



DOING BUSINESS IN LATIN AMERICA

By Globalaw Limited
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Dear Friends and Colleagues,

As the President of Globalaw Limited, a network of 110 (and growing) law firms serving key market jurisdictions around the world, it is my distinct pleasure to welcome you to the latest Doing Business Guide written and produced by member firms representing global regions which serves as an immediate resource to provide valuable and critical information about legal requirements to operate in their respective countries.

Thus far, Globalaw has produced Doing Business Guides in Asia Pacific and in Europe, with the latest versions being issued in 2013. We now offer the third edition focusing on Latin America which, like the first two editions, represents the individual and collaborative expertise of the law firms contributing to this publication, further demonstrating the regional strength of the attorneys who comprise the Globalaw network. In fact, the total population of the lawyers within Globalaw exceeds 4,500 practitioners who bring and offer a universe of practice areas to these key markets. The Guides serve not only to demonstrate this expertise but also to provide an immediate roadmap to learn more about doing business fundamentals in a concise, informative and "desktop" format for your ready reference.

In addition to the contributing firms. I would also like to acknowledge Amy Berlin Opsal of The Brand Hatchery in Dallas, Texas for her invaluable assistance in directing and managing the publication of this Guide. Thanks also to the folks at Congrex for their time and efforts to making this Guide a reality.

If you would like to learn more about the global resources of Globalaw, please visit our website at globalaw.net

Best regards,

Bill Taylor

A handwritten signature in blue ink that reads "William D. Taylor". The signature is fluid and cursive, with a long horizontal stroke at the end.

Globalaw President



ARGENTINA

- Argentina is located at the extreme southeast end of South America and is the eighth largest country in the world, covering 3.8 million km² (1.5 million square miles).
- Population: approximately 41 million, of which 90% is urban population.
- Organized as a federal republic with a democratic political system.
- Spanish is the official language, but English is widely written and spoken in urban areas and to conduct international business matters.
- Currency: Argentine peso.

BUSINESS PRESENCE

- Foreign companies may conduct business on a permanent basis. The main methods for doing so are: a) appointment of a local commercial representative, b) setting up of a branch, c) incorporation of a local corporate entity (subsidiary), d) acquisition of shares of an existing Argentine company.
- The main types of investment vehicles used by non-resident individuals and foreign companies are the corporation (*Sociedad Anónima - SA*) and the limited liability company (*Sociedad de Responsabilidad Limitada - SRL*). All vehicles are regulated by the Inspección General de Justicia (IGJ).
- Any company duly organized in accordance with the laws of its country of origin can set up a branch in Argentina. The branch must keep separate accounting records in Argentina and file annual financial statements with the IGJ.
- An SA requires at least two shareholders, which can be corporate entities or individuals, and a minimum capital of approximately US\$4,000. The capital is divided into shares, which must be registered. Transfer of shares is generally unrestricted unless otherwise provided for in the by-laws. The SA is managed by a board of directors elected at the shareholders meeting. The directors may be foreigners but the majority of the members of the board must be Argentine residents. Shareholders meetings must be held at least once a year to consider financial statements, allocation of profits, and the appointing of directors and members of the supervisory committee. Shareholders that have fully paid their subscribed shares are in general not liable for the company's obligations beyond their capital contribution. All directors and managers are subject to standard loyalty and diligence duties. Non-compliance with these standards results in unlimited and several liabilities damages.
- An SRL requires a minimum of two and a maximum of fifty partners, who may be individuals or corporate entities. In general, and with few exceptions, similar rules apply to SRLs and SAs.

FOREIGN INVESTMENT RESTRICTIONS AND CONDITIONS

- As a general principle, foreigners investing in Argentina enjoy the same status and have the same rights that the constitution awards to local investors. The main aspects of the existing legal framework in relation to foreign investors are the following: a) domestic treatment for foreign investors, b) lack of prior approval requirements or registration of investment, c) access to all sectors of the economy, d) access to domestic incentive schemes, and e) possibility of transferring profits and repatriating capital.
- Local legislation provides foreign investment with protection and an arbitration process for disputes between Argentina and countries that have signed Bilateral Investment Treaties and are members of the Multilateral Investment Guarantee Agency (MIGA), the Overseas Private Investment Corporation, and the International Center for the Settlement of Investment Disputes (ICSID).
- Barriers preventing access to foreign investors have been removed, attracting foreign investment projects in several sectors of the economy, such as: manufacturing industry, oil and gas, electricity, gas and water, banking, communications, and mining.
- Foreign investments in Argentina are regulated by a framework on international treaties and as a general rule do not require prior governmental approval.

