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IN LATIN AMERICA AND THE CARIBBEAN



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DOING BUSINESS IN LATIN AMERICA AND THE CARIBBEAN

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ARS	Argentinean Peso	DOP	Dominican Republic Peso
BSD	Bahamian Dollar	GTQ	Guatemalan Quetzal
BRR	Brazilian Cruzeiro Real	HNL	Honduran Lempira
KYD	Cayman Dollar	MXN	Mexican New Peso
COP	Colombian Peso	NIO	Nicaraguan Córdoba
CRC	Costa Rican Colón	PYG	Paraguayan Guarani
USD	United States Dollar	UYU	Uruguayan Peso

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With a territory of 21,000 square kilometers, El Salvador is the smallest country in Central America and the only one with no access to the Atlantic Coast. Its population reaches almost 7 million and the territory is politically divided into 14 departments.

The government is democratic and representative and the president of the republic is the chief of state. The legislative power is held by the Congress comprised of 84 congressmen. The judicial power is held by the courts. By constitutional provisions, the exercise of executive, legislative and judicial powers are carried independently by the corresponding authorities but they are bound to collaborate in order to achieve the best interests of the Republic.

Since 1 January 2001 the currency of El Salvador is the U.S. dollar.

FOREIGN INVESTMENT

Since the early 1990s, the Salvadoran government promotes and protects foreign investment through the gradual elimination of legal limitations and restrictions. Currently there is virtually no restriction or limitation for a foreign investor who can conduct business in El Salvador as a Salvadoran citizen. The only exceptions are constitutional provisions that reserve to Salvadoran nationals certain activities such as artisan fishing (small scale maritime fishing) and the ownership of rural property.

Except for these constitutional limitations, foreign investors have the same rights as local investors. There are no legal requirements or authorizations for foreign investments. Foreign investors are allowed without restriction in most economic activities as well as in 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.

According to the Promotion of Investments Law, a foreign investor may register his investment in the National Investment Office of the Ministry of Economics. But in the frame of the current legal structure of El Salvador, such registration does not confer any additional rights, privileges or special protection to the investments. On the other hand, the lack of this registration does not imply any disadvantage or limitation to the investment or the investor nor is it a requisite prior to development and conducting business in El Salvador.

In general, there are no restrictions or limitations for the acquisition of land by foreigners. The exception is rural land which may be acquired only if a

Salvadoran citizen is allowed to acquire land in the foreign investor's country of origin.

Salvadoran environmental law requires the authorization of commercial and industrial activities which are potentially harmful for the environment and for the import or export of dangerous substances or materials. These requirements are applicable to locals and foreigners alike. There are not different or special environmental regulations for foreign investments.

The only special investment areas are the Free Zones established in accordance with the Industrial Free Zones Law. These investments are rewarded with income tax and municipality tax exemption for a 10-year period and the VAT incurred in acquisitions of goods is subject to a 0% rate. There is also a custom duties exemption for the import of machinery and raw materials. Notwithstanding this current legal regime, the tendency of the Salvadoran economy seems to be toward the generation of an international services regime rather than an industrial free zone regime. In fact, the extinction of the current Industrial Free Zones Law is foreseeable.

The Competition Law entered into force late in 2005 so the development of this legal discipline is currently in its early stages. This law establishes prohibition to anti-competitive activities such as monopoly, and provides requirements for prior authorizations of mergers and acquisitions. The application of the law corresponds to the Superintendency of Competition which is an autonomous governmental authority.

BUSINESS ENTITIES

The Commercial Code of El Salvador provides basically two forms of commercial corporations:

- Partnerships, which are 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.
- Stock Companies, which are registered associations of two or more persons whose liabilities for acts of the company are limited to their investments and whose participation is represented by shares.

The stock company is by far the most common form of corporation because of the liability advantages it has over partnerships.

Minimum Capital Stock

For stock companies, a minimum capital stock is required (USD2,000). For stock companies that will develop banking, insurance or stock market business, other minimum capital stock requirements exist. The stock capital of the company can be fixed or variable.

Number of Shareholders

A stock company must be incorporated and maintain at least two shareholders, whether individuals or legal entities, foreigners or Salvadorans.

General Shareholders' Meeting

This is the company's governing body and is formed by the shareholders. The general shareholders' meetings are ordinary or extraordinary. The ordinary general shareholders' meeting must be held at least once a year and its basic objective is to approve the financial statement of the company and to appoint the board of directors when its term finishes. The extraordinary shareholders' meeting is only held when decisions regarding the legal structure or existence of the company shall be made, i.e., the transformation of the legal form of the company or the dissolution and liquidation. All shareholders are bound to comply with any resolution or decision legally made by the general shareholders' meeting, whether ordinary or extraordinary.

Board of Directors

The administration of the company can be entrusted by the general shareholders' meeting to a sole director or to a board of directors of at least three members. Its duties are to manage and conduct the company's business except for those duties legally attributed to the general shareholders' meeting. Members of the board of directors must be individuals and cannot delegate their office to third parties or carry the same by proxy.

Management

The board of directors may appoint one or more managers to conduct the business of the company. The board of directors is liable to the company and the shareholders for the acts of the managers.

Formal Requirements

A stock company is incorporated by means of a public deed containing the articles of incorporation and the bylaws. Said public deed must be recorded with the Registry of Commerce. Upon registration, the company's legal existence begins. Any amendment to the bylaws, including capital increases, shall be made in the form of a public deed and recorded with the Registry of Commerce. In the case of a company of variable stock amount there is no need for a public deed and registration except if the modification of the amount of stock involves the legal minimum of the company.

