulations aim at creating a legal framework that guarantees equal treatment for both domestic and foreign investors. These conditions are set in the Political Constitution of Nicaragua.

The government encourages foreign investment by issuing laws that promote tax exemptions or reductions that encourage new projects.

The government introduced regulations whereby the state works together with the private sector through public companies. These can work together to fulfill their business goals. In other words, they can form associations, strategic alliances, or mixed economy companies (PPA). This framework has not yet been extensively exploited.

Foreign investment can be clearly seen in a variety of tourist projects that currently operate in Nicaragua. Furthermore, the country has experienced an increase in direct international flights, which offer their service with new frequencies between Nicaragua and other countries.

We have also observed the establishment of foreign investors such as Sukarne (Mexico), Cargill (USA), and LR Group (Israel), in addition to the acquisition of local companies from foreign investors such as BAC Bank acquired by a Colombian group and Grupo Mayaguez purchasing a sugar mill.

The procedures for establishing a company in Nicaragua have been modified, facilitating their processes with fewer requirements, making the process faster and easier. The government has in this manner promoted more effective policies for the establishment of local companies or branches by foreign companies.

2. **Can foreign investors conduct business in Nicaragua without a local partner? If so, how does the Nicaragua government regulate commercial joint ventures between foreign investors and local firms (include information on common corporate structures)?**

Yes, in general, a foreign investor can conduct business without a local partner, as they can own property (including real estate) and own 100% shares of local companies. A local company owned by a foreign investor receives the same fiscal treatment as any other company, and it must appoint a legal representative that holds residency or citizenship in Nicaragua.

Limitations: Infrastructure projects carried out by the government are executed through public bidding and with the participation of a Nicaraguan partner as an offeror. The Government Procurement Law (No. 737) and the Municipal Procurement Law (No. 622) provide detailed procurement procedures. These include rules for open bidding, qualified bidding, limited tendering, and purchase by quotation.

Foreign companies have the alternative of establishing a branch in Nicaragua. In these cases, the appointment of a legal representative with full power of attorney is required, and the allocation of a specific amount of capital to the branch is required.

3. What laws influence the relationship between local agents and distributors and foreign companies?

The relationship between local agents and distributors is regulated by the agreement between the parties. There is currently no law that determines or imposes conditions on how that relationship should be structured. Therefore, conditions on termination of the relationship or other contractual matters are deferred to what the parties agree. Notwithstanding the above, if the distribution relationship exists before 1998, terminating the distribution agreement without a just cause, triggers indemnifying obligations for the distributor on benefit of the agent. In 1998 the law of "Agentes y Representantes de Casas Extranjeras" was repealed. The revocatory law, expressly states that the termination of distribution agreements dated before July 1998 would grant the agent indemnifying benefits stated in the repealed law.

4. How does the Nicaraguan government regulate proposed merger and acquisition activities by foreign investors, and are there any areas of the economy where they are prohibited (e.g., natural resources, energy or telecommunications)?

LEGAL FRAMEWORK

Proposed merger and acquisition activities by foreign investors are primarily regulated by Law No. 601, Law for the Promotion of Competition (Law 601) and its regulations, as amended from time to time. The main objective of Law 601 is to promote and protect free competition among the economic agents and to guarantee the market's efficiency and the well-being of consumers. Law 601 applies to any act, conduct, transaction, or covenant carried out by economic agents in all sectors of the national

economy, including those effectuated abroad, insofar as they produce or might produce anticompetitive effects in the national market. The authority in charge of the application of Law 601, which is also the regulator for competition matters in Nicaragua, is the Institute for the Promotion of Competition, known as PROCOMPETENCIA.

ANTITRUST CONTROL

The following are regarded as concentrations (mergers/acquisitions) by Nicaraguan law: (a) when independent economic agents carry out acts, contracts, agreements, or covenants aimed to merge, acquire, consolidate, integrate, or combine their businesses, totally or partially, being no longer independent; (b) when one or more economic agents already controlling others, acquire, by any means, direct or indirect control of all or part of other economic agents; (c) any other agreement or act transferring tacitly or legally the assets of a company to an economic agent, or granting determinant influence in a company's ordinary or extraordinary administration decision-making.

THRESHOLDS

The above-mentioned transactions do not require to be filed (notified) with, nor previously authorized by, PROCOMPETENCIA, except in the following cases: (a) when the transaction results in an acquisition or increase of market share equal or greater than 25% in the relevant market; or, (b) when the combined gross income of the economic agents to be merged is greater than an average of 642,857 minimum wages (USD125 MM, approximately). In both of these situations, PROCOMPETENCIA must be notified, and the transaction must receive their approval.

FILING

Transactions notified to PROCOMPETENCIA are subject to a clearance procedure until obtaining a final resolution from PROCOMPETENCIA, which may involve approval, conditioning, or rejection of the proposed transaction. Either of the parties involved in the transaction may conduct the filing with PROCOMPETENCIA.

Preliminary Assessment: Upon the presentation of all the information and documents required, PROCOMPETENCIA has 30 business days to conduct a preliminary assessment of the effects of the proposed transaction, and if no anti-competitive effects are found, then the resolution approving the transaction is issued within the next five business days.

Investigation Procedure: If the Preliminary Assessment is insufficient to determine whether there are any anticompetitive implications related to the proposed transaction, then the process is open for proof for a 90 business days' term.

Resolution and Challenge: Within the next 90 business days, PROCOMPETENCIA must issue the corresponding resolution, and if it is adverse to the interests of the parties, then it may be challenged via the revision and appeal recourses. If the resolution is still adverse, then the case may be solved judicially at the Supreme Court of Justice.

AREAS OF THE ECONOMY PROHIBITED

In Nicaragua, there is an open and friendly climate for investors, both national and foreign. Restrictions on foreign investments are minimal, such as in the telecommunications sector, where licenses for social media are granted solely to Nicaraguan individuals or legal entities; for the latter, 51% of the stock capital should be of Nicaraguan nationals, and shares must be nominative.

The Banking, Nonbank Intermediary, and Financial Conglomerate Law (No. 561) allows investors to convert freely and transfer funds associated with an investment. Likewise, the Foreign Investment Promotion Law (344) establishes fundamental guarantees for investors, such as full currency convertibility and freedom to expatriate all capital and profits.

5. How do labour statutes regulate the treatment of local employees and expatriate workers?

The Nicaraguan Labor Code regulates the employment contract and its different types, as well as the rights and obligations of employees and employers. It applies to all employees working in Nicaragua, whether nationals or foreigners. It establishes the most basic principles, such as the nonwaiver of employees' labor rights, and in case of conflict in the interpretation of labor laws, the rule most favorable to the employee will prevail.

Under this Code, the employment relationship is given by the voluntary agreement of the parties to enter into an employment contract and should therefore normally be made in writing. Only certain types of contracts may be made orally.

The employer is free to establish the contents of the employment contracts, including what has not been stated by the Labor Code, such as the wages above minimum, holiday overtime, and payment of vacations.

In indefinite-term contracts, seniority is accumulated and will result in one month's pay per year of service for the first three years and 20 days' pay for the fourth, fifth, and sixth years. This type of contract imposes a limitation on the employer, forcing it to obtain previous authorization from the Ministry of Labor if it wishes to terminate such contract alleging a justified cause.

It will be mandatory for the employer to affiliate the employees with social security from the beginning of their employment relationship.

Any foreigner who wants to work in Nicaragua must first comply with the immigration law, that is, to have met all current migratory requirements that allow him to work in Nicaragua. Approvals for expatriate workers are given by different authorities, depending on the type of business of the company.

6. How do local banks and government regulators deal with the treatment and conversion of local currency, repatriation of funds overseas, letters of credit, and other basic financial transactions?

In Nicaragua, the banking system is a regulated sector based on the Banking General Law. The Central Bank is in charge of determining and executing the monetary and exchange policies and all financial institutions are supervised by the Superintendency of Financial Institutions and Banks

According to Law No. 732, Central Bank Organic Law (Law 732) prices, taxes, rates, wages, salaries, contracts, and obligations of any kind that should be paid, collected, or executed in Nicaragua should be expressed and liquidated in Córdobas (local currency).

However, the same Law No. 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 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.

7. What types of taxes, duties, and levies should a foreign investment in Nicaragua expect to encounter?

In the case of foreign investment in a company that is incorporated or domiciled in Nicaragua, the company must pay the following corporate taxes: (i) 30% of net income tax; (ii) 1% to 3% advance of income tax (monthly); (iii) 15% of withholding tax for nonresidents; and (iv) 15% transfer fee and the dividends received (for non-residents).

Additionally, municipal taxes applicable to companies are the Municipal Tax, which is 1% of the capital subscribed for the opening of commercial operations, and the Municipal Income Tax, which is 1% of Gross Monthly Income.

There are many investment regimes, such as Tax Benefits to Exporters, Tax Benefits to Agricultural Producers, Tax Benefits to Forestry Sector, Temporary Admissions, Free Trade Zones, and Incentives for the Tourism Industry, etc.

8. How comprehensive are the intellectual property laws of Nicaragua, and do the local courts and tribunals enforce these laws regardless of the nationality of the parties?

The Nicaraguan legislation in matters of intellectual property covers trademarks, trade names, slogans, geographical indications, plant varieties, patents, copyrights, utility models, and industrial designs, as well as satellite signals. Said body of rules is a direct consequence of The World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Thus, they include such contemporary concepts as a broader definition of what constitutes a mark (from letters and numbers to abstract figures to sounds, and "other perceptible symbols"), multi-class trademark applications, a 3-year period for non-use cancellation actions, 6-month priority term, and renewals every ten years, as well as administrative opposition procedures.

In addition, Nicaragua has been a member of the Berne Convention for the Protection of Literary and Artistic Works, since August 23, 2000; The Paris Convention for the Protection of Industrial Property since July 3, 1996; The Brussels Convention Relating to the Distribution of Programmed- Carrying Signals Transmitted by Satellite since December 18, 1975; the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms since August 10, 2000; The Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations since August 10, 2000; the WIPO Copyright Treaty since March 6, 2003, the WIPO Performances and Phonograms Treaty since March 3, 2003; the Patent Cooperation Treaty (PCT) since March 3, 2003, and others.

By constitutional mandate, all parties in Nicaragua, regardless of their nationality, have full access to courts, tribunals, and administrative authorities to seek enforcement and protection of their intellectual property rights.

9. **If a commercial dispute arises, will local courts or will international arbitration offer a more beneficial forum for dispute resolution to foreign inventors?**

In Nicaragua, disputes can be resolved either through courts or arbitration, including local or international.

There are fundamental differences between international arbitration and litigation in local courts that can influence the choice of international arbitration. The main disadvantage of litigating in Nicaragua is the extensive duration of judicial proceedings; also, the legal system has been criticized for being cumbersome, which encourages parties to arbitrate their disputes, despite the cost of arbitration.

Under the arbitration law, foreign investors are able to safely use arbitration to resolve their disputes in Nicaragua. If an arbitration seat is in Nicaragua, the arbitral award is in itself considered an enforcement order in the Nicaraguan territory and is valid as a final judgment or court decision, which cannot be appealed. If the arbitration seat is outside of Nicaragua, the acknowledgment and enforcement of the foreign arbitral awards will occur before the Supreme Court.

Nicaragua has up to 20 bilateral agreements for reciprocal protection of investments and also treaties for alternative dispute resolution, among these:

- International Center for Settlement of Investment Disputes (ICSID)
- Multilateral Investment Guarantee Agency (MIGA)
- Overseas Private Investment Corporation (OPIC)
- United Nations Commission on International Trade Law (UNCITRAL / New York Convention of 1958)
- Inter-American Convention of Commercial Arbitrage of Panama.