CENTRAL BANK EXCHANGE CONTROL

- Argentine and non-Argentine residents can transfer, purchase, and sell foreign currency in the Foreign Exchange Market (FEM) only in transactions authorized by foreign exchange regulations.
- There are no restrictions on cross-border transfers for foreign direct investment repatriations and payment of dividends, provided certain requirements are met.
- Unless qualifying for an exemption, foreign financings are

subject to a 365-day mandatory deposit in US dollars with a local financial entity, equal to 30% of the financing proceeds sold in the FEM. Principal can only be repaid 365 days after the proceeds have been sold in the FEM.

- Subject to certain formal requirements, principal and interest payments of foreign financings can be paid without Central Bank approval.

TAXATION

- The tax rate applicable to the net income of corporate entities such as SAs or SRLs is 35%. The same rate is applicable to branches and other permanent establishments of foreign companies in Argentina. As a general rule the distribution of dividends and remittances of profits abroad by branches or establishments are in general not subject to taxation.
- Individuals are taxed on an increasing scale ranging from 9% to 35% of the profits.
- All transactions must be valued in Argentine currency so fluctuations in foreign exchange rates generates gains and losses.
- All incomes and gains from an Argentine source obtained by a non-resident individual or foreign entity without a permanent address in Argentina is subject to withholding tax. Argentina, along with a number of other countries, has signed tax treaties which impose caps on withholdings of certain taxable income, which may reduce the rates of the withholding tax.
- Value Added Tax (VAT) rate is 21% but sales and imports of capital goods have a 10.5% rate.
- There is a tax on sales and also a stamp tax on public and private documents. The rates depend on the province where activities are conducted.
- Personal assets tax for non-resident individuals has a 1.25% rate.
- A tax on credits and debits over bank accounts is applied at a 0.6% rate over each transaction.
- Argentina has treaties presently in force with many countries to avoid double taxation.

EMPLOYMENT LAW

- Salaries must be paid on a monthly, daily, or hourly basis and there is a mandatory minimum wage per month. A work day is a maximum of eight hours, and 48 hours per week. Employees receive an extra month's salary by law, paid in two installments (June/December). The minimum vacation period is 14 days per year and the maximum is 35 days.
- The health and pension fund system is financed from tax on the employees of about 17% of salaries, and tax on the employers of about 25% of salaries.
- In case of dismissal with no cause, severance pay is related to the amount of time the employee has worked for the employer.
- Trade unions negotiate wages and labor conditions in each

sector of the economy, receiving approximately 2% of salaries of represented employees.

DISPUTE RESOLUTION

- Choice of law is allowed as long as it does not contravene Argentine international public policy (*orden público*).
- Argentine courts have jurisdiction whenever a) the defendant is domiciled in Argentina, b) the performance of the obligations is located in Argentina, and c) Argentine courts have been chosen as the applicable forum.
- Argentine courts acknowledge that parties may choose a jurisdiction other than Argentina for settlement of any disputes arising under a contract, provided that there is a connection with such jurisdiction and the dispute relates to economic rights.
- The Argentine constitution guarantees non-Argentine citizens the same rights as Argentine citizens, including unlimited access to Argentine courts for the resolution of legal disputes, but non-residents will have to post a bond if required by the other party.
- If an international treaty for the enforcement of foreign judgments exists between a foreign country and Argentina, the rules of such treaty will prevail. In absence of treaty the national Code of Civil and Commercial Procedure (CPCC) will be applicable.
- Subject to certain requirements established by the CPCC, Argentine courts will enforce foreign judgments resolving disputes. A notarized copy of the decision must be filed with an Argentine court and the petitioner must evidence that each of the conditions required by law has been fulfilled.
- Foreign arbitral awards are recognized in Argentina but are subject to the same requirements applicable to foreign judgments.