FOREIGN CORPORATION BRANCHES

A foreign company can conduct its business directly in El Salvador through a branch office or agency. Said branch office requires an authorization of the Registry of Commerce prior to beginning its activities. A minimum amount of assets will be established and the company must appoint a legal representative who is a permanent resident in El Salvador. 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.

TAXATION

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 has its own law, the general rules and legal provisions regarding taxation 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

Annual income is subject to taxation. The income tax for individual persons is established in a gradual fashion, depending on the amount of income, with a maximum rate of 30% of the net income. The income tax for companies has a unique rate of 30% of the net income. The dividends paid to the shareholders are subject to a withholding tax of 5%. If the shareholder is domiciled at a "tax paradise" the withholding tax is 20%. Every payment (other than dividends) made from a Salvadoran individual or corporation to a foreign individual or company is subject to a withholding tax of 20%.

The income tax must be declared and paid on annual basis but a system of advance payment is mandatory. Companies must make payments on a monthly basis in the amount of 1.75% calculated over the gross income of the same period.

VALUE ADDED TAX

The Value Added Tax (VAT) is a general tax which affects virtually every commercial activity involving transfer or sale of movable goods and 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. The rate of VAT is 13% calculated over the price of the sale or the rendering of service. For exports the rate is 0%. The tax should be declared and paid on a monthly basis and the law provides that the tax paid in a previous stage can be used as a tax credit.

REAL ESTATE TRANSFER TAX

Every real estate property right transfer over a minimum of USD28,572.42 is subject to a tax of 3% calculated over the market price of the transaction.

IMPORT DUTIES

The legal structure of custom 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.

INTELLECTUAL (INDUSTRIAL) PROPERTY

Industrial property is regulated through the Trademarks Law enacted in 2002, and the Intellectual Property Law enacted in 1993, which regulate all issues related to patents.

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 is able to initiate legal actions against infringements by third parties.

APPLICABLE REGULATIONS

The regulations for industrial property are based on two important laws: The Trademarks Law and the Intellectual Property Law. The Trademarks Law establishes the process to register trademarks, trade names and slogans; opposition proceedings, cancellation and nullity actions. The Intellectual Property Law regulates the protection of copyrights, industrial designs, utility models and patent registration.

APPLICATION REQUIREMENTS

To apply for a trademark or patent registration, it is necessary to have the full particulars of the applicant such as domicile, nationality and the necessary power of attorney. In the case of patents, it is mandatory to have an assignment document from the inventors if the application is filed in the name of a corporation.

TERMS OF EFFECTIVENESS

The protection of a trademark is granted for a 10-year period. A patent is registered for a 20-year period.

APPLICATION COST

The official fees for registering a mark are around USD100; other expenses will raise the cost to approximately USD500. The official cost for registering patents is around USD800 (including the examination step).

INDUSTRIAL PROPERTY OFFICE

The Industrial Property Office is divided into the Trademarks Office and the Patents Office (which includes design applications and utility models applications). Both depend on the Intellectual Property Registry.

PATENTS

The process for registering a patent application may take around one or two years, depending on the possible objections from the examination process.

LABOR LAW

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. Until very recently, the above-stated laws and constitutional provisions had remained virtually unchanged and without reforms for decades in El Salvador.

This situation has radically changed by the execution and ratification of very significant international treaties: The Central American and Dominican Republic Free Trade Agreement with the United States (DR-CAFTA) and, most recently, by the ratification of the Conventions numbers 87, 98, 135 and 151 of the International Labor Organization (ILO) Declaration on Fundamental Principles and Rights at Work.

The status of these legal instruments as International Treaties gives them a preferential applicability over the internal Salvadoran laws and regulations. In many aspects, their execution and ratification suppose a virtual reform of Salvadoran internal regulations.

HIRING OF EMPLOYEES; LABOR CONTRACTS

Salvadoran Labor Code requires a written Individual Labor Contract. If the employer fails to comply with this requirement, the contract will nevertheless be deemed existing and valid and the employer is subject to administrative fines. All individual labor contracts are subject to a 30-day trial period during which the employer can dismiss the employee without legally justified cause. Beyond this period, the contract is deemed as permanent and can only be terminated without responsibility for the employer with legally justified cause.

BENEFITS AND LABOR RIGHTS

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 equal to a monthly salary. 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 USD223 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 3.25% for the Private Pension System and of 3.5% for the Social Security Institute. Employers must pay, based on the worker's salary, 6.75% for the Private Pension System and 7.5% for the Social Security Institute.

TRADE

IMPORT RESTRICTIONS

In general terms, El Salvador has no restrictions to foreign trade. Nevertheless, the importation of certain products, such as food, medicines, chemical materials, explosive materials and such, needs authorization and registration for sanitary or security reasons. The rates of the custom duties vary according to the Central American Custom System but the many free trade agreements now in force in El Salvador reduce several import duties depending on the exporting country.

EXPORT RESTRICTIONS

There are no restrictions to exportations according to Salvadoran legal structure. The exportations are not subject to taxation with the exception of VAT but in any case the VAT rate for exports is 0%. According with the Ministry of Economy, the draw-back of 6% of the price of the export of several non-traditional products was eliminated at the end of 2010.

INTERNATIONAL FREE TRADE AGREEMENTS

El Salvador is signatory of the following international free trade agreements:

- DR-CAFTA (free trade agreement between Dominican Republic, Central America and the United States of America)
- Free Trade Agreement between Mexico and El Salvador, Guatemala and Honduras
- Free Trade Agreement between Dominican Republic and El Salvador
- Free Trade Agreement between Colombia, El Salvador, Guatemala and Honduras
- Free Trade Agreement between Central America and Panama
- Free Trade Agreement between Taiwan, El Salvador and Honduras
- Free Trade Agreement between Chile and El Salvador

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