10. **What advice can you provide for how best to negotiate or conduct business in Nicaragua?**

If an investor has the intention of doing business in Nicaragua, our legislation offers a combination of incentives for foreign investors, without restrictions on the repatriation of capital and profits. Tax incentives to promote investments in Nicaragua are generally in the form of tax exemptions on profit and capital-based incentives in the form of allowances or deductions based on the capital expenditure incurred. Companies in the manufacturing,

agricultural, and tourism sectors, or any other industrial or commercial sector that participates in a promoted activity of producing a promoted product, may be eligible for export incentives when qualifying conditions are met.

There is a well-developed infrastructure of support services and facilities and a labor force that is priced relatively lower than in developed countries, young and capable of being trained to high levels of productivity.

The investor must previously confirm the necessary requirements for his possible investment turnover in a business and have all the detailed information so that he does not have unnecessary setbacks in Nicaragua. In that sense, you should consider your immigration issue that is linked to the activity you will carry out in Nicaragua, and in this way you can obtain a previous temporary residence. Also, work permits can be obtained for skilled foreign personnel.

The Investment Promotion Agency of Nicaragua (ProNicaragua) offers assistance to foreign investors providing detailed information on the country and organizing investment agendas with the government, service providers, and other stakeholders for potential investors.

Panama

FIRM

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Alemán, Cordero, Galindo, and Lee (Alcogal) is a highly reputable law firm that provides comprehensive legal services in banking and finance, M&A, litigation, offshore services, and other business-related matters.

At our core, we boast extensive proficiency in serving banking institutions and multinational corporations. We take great pride in representing some of the largest foreign and locally-owned banks operating within Panama's financial landscape. In addition to our banking expertise, we also excel in handling Mergers & Acquisitions, participating in the largest and most complex M&A transactions in the country. We also have a leading litigation team providing guidance and strategic counsel to companies and individuals. Alcogal is also highly experienced in energy and telecom in Panama, advising the largest players in the market.

Our reputation for delivering prompt, efficient, business-oriented, and sound legal advice is well-earned. Our highly skilled attorneys have extensive knowledge and experience in Panamanian law, ensuring that our clients receive exemplary representation.

1. What role does the government of Panama play in approving and regulating foreign direct investment?

The government of Panama plays an important role in attracting foreign direct investment to the country. In addition to being responsible for approving commercial licenses (*avisos de operación*), generally required for operating a business in Panama, as well as other regulatory authorizations that may apply, the government also promotes special regimes for certain economic activities. The government is also responsible for enforcing rules under these regimes, granting specific authorizations under these, enacting supplementary rules, and providing agency guidance or interpretation when needed.

The following special regimes are of relevance to foreign individuals or companies interested in investing in Panama:

- **EMMA Law** (*Empresas Multinacionales para la Prestación de Servicios Relacionados con la Manufactura*). This special regime was created by Law 159 of 2020. The main objective of this law is to promote the manufacturing industry in Panama by providing attractive incentives such as a special income tax rate of 5% (and not the general income tax rate of 25%), special visa programs that allow companies to hire personnel without consideration of the personnel quotas, and the exemption of payment of dividend tax.
- **Headquarters for Multinational Companies** (*Sedes de Empresas Multinacionales*, or SEMs). The special regime for the establishment and operation of the Headquarters for Multinational Companies was created by Law 41 of 2007. The main objective of this law is to promote investment, employment, and transfer of technology, attracting multinational companies that supply the services indicated by such law, as well as other companies forming part of their own economic group. In accordance with the law, the Headquarters for Multinational Companies benefit from important tax exemptions, as well as labor and immigration matters.
- **Free Zones**. Free Zones are governed by Law 32 of 2011, and defined as free enterprise zones specifically delimited, with the infrastructure, operational organization, and administrative management necessary for the establishment of companies from around the world. The activities contemplated include the production of goods, services, and advanced technology; scientific investigation; higher education; logistic services; environmental services; healthcare services; and general services. Free Zones may be established in any part of the national territory and enjoy various tax and labor benefits.

- **Panama-Pacifico Special Economic Area.** Law 41 of 2004 created the Panama-Pacifico Special Economic Area, a specific area located on the Pacific coast of Panama, as a special free zone, with its own legal, tax, customs, labor, and immigration regime, wherein the activities described under Law 41 would be carried out. Many of the benefits are similar to those offered to Free Zones under Law 32 of 2011.
- **Colon Free Zone.** Law 8 of 2016 approved the reorganization of the Colon Free Zone, with the objective of adapting it to the new tendencies and opportunities provided by international trade, and at the same time establishing a legal tool that ensures its positioning in the region. According to Law 8 of 2016, the areas that make up the Colon Free Zone are considered zones free of taxes, with a legal, tax, and special immigration regime, within which the activities described in such law can be carried out.
- **Petroleum Free Zones.** By virtue of Law 8 of 1987, a special regime was established for petroleum-free zones, within which no taxes are incurred. In general, in these free zones, the companies can import, re-export, store, trade, and sell petroleum-derived products to the domestic Panamanian market, abroad, and/or to vessels in transit in the Panama Canal.
- **Call Centers.** In accordance with Law 54 of 2001, any person duly authorized by the Public Utilities Authority (Autoridad Nacional de los Servicios Públicos) may operate call centers, benefiting from tax incentives granted to companies operating within Free Zones, according to the stipulations of Law 32 of 2011.
- **Tourism.** Law 8 of 1994 regulates touristic activities in Panama, establishing incentives and benefits for tourism projects such as hotels, restaurants, nightclubs, convention centers, condominiums, airports, and ecological tourism, among others.
- **City of Knowledge.** Decree Law 6 of 1998 approved the project called "City of Knowledge," which promotes educational and scientific investigation within a specific area by the granting of various tax and immigration benefits.

An important supplement to these special laws is Law 54 of 1998 (the "Legal Stability of Investments Law"), which provides that investments of US\$2,000,000.00 or more in certain activities will be subjected, for ten (10) years, to the same legal, tax, customs, and labor laws that were in place at the time of the investment. The investment must generally be made within two (2) years, and the investor must be registered with the Investment Register of the Ministry of Commerce and Finance. The activities include

tourism; industrial activities; export of agricultural products; mining; processing zones for export; commercial-free zones; petroleum-free zones; petroleum or natural gas refining, storage, and transport; telecommunications; construction; port development; railway developments; and electric power generation, distribution and transmission.

2. **Can foreign investors conduct business in Panama without a local partner? If so, how does the Panamanian government regulate commercial joint ventures between foreign investors and local firms (include information on common corporate structures)?**

Foreign investors are generally allowed to conduct business in Panama without a local partner, and business operations may be started simply by obtaining a commercial license (*aviso de operación*), and registering the company as a taxpayer, at the General Revenue Office (*Dirección General de Ingresos*) and applicable municipalities, and as an employer, at the Social Security Office (*Caja de Seguro Social*). The company may furthermore be required to issue electronic invoices (*facturas electronicas*).

There are, however, nationality restrictions related to certain economic activities, most notably retail trade, which is reserved for Panamanian nationals under the Constitution (subject to certain exemptions), and real estate purchases along the border, coastline, and in islands, generally not allowed except in limited circumstances. Furthermore, regardless of nationality, other authorizations may apply generally if the activities conducted are in a regulated sector of the economy (e.g., banking and financial services, insurance activities, and securities market activities).

The government does not regulate the type of corporate structure used, but commercial joint ventures with local firms are usually undertaken by incorporating a special purpose vehicle, most commonly a Panamanian corporation (*sociedad anónima*) and, less commonly, a Panamanian limited liability company (*sociedad de responsabilidad limitada*). Both types of entities offer a simple governing structure and flexible rules, generally allowing for corporate resolutions to be adopted by simple majority of the shareholders or partners, or simple majority of the directors or administrators, via meetings (anywhere in the world, whether physically present or through electronic means) or in writing.

3. **What laws influence the relationship between local agents and distributors and foreign companies?**

There are no laws specifically regulating the relationship between local agents or distributors and foreign companies. These relationships are principally governed by the corresponding distribution agreement and general provisions in the Commerce Code and the Civil Code applicable to contracts, agents, and civil liability.

Although distribution relationships between foreign or local manufacturers and their distributors between 1969 and 1989 had been governed by Cabinet Decree 344 of 1969, which granted local distributors certain favorable protections, the Supreme Court, by judgment of August 2, 1989, declared it unconstitutional.

4. **How does the Panamanian government regulate proposed merger and acquisition activities by foreign investors, and are there any areas of the economy where they are prohibited (e.g., natural resources, energy or telecommunications)?**

In general, mergers and acquisitions involving foreign investors are not restricted, but (as mentioned previously) there are nationality restrictions related to certain economic activities, most notably retail trade, which is reserved for Panamanian nationals under the Constitution (subject to certain exemptions), and real estate purchases along the border, coastline, and in islands, which generally prohibits these except in limited circumstances. Furthermore, specific provisions regarding mergers and acquisitions apply to some regulated sectors of the economy (e.g., banking and financial services, insurance activities, and securities market activities), including prior approval, as well as notification of corporate changes resulting from the corresponding merger or acquisition (for example, a change of directors, officers, company name, legal representative, or attorneys-in-fact).

M&A transactions in Panama are impacted by provisions of the Commercial Code, the Civil Code, and – depending on the nature of the target company – by the Corporations Law, the Limited Liability Company Law, and industry-specific regulations (banking, securities, mining, energy, etc.). The primary regulator for M&A activity in Panama will depend on the nature of the business undertaken by the target company. So, for example, in the case of banks, the primary regulator would be the Superintendence of Banks of Panama, and in the case of broker dealers or investment advisory firms, the primary regulator would be the Superintendence of the Securities Market (formerly known as the National Securities Commission).

Furthermore, the antitrust regime and the antitrust agency (ACODECO, for its acronym in Spanish), could play an important role in a merger where a change of control occurs, given that the validity of economic concentrations that unreasonably diminish, restrict, hurt, or impede freedom of competition may be challenged within three (3) years from the time the economic concentration (the applicable change of control) takes effect. However, if the antitrust agency's prior review is sought, and the economic concentration is approved, or is approved under certain conditions (which are met), then it may not be later challenged.

5. How do labour statutes regulate the treatment of local employees and expatriate workers?

The Labor Code of Panama contains the provisions applicable to employment relationships in Panama. In general, in accordance with the Labor Code, the rights of workers (specifically referring to benefits) cannot be affected or reduced, and any contrary provisions are considered null and void.

Notably, the Labor Code establishes that workers that have been employed for a period of more than two (2) years cannot be terminated without just cause, and the employer must notify the worker in writing of the date and specific reason or reasons for the dismissal or termination of the employment relationship based on those causes established by the Labor Code. Subsequently, the employer may not claim other reasons as valid for termination other than the ones contained in the termination letter.

The Labor Code requires that at least ninety percent (90%) of the ordinary workers (workers with no expertise or technical knowledge) of all companies located in Panama be Panamanian citizens or foreigners married to Panamanian nationals and may have foreign specialized or technical personnel not exceeding 15% of the total workforce. Foreign workers must obtain a work permit prior to their employment and an immigration visa within the corresponding immigration category.

There are different immigration categories; among them are:

- **Non-Resident.** For purposes of Panamanian immigration laws, a non-resident is a citizen of any country that enters without the intention of establishing permanent residency in Panama or renouncing his citizenship.
- **Permanent Resident.** For purposes of the Panamanian immigration laws, a permanent resident is a foreigner that enters the country with the intention of establishing residency in Panama, for economic and

investment purposes, in accordance with the specific policies adopted by the Panamanian government. In general, after the term of two (2) years, the applicant may opt for permanent residency.

- **Temporary Resident.** For purposes of Panamanian immigration laws, a temporary resident is a foreigner that enters with the intention of establishing temporary residency in Panama and is subject to a maximum of six (6) months.
- **Resident by Special Policies (Temporary).** This process applies to foreigners that enter the country temporarily as a trusted employee, producer, actor, technician, or expert of a foreign company, performing a specific job within the national territory. It applies in the cinematography and audiovisual fields, the City of Knowledge, the Panama Canal Authority, the Panama-Pacific Area, Free Zones, call centers, and Headquarters for Multinational Companies.

6. How do local banks and government regulators deal with the treatment and conversion of local currency, repatriation of funds overseas, letters of credit, and other basic financial transactions?

Panama does not have provisions restricting the conversion of local currency or the repatriation of funds overseas. Panama has a robust banking system, with a total of 61 (sixty-one) banks currently offering all types of banking products and services (from consumer banking to commercial and investment banking). Many banks in Panama are part of large international financial groups, such as Citibank N.A., The Bank of Nova Scotia, BAC, and Bancolombia, among several others. While KYC and AML requirements are many, foreign investors in Panama should have no trouble in finding any banking product or service required for their business.

7. What types of taxes, duties, and levies should a foreign investment in Panama expect to encounter?

Panama tax laws adopt the “principle of territoriality,” which generally implies that only income generated by domestic activities or carried out in the territory of the Republic of Panama will be subject to income tax.

A determination of all taxes a foreign investor may encounter investing in Panama requires a careful analysis of the specific investment to be made. However, taxes that may generally be expected to apply include the

income tax (*impuesto sobre la renta*), which is 25% for legal entities; the value-added tax (*impuesto sobre la transferencia de bienes y servicios*), which is 7%; the dividends tax, which is 10% for the Panama-sourced income and 5% for the foreign-sourced income; the commercial license tax (*impuesto de aviso de operación*), which consists of an annual tax of 2.0% over the capital of the company, with a minimum of US\$100.00 and a maximum of US\$60,000.00, unless the invested capital is less than US\$10,000.00; and any applicable municipal taxes.

Furthermore, there is a tax on remittances for natural persons or companies whose domicile is outside the Republic of Panama as a result of any service or act, documented or not, that benefits the income of natural or legal entities, national or foreign, located within the Republic of Panama. A withholding tax of 25% applies on half of the amount paid to foreign entities beneficiaries instead of the full amount (an effective rate of 12.5%). It is important to note that this withholding obligation shall not apply in the event that the individual or legal entities whose domicile is outside the Republic of Panama has registered as an income taxpayer with the General Revenue Directorate.

Additionally, there is a stamp tax in the Republic of Panama at a rate of USD0.10 for each USD100 of the value of any such document applicable to any document with respect to a transaction that generates Panama source income. Even in the event that the transaction does not generate Panama source income, the stamp tax will be due and payable, if presented before an administrative authority or court in the Republic of Panama as evidence.



How comprehensive are the intellectual property laws of Panama, and do the local courts and tribunals enforce these laws regardless of the nationality of the parties?

Law 64 of 2012, as amended, protects the rights of authors and right holders over their literary, artistic, or scientific work, regardless of their type, form of expression, or destiny, including related rights; it further provides that copyright is independent and compatible with industrial property rights that may exist on the work. This protection is recognized independently of the material form contained within the work and is not subject to any formality.

Law 35 of 1996, in addition, protects inventions, trade names, utility models and industrial designs, industrial and trade secrets, trademarks for products and services, collective marks and guarantees, geographical indications, indications of source, destinations of origin, and trade names, as well as advertising and slogan signs.

In Panama, these protections are afforded to the authors and/or owners of the specific works, trademarks, etc., regardless of their nationalities.

9. **If a commercial dispute arises, will local courts or will international arbitration offer a more beneficial forum for dispute resolution to foreign inventors?**

Plaintiffs will often prefer arbitration rather than a local court because arbitration offers a more expedient process than the court system in Panama. Conversely, defendants will often prefer a local court rather than arbitration, since they benefit from a broader scope of actions and defenses within the process. Ultimately, which forum is more beneficial to foreign investors for dispute resolution – whether a local court, local arbitration, or international arbitration – will depend on each situation.

10. **What advice can you provide for how best to negotiate or conduct business in Panama?**

Panama has been, and continues to be, a country that is open to trade and business from around the world, with a strategic location for logistics, and a growing services-oriented platform. Before conducting business in Panama, however, it is advisable for the interested person to become acquainted with the general commercial landscape of Panama (including its laws, taxes, and business practices), and to learn of any requirements, obligations, or pertinent facts connected to the particular business to be conducted, and the parties involved, to assess the risks and advantages of the potential course of action. To best accomplish this, we recommend seeking the advice of well-trained and experienced professionals – attorneys, accountants, investment advisors, etc. – that can best provide the necessary guidance.

Paraguay

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Peroni Sosa Tellechea Burt & Narvaja (PSTBN) is one of the largest firms in Paraguay, established in 1968. PSTBN has been an active participant in legal innovation in Paraguay, advising the Government on development strategies, working closely with the Congress to enact new legislation, and taking an active part in University education.

PSTBN offers a broad range of legal services for clients from renowned professionals. The Firm's specialization includes compliance, mergers and acquisitions, real estate, foreign investment, maritime and aviation, logistics infrastructure, project financing, antitrust, telecommunications, banking and international finance, mineral and oil exploration projects, labor relations, general civil litigation, taxation, environmental law, counseling before local government agencies and legislative bodies, maquila projects, distribution agreements, franchising and licensing agreements, and intellectual property matters.

Representation before Courts of Law and administrative Governmental Agencies is an important activity of PSTBN; we have represented plaintiffs or defendants in several landmark civil and commercial cases. PSTBN prides itself on keeping its tradition in the practice of law, providing personal attention to clients with great involvement from all partners.

1. **What role does the government of Paraguay play in approving and regulating foreign direct investment?**

The government of Paraguay welcomes foreign investment in various sectors of the economy and has created a number of incentives to attract foreign investment. However, it does not play a direct role in approving and regulating foreign direct investment, except where these investments are subject to any of the special regimes for tax incentives, etc., which will be detailed in the questions below.

The main areas in which investment is needed and encouraged are banking and finance, infrastructure, real estate, capital markets, maquila, and agribusiness.

2. **Can foreign investors conduct business in Paraguay without a local partner? If so, how does the Paraguayan government regulate commercial joint ventures between foreign investors and local firms (include information on common corporate structures)?**

Foreign investors can conduct business in Paraguay without a local partner and they, in fact, do very often.

The most common way of structuring is through the incorporation of a local company, whether in the form of a Sociedad Anonima or Sociedad de Responsabilidad Limitada, or the creation of a Branch office, which we will refer to in detail below. The foreign entity and the local partner can agree on the shareholding each will have in the company and there are no limitations to that extent.

SOCIEDAD ANÓNIMA

There are no minimum capital stock requirements for S.A. or a maximum number of shareholders (there must be a minimum of two) and their participation in the company is represented by shares. Their liability is limited to the amount of their shareholding. The capital stock must be completely subscribed at the moment of incorporation. The process of incorporation takes approximately 45 to 60 days. Administrative and legal fees pertaining to the incorporation of an SA depend on its capital stock, but the minimum is generally at US\$ 300. Share purchase agreements of an SA are not subject to the Value-Added Tax.

SOCIEDAD DE RESPONSABILIDAD LIMITADA

The incorporation process of a S.R.L. is the same as for an S.A. An S.R.L. can be incorporated by two or more partners, with a maximum of twenty-five, and their participation in the company is represented by quotas.

There are no minimum capital requirements, but it must be fully subscribed at the incorporation and a minimum of 50% of the contributions in cash must be effectively paid-in in a two-year term following incorporation. The balance of the capital stock can be contributed in goods or assets, which will have to be transferred to the S.R.L. Incorporation takes approximately 45 to 60 days. As for S.A., administrative and legal fees pertaining to the incorporation depend on its capital stock, but the minimum is generally at US\$ 300.

BRANCHES

Foreign companies can incorporate a local branch in Paraguay. Branches are subject to all applicable legal provisions, such as publication of the bylaws in a local newspaper and registration of the document in the Public Records. The estimated time for incorporation and administrative and legal fees is similar to those estimated for S.A. and S.R.L. In order to incorporate a local branch, the following requirements must be met: (i) incorporate a representation domiciled within Paraguay, (ii) evidence that the company has been duly incorporated pursuant to the laws of its country of origin, and (iii) justify the intention to open a branch, the capital stock allocated to it and, where applicable, the appointment of representatives. All documents issued in the country of origin must be duly certified by a Notary Public and legalized or apostilled. The branch must comply with all applicable tax regulations and will be subject to control by the Ministry of Finance. Branches are subject to Income Tax at a 10% rate on the benefits obtained locally, and an additional 5% on remittance of profit to shareholders. If profits are remitted abroad for foreign shareholders or mother companies, an additional tax of 15% will be applicable.

3. What laws influence the relationship between local agents and distributors and foreign companies?

Law No. 194/93 governs the relationship between foreign companies and firms (collectively, "Principal") and local representatives, agents, and distributors (collectively, "Dealer") in Paraguay.

Parties may freely regulate their rights by contracts governed by Civil Code, but waiver of rights recognized by Law 194/93 is not allowed.

Principal may cancel, revoke, amend, or refuse to renew Representation, Agency, or Distributorship without a statement of cause, but with the obligation in such case to pay Dealer a minimum compensation pursuant to the following criteria: a) duration of the relationship; and b) average gross benefits derived from the relationship during last three years of activity.

Representation, Agency, or Distributor relationships may be cancelled, revoked, amended, or not renewed for just cause, without obligation to pay compensation for the following reasons: a) non-compliance of contract clauses; b) fraud or breach of trust on the part of Dealer; c) inability or negligence of Dealer in the sale of products or services; d) continued reduction of sales or distribution of products or services for reasons attributable to Dealer, except if caused by quotas or restrictions on imports and sales, fortuitous events, or force majeure; e) any act attributable to Dealer that affects or prejudices marketing, sale, or distribution of products or services; and f) conflict of interest due to the representation, agency, or distribution of products or services that may be in competition with the products or services contemplated by relationship.

Prior to termination, Principal shall require Dealer to cure the cause invoked within a term of 120 days. Non-compliance by Dealer allows Principal to exercise its rights immediately. A curing period is not required if termination is related to fraud or breach.

Stated causes shall be proved before Paraguayan courts or by arbitration if thus agreed; otherwise, cancellation, revocation, amendment, or refusal to renew shall be deemed to be unjustified.

Parties shall submit to the territorial jurisdiction of the courts of Paraguay. They may compromise in all patrimonial matters or submit to arbitration before or after suit is filed, provided that no judgment shall have been issued.

4. How does the Paraguayan government regulate proposed merger and acquisition activities by foreign investors, and are there any areas of the economy where they are prohibited (e.g., natural resources, energy or telecommunications)?

As a general rule, the Paraguayan government does not specifically regulate mergers and acquisitions, and there are no limitations as to areas of the economy. No areas are reserved for Paraguayan investors only, given that the Investment Law grants foreign investors the same capacity and rights as local investors.

With regards to mergers and acquisitions, our legislation does regulate their function and set some requirements. There are two alternatives of merger under Paraguayan law: (i) merger by absorption, and (ii) merger by the creation of a new company. Limitations for mergers are set forth by Competition and Antitrust Law No. 4956/13. Mergers will be subject to

notification, assessment, and approval, conditional or not, or rejection by the Enforcement Authority (CONACOM), where at least one of the two circumstances following is given:

- a) As a result of the operation is acquired or incremented a fee equal to or greater than 45% (forty-five percent) of the national market of a particular product or service, or a geographic market defined therein; or
- b) The overall gross turnover in Paraguay of all participants subject to a merger exceeds in its last financial year the amount of one hundred thousand minimum monthly wages.

5. How do labour statutes regulate the treatment of local employees and expatriate workers?

Labor statutes do not regulate treatment of local employees and expatriate workers differently. The only difference is when the foreign employee does not have the Paraguayan permanent resident or a Paraguayan I.D. Card. In that case, the employer and the employee will enter into a Deferred Execution Employment Agreement, which fixes a term within which the employee will have to obtain the necessary documentation and parties agree that once this is accomplished, a new Employment Agreement will be executed, but the employment relationship will begin with execution of the first agreement.

The agreement must be registered before the Institute of Public Welfare for the employee to have mandatory social security coverage.

6. How do local banks and government regulators deal with the treatment and conversion of local currency, repatriation of funds overseas, letters of credit, and other basic financial transactions?

The financial system in Paraguay is regulated by the Central Bank of Paraguay.

Banks and other financial entities work freely in the market, with no restrictions on interest rates or in the use of funds. Currently it is possible to make deposits and obtain loans in both local and foreign currency.

There is a system of free and fluctuating exchange in Paraguay, without the intervention of monetary authorities. Currency and exchange rates are

the result of free circulation of offer and demand, for both import and export of goods and services, as well as for the movement of capital, including financial and public payment.

There are no restrictions for incoming and outgoing foreign currency or the sums involved.

However, in the framework of regulations governing money laundering, all transfers for more than USD 100.000, as well as unusual transactions, must be duly justified and supported.

There is no obligation to report financial activity with other countries to monetary authorities.

Capital markets are rather small, given that most of the companies operating in the country are closed or foreign. As a result of the creation of legal instruments to increase the number of listed companies, it has, in fact, increased.

Supervision of capital markets is exercised by the National Securities Commission.

7. What types of taxes, duties, and levies should a foreign investment in Paraguay expect to encounter?

In Paraguay, corporate entities are levied with taxes, such as income, capital, and consumption tax, depending on the economic activities they carry out. In this chapter, they will be briefly explained to help readers get to know and understand the influence of each of them on different transactions and the income generated by them.

Administration and application of Tax Office is called National Bureau of Tax Revenue (*Subsecretaría de Estado de Tributación*).

The **Income Tax** is imposed on income generated from a Paraguayan source which may be generated from commercial, industrial, or agricultural activities and services; thus, it is subdivided into four categories, depending on the economic activity of the company, the volume of revenue, and whether the derived income is purely personal, which applies exclusively to individuals and partnerships.

Corporate Income Tax in Paraguay applies to taxable income derived from various economic activities, excluding those taxed by personal income tax. This includes income generated by assets, rights, and obligations. The tax is applicable to corporations, simple partnerships, limited liability companies, and other entities, including government-owned

enterprises and branch offices. Individual businesses are also subject to this tax. Taxable income is calculated by deducting allowable costs and expenses, and the tax is settled annually with advanced payments made based on the previous year's tax determination. The tax rate is 10%. Simplified regimes exist for natural persons with sole proprietorships, based on income thresholds. There are additional rules regarding the valuation of operations when dealing with foreign or national-related companies that are exempt from tax, with a presumption for companies incorporated in low or no-taxation jurisdictions.

Taxpayers are considered to be all of the individual businesses, partnerships, associations, corporations, and other private businesses; government-owned enterprises, decentralized government corporations, and mixed capital corporations; and branches, agencies, or businesses owned by foreign corporations. Corporations incorporated overseas shall pay tax on income paid or accredited to them, as shall individuals applying capital resources and personal labor jointly, for the purpose of obtaining economic income, except those involving strictly personal services or those engaged in farming, corporative companies, when performing the same activities as other commercial/industrial companies.

Beneficiaries of Paraguayan-sourced income domiciled abroad are subject to withholding tax separately from their local branch or agency.

The Property Tax (*Impuesto Inmobiliario*) is the only tax that can be qualified as a "patrimonial tax." It is applied exclusively to real estate property located in national territory, and taxpayers are owners or users thereof. When ownership is shared, tax is paid by any one of the owners. The tax base is a fiscal valuation of real estate as set by the National Survey Service. The tax rate for the Property Tax is 1% of the fiscal value per year, reduced by 50% in case of rural properties under five hectares, in areas utilised for small-scale farming, and rural properties with approved forestation/reforestation programmes, under Law 536/94.

Value-Added Tax (VAT) – *Impuesto al Valor Agregado*: It is applicable to the transfer of ownership of goods from one person or company to another and the rendering of personal services and importation of goods. Excluded are personal services performed under the Labor Code.

- Taxpayers: Individuals who provide personal services that are not performed under the Labor Code. The individuals also pay IVA for the lease of real estate and for the operation of a sole proprietorship. Other taxpayers include private entities, companies, associations, branches, and INR taxpayers, among others.

- Rates: The general rate is 10%. For the following special cases, a reduced rate of 5% applies: a) lease of real estate destined exclusively for housing, including the use and usufruct of such assets; b) sale of real property; c) sale and import of essential food products; d) disposal and importation of certain agricultural, horticultural and fruit products; e) sale and import of live cattle, fish and poultry, as long as they have not undergone any type of alteration or transformation, except those necessary for their conservation; and f) disposal and import of products that are registered as medicines for human use.
- Tax payment and calculation: It is settled monthly and is calculated as "debit VAT" minus "credit VAT." The tax debit is the sum of the taxes accrued by taxable transactions in each month. The tax credit is the sum of the taxes included in the purchases of goods and services in the local market, the imports paid, and the withholdings supported in the month. The deduction of any tax credit is conditional on said credit arising from goods or services dedicated directly or indirectly to taxable transactions. When the tax credit exceeds the tax debits, the surplus can be transferred to future calculations.

TAX EXEMPTIONS

Law No. 60/90 establishes an incentives regime to encourage economic development, promote growth in production of goods and services, create employment opportunities, generate exports and substitute imports utilizing national resources, and incorporate efficient technology for increased and better use of national raw materials, labor, and energy resources. Legal and fiscal framework allows national and foreign investors, without discrimination, to formulate investment projects, facilitating their full operational productivity.

Investment projects enjoy the following benefits:

1. Total exemption from all taxes applicable to the constitution, recording, and registration of corporations and companies;
2. Total exemption from all taxes and charges applicable to foreign exchange transactions arising out of capital contributions or operations contemplated in investment project;
3. Total exemption from customs duties and similar taxes, including specific Internal Revenue levies on imports of capital goods;
4. Total exemption from all taxes and other levies on remittance of interests and fees related to foreign loans, during the entire term of the loan, provided that (i) loans are at least US\$5 million, and (ii) lenders are well-known financial institutions; and

5. Total exemption from all taxes applicable to dividends and profits generated by investment project for a maximum term of ten years, provided that (i) investment be superior to US\$5 million, and (ii) taxes paid in Paraguay cannot be considered tax credit in country origin of investment;

Rights acquired by beneficiaries under Law are irrevocable, provided corresponding obligations are met.

The **Maquila Regime** is regulated by Law 1064/97—inspired in the Mexican Maquiladora System—by which a local company/subsidiary/branch (*“Maquiladora”*) signs a contract with a foreign entity (*“Matriz”*) to produce goods and/or provide services for export only, operating “for account and risk of” the foreign entity, who can supply all the raw materials and other inputs to the Maquiladora from any local or foreign supplier.

The Maquiladora must file an application for a “Maquila Program” with details of the estimated operation. Once the program is approved it can be modified as necessary.

Raw materials and other inputs required for the performance of the Maquila Program can enter Paraguayan territory with the suspension of all the applicable taxes and duties; a guarantee for a value equal to the suspended taxes will be required by the Customs Authority in the form of insurance policies, warrants, or bank guarantees.

Production under this regime is subject to a 1% tax on the value added in Paraguayan territory, with no other applicable taxes.

Fiscal exemptions extend to the following taxes: Income Tax; Value-Added Tax; Customs Duties; Customs Valuation Tax; Consular Duties; Port and Airport Taxes and Duties; any type of tax, rate, or charge that pertains to guarantees issued to companies using the Maquiladora System; any type of tax, rate, or charge applied to loans financing Maquiladora operations; and any taxes that might be placed on remittances of funds related to the Maquiladora System.

8. **How comprehensive are the intellectual property laws of Paraguay, and do the local courts and tribunals enforce these laws regardless of the nationality of the parties?**

Paraguay has in place a comprehensive set of intellectual property laws that protect the rights relating to literary and artistic works; performances of performing artists, phonograms, and broadcasts; inventions in all fields of human endeavor; industrial designs; trademarks, service marks, and commercial names and designations; and protection against unfair competition. These laws are enforceable by local courts and tribunals regardless of the nationality of the parties. The Paraguayan Intellectual Property Office (“DINAPI”) has quasi-judicial functions in the administration of industrial property systems. Furthermore, civil actions for infringement are available, as well as actions against serious criminal offenses of counterfeiting and piracy. Criminal sanctions include both fines and imprisonment.

Free Zones Regime is a set of duly delimited areas with regards to the customs territory, where commercial, industrial, and services agreements are permitted, free of customs fees or taxes.

In these areas, investors are exempted from all taxes on the import of capital goods destined for infrastructure in the Free Zone; Value-Added Tax on services rendered to other users; all taxes on the port facilities provided to users; and tax exemption on payment of professional fees, interests, remuneration for services, technical assistance, transfer of technology, loans, and financing, lease of equipment and other services provided by third countries.

9. **If a commercial dispute arises, will local courts or will international arbitration offer a more beneficial forum for dispute resolution to foreign inventors?**

It would depend largely on the matter in dispute.

In general, arbitration will offer a more beneficial forum, considering some of its inherent characteristics compared to some lengthier procedures before local courts. Parties are free to decide mutually on the forum where to resolve disputes and pursuant to the novel Law No. 5393/2015, parties are also free to decide on the applicable law to international commercial agreements and can choose foreign law as applicable, with a number of

express exceptions set forth in Article 1 (employment agreements, distribution, agency and representation agreements, franchise agreements, and consumption agreements).

There are also certain matters under which, should any dispute arise, it would have to be submitted to local courts or local arbitration, such as disputes under the Distribution, Agency and Representation Law No. 194/93. Case law has established that any controversy or conflict under these types of agreements must be exclusively submitted to the jurisdiction of Paraguayan tribunals and subsidiarity, an arbitration procedure in Paraguay before the Paraguayan Arbitration Institution (CAMP).

10. **What advice can you provide for how best to negotiate or conduct business in Paraguay?**

In the first place, it is advisable to research and focus on sectors for investment that are currently in the spotlight and growing at a fast pace, such as the agribusiness sector.

In terms of dealing, Paraguay is highly globalized and negotiations are conducted on the same level as negotiations worldwide. There are no differences in negotiations in Paraguay and internationally.

We recommend foreign investors or companies looking to establish and conduct business in Paraguay seek reliable professional advice to structure the transaction and to follow up on the project.

Peroni Sosa Tellechea Burt & Narvaja (PSTN) is a full-service firm with more than 40 years of experience in the Paraguayan market, dealing mainly with international clients.

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1. **What role does the government of Peru play in approving and regulating foreign direct investment?**

The Peruvian state promotes and guarantees foreign investments in any kind of activity and entity. Foreign investors have the same rights as local investors, with the exception set forth in the Peruvian Constitution regarding the prohibition to directly or indirectly acquire and/or possess real estate property within 50 kilometers of the country's boundaries. There are no requirements for prior authorization of foreign investments. No authority, regardless of its government level, may apply different treatment to investors based on their nationality, sector, the economic activity in which they participate, or the geographic location of their investments.

The Peruvian government supervises certain industry activities independently of the nationality of the investor, such as: insurance, financial and banking operations; mining and energy; drug and chemical use; education; public infrastructure; transport and telecommunications; and water and sewage services, among others.

2. **Can foreign investors conduct business in Peru without a local partner? If so, how does the Peruvian government regulate commercial joint ventures between foreign investors and local firms (include information on common corporate structures)?**

Yes, foreign investors may conduct business in Peru in an independent way, without a local partner. Foreign investments are allowed without restrictions in most economic activities, as well as the acquisition of shares owned by national investors. Investors are entitled to organize and develop their activities under any business entity or scheme approved by law. The General Corporations Law No. 26887 provides for, among other forms of business associations, three forms of stock corporations (known as *sociedades anónimas*): simple corporations (*sociedades anónimas*), open corporations (*sociedad anónimas abiertas*), and closed corporations (*sociedades anónimas cerradas*). Since Law No. 26887 was enacted, the simple and the closed corporations have become the ones most frequently incorporated in Peru.

Foreign investors can also establish a Peruvian branch of their Company. The law defines a branch as any division of business at a different location from its main office, created to perform activities as part of the corporation's purpose. It is not deemed as a separate legal entity of the principal office, but for tax purposes, it is considered an independent taxpayer. The principal

office is liable for the branch's obligations. It must have permanent legal representation in Peru and management autonomy to the extent granted by the principal office and according to the powers granted to its representatives.

Also, through consortiums or joint venture agreements (collaboration agreements) two or more parties, which can be foreign, may associate to actively and directly participate in a certain business for the purpose of obtaining an economic profit. However, each party will maintain its independence at all times. Each party will be individually liable to third parties for the activities that it carries out under these agreements.

When the consortium or joint venture enters into agreements with third parties, there is joint liability for the partners if it is stated in the agreement or when determined by law.

The parties should determine the extent of participation in the results; otherwise, it will be deemed to be equal for all parties.

3. What laws influence the relationship between local agents and distributors and foreign companies?

In general, Peru has a free regime for foreign trade. Nevertheless, certain products such as foods, medicines, agrochemicals, and some others require registration previous to import because of sanitary considerations. Certain agricultural products are subject to a regime of price stabilization (*franja de precios*), which in case of a fall in the international quotation of these products, creates additional tariffs for imports. The importation of used clothes, used rims, and vehicles with more than five years of production is prohibited.

There are no limitations to the distribution of imported goods. A foreseeable and transparent customs regime exists, which guarantees freedom in foreign trade.

Peru is part of the Andean Community of Nations and has a free commerce area with Colombia, Ecuador, and Bolivia. According to this agreement, Peruvian exports to the referred three countries are duty-free. At the same time, all imports from the Andean countries may enter Peru duty-free. Peru has very ambitious trade agreements with Chile and with MERCOSUR (Brazil, Argentina, Uruguay, and Paraguay). According to said agreements, a very important portion of the trade between Peru and said countries is also duty-free.

In addition, Peru has free trade agreements with the United States of America and with the European Union. According to these free trade agreements, almost all Peruvian exports to the USA and the countries of the European Union enter duty-free to said countries. On the other hand, Peru has given immediate duty-free access to 80% of the American industrial and other exports to Peru. Similar free trade agreements are applicable with Canada, China, and Korea.

Peru has signed some agreements with other states for the avoidance of double taxation and prevention of fiscal evasion. A multilateral agreement, Decision No.579, was signed with the Andean Community countries: Bolivia, Colombia, Ecuador, and Peru. According to said Decision, income tax is generally applied only by the country of the source of income. Such agreements also include rules that allow the respective tax administrations to perform joint tax audits and exchange of information.

OECD Model Tax Convention was adopted in the agreements signed with Canada, Chile, Brazil, Mexico, Portugal, South Korea, and Switzerland. Therefore, they allocate tax jurisdiction between source and income. Capital gains, interest, and royalties are subject to a withholding income tax rate that in some cases may be more beneficial than the tax rate applied in the current regime. These conventions also affect related parties' transactions and should be applied considering internal transfer pricing regulations.

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According to this agreement, Peruvian exports within these three countries are duty-free. At the same time, all imports from the Andean countries could enter Peru duty-free. Peru has very ambitious trade agreements with Chile and with MERCOSUR (Brazil, Argentina, Uruguay and Paraguay). According with said agreements, a very important portion of the trade within Peru and said countries is also duty-free.

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Therefore, they allocate tax jurisdiction between source and income. Capital gains, interest and royalties are subject to a withholding income tax rate that in some cases may be more beneficial than the tax rate applied in the current regime. These Conventions also affect related parties' transactions and should be applied considering internal transfer pricing regulations.

4. How does the Peru government regulate proposed merger and acquisition activities by foreign investors, and are there any areas of the economy where they are prohibited (e.g., natural resources, energy or telecommunications)?

Since 2021, Peru has had a prior merger review regime. Merger transactions include every operation or transaction involving a transfer or change in control of a company or part thereof. Such transactions may occur as a result of the following operations:

- a. A merger of two or more economic agents, which were independent before the operation, regardless of the form of corporate organization of the merging entities or the entity resulting from the merger.
- b. The acquisition by one or more economic agents, directly or indirectly, of rights that allow them, individually or jointly, to exercise control over all or part of one or more economic agents.
- c. The constitution by two or more independent economic agents of a common company, joint venture, or any other analogous contractual modality that implies the acquisition of joint control over one or more economic agents in such a way that said economic agent performs the functions of an autonomous economic entity.

- d. The acquisition by an economic agent of direct or indirect control, by any means, of productive operating assets of one or more other economic agents.

A merger transaction is subject to the merger review process when the following thresholds are met concurrently:

- a. The total sum of the value of sales or annual gross income or value of assets in the country of the companies involved in the merger transaction that they have reached during the fiscal year prior to that in which the transaction is notified is equal to or more than one hundred and eighteen thousand (118,000) tax units (UIT) (In 2024, USD 164,243,243).
- b. The value of sales or annual gross income or value of assets in the country of at least two of the companies involved in the merger transaction that they have reached, during the fiscal year prior to that in which the transaction is notified, is equal to or more than eighteen thousand (18,000) UIT each (In 2024: USD 25,054,054).

In telecommunication (television broadcasting), foreign investment is not prohibited but the reciprocity principle is applied. In that case, the foreign investor will have the same limitations that a Peruvian investor will have in his country.

5. How do labour statutes regulate the treatment of local employees and expatriate workers?

Local and foreign employees are entitled to the same rights and benefits. Nevertheless, foreign employees can be hired for certain positions and up to a three-year term, which can be renewed on the same basis. No more than 20% of the employer's personnel can be foreign and no more than 30% of the total payroll can be used to cover foreigners' salaries. The law provides several exemptions to these restrictions. Labor contracts with foreign employees require the approval of the Labor Department.

In general, local and foreign employees are subject to a three-month trial period after which they may be fired only based on a just cause regulated by law. Peruvian labor legislation rules require different kinds of employment contracts for starting or increasing a new activity, implementing new technology, covering extraordinary needs of labor, for cases of temporal replacement, covering seasonal labor needs, etc.

In addition to a one-day weekly rest and some holidays (around 15 days in a year), employees are entitled to one month of paid vacation after a year of full employment. Furthermore, one monthly salary is paid in July

and another in December as bonuses for Independence Day and Christmas. Profit sharing is based on a scale between 5% and 10% depending on the employer's activity for companies with more than 20 employees. As compensation for time of service (CTS), employers must make semi-annual deposits in an employee's special bank account of approximately half a salary per every six months of full employment. Deposits can be withdrawn only upon employees' retirement from employment or before as long as a minimum deposit of four salaries remains until the end of employment. The first two hours of overtime have a surplus of 25%; additional overtime is subject to a 35% surplus. Dismissal of an employee without a just cause is subject to the payment of an indemnity of 1.5 monthly salaries per year of employment with a 12-month salary cap. In some cases, reinstatement is applicable.

The minimum wage (currently equivalent to approx. US\$278 per month) is applicable to any employee working a full eight-hour day. Minimum wage for jobs performed on a night shift (10:00 p.m. to 6:00 a.m.) has a surplus of 35%.

In addition to Income Tax, salaries are subject to a withdrawal of 13% for the public pension system or approximately 12% for the private pension system. Employers must pay, based on the employee's salary, 9% for health care insurance and other special taxes depending on the employer's activity. In the same way, it is mandatory to take out the Life Insurance Law from the first day of the labor relationship. In addition, employers performing activities considered as high risk must hold additional insurance covering health and pension benefits.

6. How do local banks and government regulators deal with the treatment and conversion of local currency, repatriation of funds overseas, letters of credit, and other basic financial transactions?

Foreign investors can both receive and make fund remissions abroad in foreign currency and with no previous authorization of any governmental agency whatsoever, including the total amount of their investments and the total amount obtained as dividends.

There is no limit to holding foreign currency in Peru. Almost every bank offers and manages accounts in local currency, US Dollars, and other foreign currencies.

7. What types of taxes, duties, and levies should a foreign investment in Peru expect to encounter?

The Peruvian Tax System includes mainly the Income Tax (Impuesto a la Renta), the Value-Added Tax (Impuesto General a las Ventas), the Municipal Improvement Tax (Impuesto de Promoción Municipal), the Excise Tax (Impuesto Selectivo al Consumo), the Import Duties (Aranceles), and other various minor taxes.

INCOME TAX

Annual tax is applicable for individuals and corporations. The individual's incomes are divided into categories depending on the source and are subject to the following rates:

Labor-source income:

- 8% of the net income up to approximately USD 6,136.
- 14% of the net income up to approximately USD 24,545.
- 17% of the net income up to approximately USD 42,954.
- 20% of the net income up to approximately USD 55,227
- 30% for the excess of the additional net income.

Individuals are also allowed to deduct some expenses as long they are supported in formal invoices up to the amount of USD 3,681.

Capital gains obtained by individuals are mainly subject to an effective rate of 5%.

Corporations are subject to a rate of 29.5 % of their net income.

Dividend distribution is subject to a withholding rate of 5%. Corporations that agree to the distribution or effectively distribute dividends and other kinds of profits to individuals and/or non-domiciled corporations are responsible before the Tax Authority for the withholding and payment of this tax.

VALUE-ADDED TAX

This is a general consumer tax applicable to all sales of movable goods and services rendered or used in the country, construction contracts, the first sale of real estate made by the builder, and the importation of goods. Its rate is 16%, which added to the 2% of the municipal improvement tax results in an applicable rate of 18% affecting the price of all sales. The system permits taxpayers to use the tax paid in a previous stage as a tax credit. This tax is paid on a monthly basis.

EXCISE TAX

Excise Tax is applicable to certain specific luxury goods. The rates vary from 0% to 75%. Fuel is subject to a fixed amount of excise tax.

IMPORT DUTIES

Import duties are applicable to the CIF value of goods imported to Peru. The rate is 12% for most of the goods. Certain goods are subject to a rate of 20%. Some specific goods are temporarily subject to a surtax of 5%.



How comprehensive are the intellectual property laws of Peru, and do the local courts and tribunals enforce these laws regardless of the nationality of the parties?

Industrial property rights in Peru are regulated by Decision No.486 of the Andean Community of Nations, a supranational law applicable in Andean Pact countries (Bolivia, Colombia, Ecuador, and Peru) and by its own Law Decree No.1075, as well as the international conventions to which Peru is party, like the Paris Convention for the Protection of Industrial Property, Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Pan American Convention of Washington (1929), Patent Cooperation Treaty (PCT), and Trademark Law Treaty (TLT 1994).

Patents and trademark rights may be acquired only through registration before the Patent and Trademark Industrial Property Office. The Peruvian trademarks system permits the registration of an exclusive right without any use and without any declaration of intent to use.

Patents are valid for a 20-year term from the date on which the application is filed. Trademarks are valid for a 10-year term from the date of the resolution granting the registration and can be renewed indefinitely for 10-year periods.

The Patent and Trademark Industrial Property Office will enforce these laws regardless of the nationality of the parties. Foreigners receive the same treatment as the Peruvians.

9. **If a commercial dispute arises, will local courts or will international arbitration offer a more beneficial forum for dispute resolution to foreign inventors?**

Peruvian legislation provides for several procedures with the courts for the settlement of disputes available to foreigners, as well as to local individuals, corporate bodies, or the state. In addition, it also provides non-judiciary mechanisms for the settlement of disputes, such as conciliation, mediation, and arbitration procedures.

Disputes with the state can also be submitted to arbitration tribunals established by the treaties to which Peru is a party. Peru is a signatory to the ICSID Convention and has ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the Inter-American Convention of Panama. Peru is also a member of the Multilateral Investment Guarantee Agency.

The courts and arbitrators in Peru will give the same treatment to a foreign investor as to a local one. In general, the parties can choose the applicable law and the jurisdiction in which they will settle any dispute, considering different factors such as the amounts involved, expenses, the urgency of the matter, etc. In some cases, when contracting with the Peruvian Government, this freedom to choose the applicable law and jurisdiction may be limited.

10. **What advice can you provide for how best to negotiate or conduct business in Peru?**

Even though there are no additional legal requirements in Peru for foreign investors, as in every country, there are legal formalities and requirements that the investor needs to know and fulfill to avoid any fines or sanctions. Consequently, it is important that the foreign investor receive advice from lawyers and accountants who can guide him in the whole process. In addition, and depending on the activity to be performed, choosing a bank with international relations and nationwide coverage is also advisable.

On a similar note, if the amount of the investment to be conducted exceeds of US\$ 10 million (for mining and oil) or US\$ 5 million (for all other activities), both the foreign investor and the local recipient vehicle may enter into stability agreements with the Peruvian Government, which will freeze certain employment hiring laws, tax rates, currency exchange, among others, for a renewable 10-year period.

Turks and Caicos Islands

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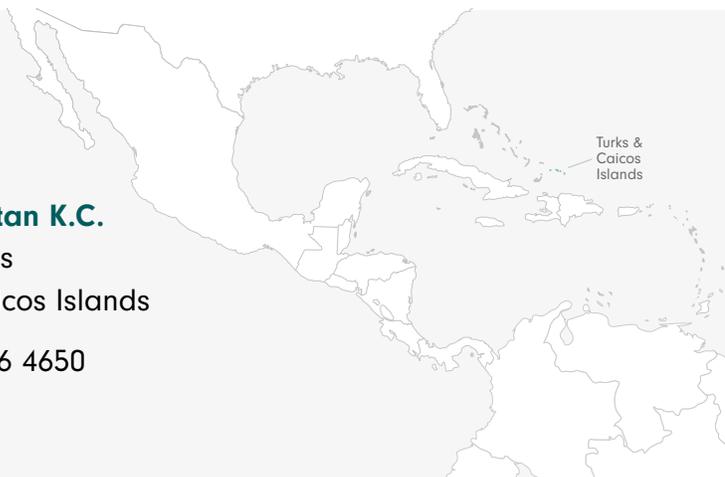
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Miller Simons O'Sullivan ("MSO") was established in 1981. We are one of the largest and longest established firms of attorneys in the Turks and Caicos Islands ("the TCI"). We are a full-service firm, advising both domestic and international clients, as well as working with leading international law firms on transnational matters.

In the Real Property and Tourism Development department, MSO represents several substantial property and hotel developers, as well as representing individual purchasers and sellers of high-value real estate.

The Commercial department deals with a wide range of commercial work, including advising utility companies and other regulated entities.

Through the Intellectual Property, MSO acts as the local agent for European and North American patent and trademark agents and assists with the registration of trademarks, as well as disputes relating to trademarks.

Our Dispute Resolution Department represents both individuals and companies, including insurance companies, in relation to Commercial Litigation at all levels including the Privy Council in London. We also have experience in alternative dispute resolution including mediation.

Our Private Client Department assists private individuals with the drafting of wills for assets held in this jurisdiction and, in conjunction with M&S Trust Company Limited, are able to advise in relation to the creation of TCI corporate and trust structures.

1. **What role does the government of the Turks and Caicos Islands play in approving and regulating foreign direct investment?**

- For the most part, the Government of the Turks and Caicos Islands (TCI), while generally promoting inward foreign direct investment to the TCI, does not have any direct involvement in approving or regulating foreign direct investment.
- There are exceptions to that general position, which will depend on the nature of the investment. Through the Government's statutory investment agency, Invest Turks and Caicos, it is possible to apply for import duty and other concessions relating to foreign direct investment in the TCI. Typically, these concessions are associated with substantial tourism-related developments, but concessions may be available with respect to investments in other areas. In the event a foreign investor wishes to benefit from Government concessions, then the TCI Government will require the development to be pre-approved and require the investor to enter into a formal development agreement with the TCI Government. That agreement will include some regulations with respect to the operation of the development.
- In the area of financial services, the Government's financial regulator, the Turks and Caicos Islands Financial Services Commission may require the approval and/or licensing of a foreign investor investing in a regulated financial services business. The regulation will apply to most financial businesses, but will certainly apply to any banking, insurance, or trust-related business.

2. **Can foreign investors conduct business in the Turks and Caicos Islands without a local partner? If so, how does the Turks and Caicos Islands government regulate commercial joint ventures between foreign investors and local firms (include information on common corporate structures)?**

- Generally speaking, in order for a person or corporation to conduct business in the TCI, a business license is required. There are a large number of business license categories covering most areas of business (excluding certain financial services-related businesses). Currently, business licenses are divided into three categories – reserved, restricted, and unrestricted licenses. Only if the category of business falls into an unrestricted category may a foreign investor conduct business in the TCI without a local partner.

- The Government regulates commercial joint ventures between foreign investors and local firms only to the extent that the ownership structure of the business must be disclosed to the Business Licensing Unit to ensure, where the business is in the reserved or restricted category, the local ownership is at least 51%.
- If the investment does not include ownership of a business, the TCI Government would not generally seek to regulate commercial joint ventures involving foreign investors.
- There are also some other exceptions to the general rule set out above, namely in relation to utility and telecom suppliers where particular statutory regimes will apply relating to the regulation of a joint venture involving foreign ownership.

3. What laws influence the relationship between local agents and distributors and foreign companies?

- There are no specific TCI statutes that govern the relationship between local agents and distributors and foreign companies.
- General principles of contract law will apply and the TCI follows English common law principles with respect to the formation and enforcement of contracts.
- Contracts between local agents and distributors and foreign companies may be governed either by TCI law or the law of the foreign company.

4. How does the Turks and Caicos Islands government regulate proposed merger and acquisition activities by foreign investors, and are there any areas of the economy where they are prohibited (e.g., natural resources, energy or telecommunications)?

- As stated above, the regulation of any proposed merger and/or acquisition will typically only be regulated with respect to local partner requirements for businesses falling into reserved or restricted business categories.
- In the areas of energy and telecommunications, each area is governed by its own specific local statute, and it will be the provisions of the relevant statute that apply in terms of acquisition or merger.

5. **How do labour statutes regulate the treatment of local employees and expatriate workers?**

- There are two primary relevant statutes that apply – the Immigration Ordinance and the Employment Ordinance.
- The Immigration Ordinance applies to expatriate workers which requires that all expatriate workers must obtain a work permit before they may lawfully work in the TCI.
- The Employment Ordinance regulates all aspects of employment in the TCI, both local and expatriate. It includes provisions dealing with the minimum periods of holiday, minimum wages payable, maximum hours of work, and other employee rights, including provisions relating to minimum periods of notice prior to dismissal and the right not to be dismissed “unfairly.”
- The TCI does not operate an “employment at will” system. In order to dismiss an employee lawfully, the employer must comply with the provisions of the Employment Ordinance.
- In the event that an employer does not comply with the provisions of the Employment Ordinance, an employee may seek compensation arising from their dismissal or other claims in relation to their employment. Those claims are heard by the Employment Tribunal, which is a stand-alone tribunal set up to deal only with employment-related issues.

6. **How do local banks and government regulators deal with the treatment and conversion of local currency, repatriation of funds overseas, letters of credit, and other basic financial transactions?**

- The official currency of the TCI is the United States Dollar. There are no restrictions on the receipt of or repatriation of funds overseas.
- Banks and other financial institutions are subject to strict anti-money laundering laws and may refuse to accept or repatriate funds if they consider that there is a risk of them being the proceeds of crime and/or related to the financing of terrorism.

7. What types of taxes, duties, and levies should a foreign investment in the Turks and Caicos Islands expect to encounter?

- There is no corporate, income, capital gains, inheritance, or value-added tax in the TCI.
- The taxes, duties, and levies that foreign investors are likely to encounter are primarily (i) stamp duty, (ii) share transfer duty when purchasing the shares of a company that directly or indirectly owns land in the TCI, (iii) import duty with respect to goods being brought into the TCI, and (iv) if an employer, national insurance and national health insurance programme payments.

8. How comprehensive are the intellectual property laws of the Turks and Caicos Islands, and do the local courts and tribunals enforce these laws regardless of the nationality of the parties?

- Trademarks may be registered in the TCI pursuant to the provisions of the Trademarks Ordinance.
- Patents may be registered in the TCI subject to registration in either the UK or the EU.
- The Supreme Court of the TCI will enforce intellectual property rights regardless of the nationality of the party seeking to protect their rights.

9. If a commercial dispute arises, will local courts or will international arbitration offer a more beneficial forum for dispute resolution to foreign inventors?

- The TCI Supreme Court which is essentially equivalent to the English High Court, has professional judges appointed by the Governor of the TCI on the recommendation of an independent judicial panel.
- The Supreme Court deals with substantial commercial transactions on a regular basis albeit, as with other jurisdictions in the region, the proceedings may take longer than those conducted via a private international arbitration.

- If a person is dissatisfied with a decision made by the Supreme Court, there is an appeal to the TCI Court of Appeal and then, subject to leave being obtained as required, a further appeal to the Judicial Committee of the Privy Council in London. Therefore, in terms of decision-making, a foreign investor can be satisfied that there is an effective and impartial judicial regime in the TCI.

10. **What advice can you provide for how best to negotiate or conduct business in Turks and Caicos Islands?**

- We would suggest that any foreign investor in any country who is considering undertaking any substantial investment or conducting business ought to obtain professional, legal, and, if necessary, other professional advice relating to their proposed investment.
- There are a number of experienced and well-regarded attorneys in the TCI, including some ranked in the various international directories.
- Attorneys in the TCI are well used to advising foreign investors and are able to give not only strict legal advice, but often practical advice as to how to conduct business in the Islands.

Trinidad

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Lex Caribbean was founded in 1997 and is a leading law firm practicing the laws of multiple jurisdictions in the Caribbean. We operate from three offices in Trinidad and Tobago and from single office locations in Barbados and Jamaica, advising on the laws of Barbados, Jamaica, St. Lucia and Trinidad and Tobago. We also coordinate legal advice from several other jurisdictions in the region, working closely with strategic partners that we know and trust. Our local cultural affinity and the seamlessness of our deployment across multiple Caribbean territories differentiate us from all other law firms in our markets.

Collectively, our lawyers combine diverse ethnicity and a shared Caribbean heritage with training and experience gained in several financial centres around the world. We cultivate productive relationships across all sectors with key agencies and stakeholders in our local environments and leverage a global network of professional firms to deliver quality, integrated cross-border legal solutions at competitive prices.

Lex Caribbean offers innovative, responsive & seamless legal services. Our local cultural affinity and the seamlessness of our deployment across multiple Caribbean territories differentiate us from all other law firms in our markets.

1. **What role does the government of Trinidad play in approving and regulating foreign direct investment?**

The government has a hands-on approach as it relates to foreign direct investment. Generally, foreign direct investment is governed by the Foreign Investment Act (hereinafter referred to as the “FIA”). Additionally, there is also the Trinidad and Tobago Free Zones Act which allows for private enterprises to acquire ‘free zone status’ subject to satisfying certain conditions. It should be noted that the government has also enacted the Special Economic Zones Act No. 1 of 2022 (hereinafter referred to as the “SEZ”), which establishes the framework surrounding the implementation of special economic zones. These special economic zones will provide incentives to foreign investors provided their area of business falls under the list of approved activities under the SEZ. The SEZ has not yet been proclaimed; however, it is expected to take effect before the end of 2024.

2. **Can foreign investors conduct business in Trinidad without a local partner? If so, how does the Trinidad government regulate commercial joint ventures between foreign investors and local firms (include information on common corporate structures)?**

Yes, foreign investors can conduct business without a local partner; however, they will be subject to the FIA. Any foreign investor who is desirous of incorporating or acquiring shares in a private company in the jurisdiction must supply the Minister of Finance with a notice in prescribed form prior to doing so. Additionally, any foreign investor seeking to acquire land in the jurisdiction for the purposes of trade or business cannot acquire more than five acres whether directly, indirectly, or cumulatively, without first obtaining a licence under the FIA. With respect to the acquisition of residential land, a foreign investor shall not acquire land exceeding one acre whether directly, indirectly, or cumulatively without first obtaining a licence under the FIA. Additionally, the FIA requires that the consideration for any of the activities contemplated above must be paid in a foreign currency to a local financial institution. It should be noted that the acquisition by any foreign investor of land in Tobago will require a licence.

Also, statutes, in the form of the Companies Act, and the common law in the field of contract law, regulate the relationship. The Companies Act provides that a foreign company, if doing business in Trinidad and Tobago, must register as, at least, an external company. Any contractual relationship between the agents/distributors and the foreign company is determined by the terms and conditions of the contractual arrangements made by them.

3. What laws influence the relationship between local agents and distributors and foreign companies?

Statutes, in the form of the Companies Act, and the common law in the field of contract law, regulate the relationship. The Companies Act provides that a foreign company, if doing business in Trinidad and Tobago, must register as, at least, an external company. Any contractual relationship between the agents/distributors and the foreign company is determined by the terms and conditions of the contractual arrangements made by them.

4. How does the Trinidad government regulate proposed activities by foreign investors and are there any areas of the economy where they are prohibited (e.g., natural resources, energy, telecommunications or real estate)?

Mergers and acquisitions are regulated by the Fair Trading Act (hereinafter referred to as the "FTA") and by extension, the Fair Trading Commission (hereinafter referred to as the "Commission"), a regulatory body established under Section 4 of the FTA. Section 14(1) of the FTA states that (a) all anti-competitive mergers are prohibited, and (b) enterprises shall not enter into a merger unless they obtain permission from the Commission where (i) their assets exceed 50 million dollars and (ii) at least one of the enterprises carries on or intends to carry on business in Trinidad and Tobago. It should be noted that notwithstanding the said Section 14(1), the Commission requires all mergers to be filed with the Commission for a formal ruling that such merger is not required to obtain permission from the Commission. It should be noted there are entities that do not fall under the purview of the Commission, some of which include banks, non-bank financial institutions, petrochemical companies, and companies that fall within the purview of the Telecommunications Act.

5. How do labour statutes regulate the treatment of local employees and expatriate workers?

There is no difference between the treatment of local employees and expatriate employees once the employees fall within the definition of "worker" as per the Industrial Relations Act. The definition of "worker" under the Act is quite wide but excluded from that definition are employees who manage a department in the organisation or who are responsible for or have an effective voice in the formulation of policy for the organisation.

6. How do local banks and government regulators deal with the treatment and conversion of local currency, repatriation of funds overseas, letters of credit, and other basic financial transactions?

We have a floating foreign exchange regime in the jurisdiction and transactions can be conducted in any currency. The conversion of local currency is governed by the Exchange Control Act (hereinafter referred to as the "ECA"). Section 6 of the ECA states that, except with the permission of the Central Bank of the Republic of Trinidad and Tobago, no person, other than an authorised dealer, shall buy or borrow any gold or foreign currency from, or sell or lend any gold or foreign currency to, any person other than an authorised dealer. Additionally, there is no requirement to keep the settlement of funds within the jurisdiction. It should be noted, however, that there is a shortage of foreign exchange locally which may affect the ability to transfer funds outside of the jurisdiction. Further, the Republic of Trinidad and Tobago is compliant with the Foreign Account Tax Compliance Act ("FATCA") by virtue of the Tax Information Exchange Agreements Act (United States of America) 2017. Consequently, foreign companies and their employees may have to disclose information surrounding bank accounts in the United States of America and money being transferred from this jurisdiction to U.S. accounts.

7. What types of taxes, duties, and levies should a foreign investment in Trinidad expect to encounter?

Foreign investors may expect to be subject to (i) corporation tax at a rate of 25% for the first TTD1 million of chargeable profit and 30% of chargeable profit in excess of TTD1 million for each year of income, (ii) business levy at a rate of 0.6% on quarterly gross sales where the business levy exceeds the corporation tax liability, (iii) green fund levy at a rate of 0.3% on the quarterly gross; (iv) withholding tax on any distribution made to any person not resident in the jurisdiction and to every non-resident company, and (v) value added tax at a rate of 12.5%. Additionally, foreign investors resident in jurisdictions that are party to double taxation treaties with the Republic of Trinidad and Tobago will also be subject to the terms of such treaties. It should be noted that the corporation tax rate mentioned above does not apply to banks and petrochemical companies. Such companies will be taxed at a higher rate.

8. **How comprehensive are the intellectual property laws of Trinidad, and do the local courts and tribunals enforce these laws regardless of the nationality of the parties?**

Intellectual property laws are comprehensive in that there is the Trade Marks Act, 2015, the Copyright Act, and the Patents Act. There are authorities in the local courts dealing mainly with the statutory rights of trade marks and copyright as well as the common law action of passing-off. Although there is legislation treating patents, there has been no litigation, as far as we are aware, involving the breach of any rights under that statute.

9. **If a commercial dispute arises, will local courts or will international arbitration offer a more beneficial forum for dispute resolution to foreign investors?**

Both local courts and international arbitration offer the same recourse to parties in that there is ultimately a resolution of disputes between them. Local courts are quite strong in commercial matters and there is no real benefit to proceeding to international arbitration unless that is the express wish of the parties.

10. **What advice can you provide for how best to negotiate or conduct business in Trinidad?**

It is advisable to retain competent legal counsel, accountants, and tax advisors, who will be able to provide a step-by-step guide to establishing a presence in the jurisdiction without contravening any of the existing laws and regulations.

Uruguay

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With more than 95 years of history, Posadas is one of the largest and most prestigious full-service firms in Uruguay. With offices in Montevideo, Punta del Este, and two free zones—Zonamerica and World Trade Center—the firm boasts a truly international perspective.

The firm's leading position is built on its ability to support clients in highly complex business transactions, advising multinational corporations, financial institutions, and local companies in a broad range of practice areas.

Posadas' professionals provide legal, accounting, notarial, and tax advice on complex business matters from a multidisciplinary perspective. This entails working as a team to provide the right solutions to the challenges posed by today's business world.

Main practice areas: Corporate/M&A, banking and finance, dispute resolution, tax and accounting, real estate and notarial services, energy and natural resources, labour and employment.

1. **What role does the government of the Uruguay play in approving and regulating foreign direct investment?**

Uruguay has historically been open to foreign investment in all sectors of its economy. Since 1998, through law 16.906, the promotion and protection of domestic and foreign investment is of national interest.

Foreign investment is growing under signs of protection of free market rules and different government incentives such as tax exemptions in certain critical areas (e.g., renewable energy, biotechnology and machinery, and agricultural equipment manufacturing). Economic growth has also attracted foreign companies to purchase existing players in sectors such as services, transportation, abattoirs, and the retail business. As a supplementary measure to improve investment conditions, our country has signed several agreements with different countries to avoid double taxation (CDI).

The Uruguayan legal system protects equality as a constitutional right and at a statutory level where no distinctions are made between nationals and foreigners. Also, foreign investment is generally admitted without specific authorization or filing requirements, and capital inflows and outflows are free. These rules apply, among others, to government contract bidding and to corporate rules on the purchase of companies. Furthermore, the judicial system provides efficient and adequate remedies in cases where a foreign bidder wants to contest the fairness of a bidding procedure.

2. **Can foreign investors conduct business in Uruguay without a local partner? If so, how does the Uruguayan government regulate commercial joint ventures between foreign investors and local firms (include information on common corporate structures)?**

Foreign investors can conduct business in Uruguay without the need for a local partner. The Uruguayan government does not regulate in a special manner commercial joint ventures between foreign investors and local firms as opposed to other joint ventures.

The basic law governing commercial companies in Uruguay is Law 16.060 ("Companies Act"), which contains most of the rules applicable to commercial entities. In accordance with its regulations, business can be carried out under different legal forms, amongst which Corporations Limited Liability Companies ("SRLs"), and Branches of Foreign Companies stand out as the most common.

Nevertheless, in 2019 a new legal form, known as Simplified Joint-Stock Companies (“SAS”) was created in Uruguay by Law N° 19.820. This new legal form constitutes in the present, another of the most common legal forms for commercial companies to carry out business in Uruguay.

CORPORATIONS

Corporations must be incorporated by at least two founders, but may then be owned by just one shareholder, and the main formalities for their incorporation are: (i) the approval of the bylaws by the Internal Audit Office (“AIN”); (ii) the registry of the bylaws before the Public Registry of Commerce (“RNC”); and (iii) the publication of the incorporation in the Official Gazette and another newspaper.

In Uruguay, there are no restrictions regarding the nationality or domicile of the Corporation’s founders, shareholders, or directors.

Regarding the share capital of a corporation, at least 25% of the committed capital must be paid up upon incorporation, but afterward, the shareholders could decide on the amount and conditions of payment, without them being bound by a minimum or maximum share capital. Corporation’s share capital is issued by shares, either in bearer or registered form.

In accordance with laws 18.930 and 19.484 and regulatory decrees, it is mandatory to identify the direct owners, the chain of shareholders, and the beneficial owners of the company before the Central Bank of Uruguay (CBU). It is worth mentioning that the information provided to the CBU is not available to the public for review.

SRLs

The incorporation of SRLs involves only the registration of the bylaws before the RNC and the publication of the incorporation in the Official Gazette and another newspaper (avoiding the AIN’s approval).

SRL’s must have at least two holders of capital interest (“quotas”) and no more than fifty throughout their existence.

Another relevant difference between SRLs and Corporations is that even though in both cases the shareholders/quota holders have no liability exposure—other than the committed capital contributions, in SRLs they may also be liable in case of IRAE (companies’ income tax) and salary debts.

Regarding the capital interest of an SRL, as opposed to Corporations, it is mandatorily issued as registered quotas that do not have documentary support (i.e., quotas are not negotiable instruments).

It is also mandatory for SRLs to identify their direct owners, the chain of shareholders, and beneficial owners before the CBU.

FOREIGN COMPANY BRANCHES

Branches of foreign companies may perform business in Uruguay and are subject to the bylaws of their head office.

They must be registered at the RNC, and their bylaws must be published in the Official Gazette and another newspaper.

Also, they must be registered before the local Tax Authority and identify their beneficial owners before the CBU.

SAS

SAS may be created by a sole founding member (as opposed to Corporations and SRLs, two founding members are not required), and as opposed to Corporations and SRLs, the incorporation process only requires the registration of the company at the RNC.

Its capital stock must be fully subscribed upon incorporation, and at least 10% must be paid in if the capital contribution is in cash, or 100% if the capital contribution is in kind.

SAS may be incorporated by one or more natural or legal persons, always provided such person is not a Corporation. Nevertheless, once the company has been incorporated, its shares may be transferred to a Corporation.

The capital of the SAS can be represented by endorsable or non-endorsable registered or book-entry shares, but not by bearer shares.

Finally, it is also mandatory for the SAS to identify the direct owners, the chain of shareholders, and the beneficial owners before the CBU.

3. What laws influence the relationship between local agents and distributors and foreign companies?

In Uruguay, there are no specific regulations regarding this issue.

4. **How does the Uruguayan government regulate proposed merger and acquisition activities by foreign investors, and are there any areas of the economy where they are prohibited (e.g., natural resources, energy or telecommunications)?**

Foreign investors are the main engine of M&A deals. In recent years, the major and most relevant M&A transactions in Uruguay were acquisitions of local companies by international investors. Uruguayan government makes no distinction between nationals and foreign investors, thus, there is no area within the Uruguayan economy where foreign investment is prohibited.

Generally, M&A transactions in Uruguay take place through a purchase of shares. The acquisition of the going-concern business or pure asset transactions are not normally used due to tax disadvantages and certain bureaucratic requirements imposed by law, and merger transactions are uncommon since they are subject to formal and time-consuming control by the AIN.

Uruguay has had a merger control regime since 2007, provided by Law No. 18,159 (the "Antitrust Act") as amended, and its regulatory decree 404/007. Antitrust Act provides that any act of economic concentration that cumulatively exceeds certain turnover thresholds and does not fall within certain legal exceptions shall be subject to prior review and authorization by the applicable enforcement agency (that in most cases is the Commission for the Promotion and Defense of Competition).

Currently, the Antitrust Act provides that a transaction shall require prior authorization when the following thresholds are exceeded cumulatively:

- (i) The annual net turnover within Uruguay of all the participants in the transaction must be equal to or exceed UI 500,000,000 (the "Joint Threshold"); and
- (ii) The annual net turnover within Uruguay of two or more participants in the transaction, each considered individually, must be equal to or greater than UI 30,000,000 (the "Individual Threshold").

Although the thresholds are cumulative, in all cases in which the Joint Threshold is exceeded, the parties must also inform the enforcement agency for it to determine whether the transaction will be subject to authorization or not.

The cases in which the Antitrust Act exempts the parties from the obligation to request authorization are:

- Acquisition of companies in which the buyer already has control (i.e., companies in which the buyer already has at least 50% of the shares).
- Acquisition of non-voting securities (including bonds, debentures, “obligaciones negociables,” any other debt security of the company, or shares without voting rights).
- “First landing”: Acquisition of a single business by a single foreign business that does not previously own assets or shares of other companies in Uruguay.
- Acquisition of companies in insolvency proceedings, provided that only one bidder has applied in the bidding process.

5. How do labour statutes regulate the treatment of local employees and expatriate workers?

Labor statutes regulations in Uruguay appear in dispersed provisions of different regulations (including International Conventions, Laws, Decrees, Collective Agreements between employers and employees, and Decisions of the Salary Councils).

In general, local and foreign workers have the same treatment under labor regulations. There are very few situations where law or collective agreements establish limitations related to foreign workers.

Main labor rights, benefits, and compensations are the following:

- Minimum wage:** There is a national minimum wage to be calculated per month of work (approximately USD 590). Also, a special minimum wage for each labor position or specific task may be stipulated in the Collective Agreements entered into between employers and employees' unions of a certain type of business activity (industrial, commercial, services).
- Mandatory Bonus (“Aguinaldo”):** Local law provides, as a general benefit to all employees, that the employers give them an annual bonus of 1/12 of all salary payments made to the employee during the calendar year. This bonus is split into two payments in June and December of each year.
- Paid Vacations:** For each year of work, an employee is given 20 days of paid vacation.

- d) **Vacation Salary:** In addition to the foregoing, the employee is also paid an additional amount equivalent to 100% of the net amount paid for paid vacations.
- e) **Paid holidays:** Payment is made for different leave benefits and holidays (January 1st, May 1st, July 18th, August 25th, and December 25th). In case the employee works on a holiday, payment shall have a surcharge of 100%.
- f) **Dismissal payment:** When there is no specific term for a labor contract, dismissal payment is granted to all employees when terminated by the employer's will. This indemnification is equivalent to one monthly salary (which must include the pro rata amount of the paid vacations, the vacation salary, and the mandatory bonus) for each year of work (or fraction) up to a maximum of six wages. This payment may be increased two to three times under certain special causes.

Hiring of foreign employees is allowed. Each worker or employer must request before Migration authorities either a temporary Identity Card or a Temporary or Permanent Residence in Uruguay in order to be legally allowed to work.

The Temporary Identity Card enables permanence and work in Uruguay for up to a maximum period of one hundred and eighty days per calendar year.

Obtaining the Residency permit, whether Temporary or Permanent, will allow the employee to work and obtain a Uruguayan identity card which will give him access to all Social Security benefits (health insurance, sickness, unemployment, etc.) apart from all labor rights and benefits that are always granted in equal conditions to a local worker.

6. How do local banks and government regulators deal with the treatment and conversion of local currency, repatriation of funds overseas, letters of credit, and other basic financial transactions?

The CBU is the authority in charge of the control of the Uruguayan monetary policy and the financial system of the country. The CBU was created by Uruguayan Constitution and regulated by law No. 16.696 ("Organic Charter of the Central Bank of Uruguay"). Through it, the CBU was organized as an autonomous commercial body, providing it with technical, administrative, and financial autonomy.

The unit of currency is the Uruguayan Peso; the U.S. dollar is also widely used within the territory. Uruguayan legislation allows the free repatriation of funds and other sums related to investments. Fund transfers can be made in any currency based on the free convertibility system in force.

The unit of currency is the Uruguayan Peso; the U.S. dollar is also widely used within the territory. Uruguayan government guarantees the free repatriation of funds and other sums related to investments. Fund transfers can be made in any currency based on the free convertibility system in force in Uruguay.

7. What types of taxes, duties, and levies should a foreign investment Uruguay expect to encounter?

Uruguayan government promotes investments and has specific policies towards the attraction of foreign investment. The general regime established by law 16,906 is open and, from a fiscal point of view, it does not discriminate between local or foreign investors. Foreign and local investors are entitled to the same incentive.

With respect to the taxation regime, in general, different taxes are applied only on the activities carried out within the country, the tenure of property located within the country, and the revenues generated by them.

- i. Corporate Income Tax (“IRAE”) levies Uruguayan net income of economic activities of any nature obtained by national companies and foreign legal persons with a permanent establishment in the country at an annual rate of 25% applicable to the difference between gross income and the expenses required to obtain it, which are duly documented.

Uruguayan-sourced income is defined as all income generated in activities carried out, goods located, or rights used economically in Uruguay, regardless of the nationality, domicile, or residence of those involved in the transactions and the place of celebration of the legal business.

Foreign-sourced passive income obtained by local entities which are part of a multinational group are taxed by IRAE if the local entities have no substance in Uruguay.

- ii. Income Tax on Non-Residents (“IRNR”) levies any kind of income from Uruguayan sources (as defined for IRAE) obtained by non-residents with no permanent establishment in Uruguay. The general rate amounts to 12%; however, there are the following exceptions: (i) different rates ranging from 0.5% to 12% for interests on deposits; interests on debt

titles issued by resident entities; and income from participation certificates issued by financial trusts through public offer and listed in Stock Market in national entities; (ii) 7% for dividends or profits paid by IRAE taxpayers to non-residents; and (iii) 25% for income obtained by entities that are residents, domiciled, incorporated, or located in low taxation jurisdictions, except for the dividends paid to IRAE taxpayers.

- iii. Net Worth Tax is an annual tax that levies the net worth of Uruguayan or foreign companies located in the country at the rate of 1.5%, adjusted according to tax regulations, on the closing date of the company's fiscal year. Assets abroad and some local assets such as government bonds, negotiable debt securities, and shares or capital of companies that are taxpayers of this tax are not included in the liquidation of this tax.
- iv. Value-Added Tax levies the domestic circulation of goods, the rendering of services within the national territory, the introduction of goods into the country, and the value added originating in the construction of buildings. Its basic rate is 22% and is applicable to most of the taxed goods and services in the national territory. There is also a minimum rate of 10% that is applied to some basic food, drugs, and some hotel services. Exports of goods are not levied by this tax. In relation to services, they are not levied by VAT only if they are qualified as an export of services strictly mentioned by the law. The concept of export of services includes, among others, services provided in customs areas and provisioning of ships, as well as services provided from Uruguay to companies or people domiciled abroad to be used exclusively abroad.

Finally, companies must make social security contributions on all types of salary paid to their employees located in Uruguay.

How comprehensive are the intellectual property laws of Uruguay, and do the local courts and tribunals enforce these laws regardless of the nationality of the parties?

Uruguayan legislation on intellectual property is very comprehensive and it is enforceable regardless of the nationality of the parties to each conflict. Apart from its internal regulation, Uruguay has ratified several Intellectual Property Rights treaties.

The protection regarding intellectual property in Uruguay is entrusted to the National Direction of Intellectual Property, which is committed to managing and protecting industrial property rights.

Uruguay's regulation on intellectual property comprises:

- a) Copyright. The legislation in force protects the moral right of the author of all literary, scientific, or artistic creations and acknowledges his/her ownership right to the products of his/her thought, science, or art, protecting the rights of artists, interpreters, and performers, phonogram producers, and radiobroadcast agencies.
- b) Industrial Property. The protection of industrial property comprises patents for inventions, utility models, and industrial design.
- c) Distinctive Signs. Uruguayan law also protects distinctive designs, including marks, trade names, and geographical indications. Regarding marks, its registration confers its holder the right to use it, while in the case of trade names that are not part of the mark and geographical indications, no registration is needed, although it is advisable.

9. **If a commercial dispute arises, will local courts or will international arbitration offer a more beneficial forum for dispute resolution to foreign inventors?**

Uruguayan state is divided into three powers/branches: Executive, Legislative, and Judiciary. The Judiciary is the organism in charge of conflict resolutions, and it has the competence to resolve conflicts between individuals and public organisms or between individuals, regardless of their nationality.

The courts in Uruguay are divided geographically by the amount of the claims and by subject (civil, criminal, organized crime, family, labor, customs, and bankruptcy). Despite the foregoing, Uruguayan courts do not specialize in commercial law, as arbitral tribunals tend to be.

In addition to the above, Uruguayan courts are well known for their independence from the other branches and their very low (or inexistent) corruption. They are characterized for their accessibility, impartiality, and transparency, being regarded as among the most reliable in Latin America.

Although in most cases it is indifferent whether arbitration or local courts are chosen for dispute resolution, there are some subjects that can be solved only by local courts (labor, crime, and family law conflicts). Additionally, it should be noted that the submission of a conflict before local courts allows appeal, which arbitration does not.

On the other hand, international arbitration is accepted by Uruguayan law, and it is also characterized by its confidentiality, celerity, flexibility, and knowledge of commercial law. International arbitration is commonly used in our country, and it is centralized on the Uruguayan Board of Trade.

It is also important to note that Uruguay has recently implemented a new legal regime for arbitration, aligned with current trends and coordinated with the international arbitration system, which presents significant advantages for the parties involved in commercial disputes.

Additionally, Uruguayan laws recognize the enforceability of foreign court judgments and arbitration rulings as a general principle. This recognition implies that, when enforcing such rulings, the competent court in Uruguay shall not analyze the merits of the case, nor their consistency with the court's/tribunal's decision, except for certain formal aspects.

10. **What advice can you provide for how best to negotiate or conduct business in the Uruguay?**

Uruguay is undoubtedly one of the most attractive Latin American countries to invest in. Its social and political stability, very low level of corruption, favorable and suitable legal framework, and excellent geographical location make it a great host country for foreign investment. Additionally, in the last years, deals have become more sophisticated with the progressive arrival of foreign investors. Transactional documents and due diligence processes have been standardized to meet the international practice requirements.

The most important advice we have for those planning to negotiate or conduct business in Uruguay are:

- a) A thorough tax analysis of the investment to identify the most suitable and tax-efficient purchase instrument and special purpose vehicle should be conducted.
- b) To particularly focus on labor law as it is a complex matter in Uruguay, thus requires a concise and deep understanding to plan an investment; and
- c) To carefully address the structure for the enforceability of post-closing claims, including an analysis of applicable law, competent venue, and security to be granted.



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