IMMIGRATION PROCEDURES

- Citizens of most countries are not required to obtain a visa to enter the country for up to three months. Foreigners wishing to reside and work in Argentina must obtain a residence permit from the Argentine Immigration Board (AIB).
- There are two categories of residents: a) permanent and b) non-permanent. Permits to establish either type of residence are obtained by filing an application at the nearest Argentine consulate in the country of origin, but must be preceded by the issuance of an entry permit by the AIB directly to the foreigner or through a third party on his behalf.
- A permanent residency permit grants a foreigner the right to reside and work in Argentina indefinitely. A non-Argentine citizen may apply for a permanent residence if she/he is related to an Argentine citizen (wife or husband, son or daughter or parent). A non-Argentine citizen may also obtain permanent residency in the country after having extended the temporary residency for more than one year. Certain documentation such as a certificate that the applicant has no criminal record will be required.

- To apply for a temporary residence permit in order to work in the country the applicant and her/his family must provide certain personal data and documents. The company for which the applicant will work must provide additional corporate information and the applicant and the employer must enter into a labor contract. The authorization may be granted for a period of one year and may be renewed for an equal period.
- Citizens born in Brazil, Bolivia, Colombia, Chile, Ecuador, Paraguay, Uruguay, and Venezuela may apply for an initial two-year temporary residence.





BRAZIL

- Strategically located in South America sharing borders with ten countries: Argentina, Bolivia, Columbia, French Guiana, Guyana, Paraguay, Peru, Suriname, Uruguay, and Venezuela.
- Democracy with stable public institutions, such as the chamber of deputies, the federal senate, and the courts of law.
- Population: 201,032,714.
- Roman Catholicism is the predominant religion.
- Portuguese is the national language, and English is widely written and spoken especially in urban areas and for business.
- Currency: Real (R\$).
- Investment growth areas include infrastructure, energy, transportation, utilities, telecommunications, and tourism.

BUSINESS PRESENCE

- Main types of business models in Brazil: locally incorporated companies, mostly incorporated under the rules of “*sociedade limitada*” type, enforced by Brazilian civil code, as well as sole proprietorships, partnerships, and registered branches of foreign companies.
- Partnerships in Brazil are largely used by both Brazilian and foreign companies, involving governmental entities and private companies that may or may not have the participation of a foreign investor. The partnership is usually effectively made by the foreign investor becoming a quotaholder (in a limited liability company) or a shareholder (in a corporation) in the Brazilian company.
- Branches of foreign companies may be opened in Brazil without actually organizing a new company in the native territory. These require authorization by the country’s government before the federal revenue and the competent commercial register of each state prior to conducting any kind of business.

FOREIGN INVESTMENT RESTRICTIONS AND CONDITIONS

Restrictions in Equity Participation

- To foreign investors some economic activities such as public health, mail and telegraph, activities related to media, nuclear energy, airlines with domestic flight concessions, sanitation, and the aerospace industry continue to be restricted.
- Foreign investors can only hold a minority participation in media, financial institutions, and insurance companies, but may

acquire the control of a bank with prior authorization from the government.

- Additionally, there are restrictions on foreign participation in activities subject to national security concerns and on foreign ownership of rural areas and businesses in border zones.
- A potential investor should consult the government agencies that would most likely hold an interest in a proposed project.
- This process can sometimes yield significant benefits to the foreign investor, since the government generally prefers to grant incentives (tax and funding costs, for example), rather than restrictions, to encourage investors.

Restrictions in Real Property Acquisition

- Brazilian legislation does not apply any type of restriction on the foreign ownership of real property in urban areas, except for coastal land owned by the federal government. As a rule, the acquisition of real property in Brazil by foreigners is not permitted or has some restrictions in the following cases:
 - o Rural land: Foreign individuals living in the country and foreign corporations duly authorized to operate in Brazil may acquire rural land provided that they respect some limitations regarding the area, established by law. The acquisition of rural property by a foreign individual may not exceed 50 modules of operating undefined area, whether continuous or discontinuous. In case of properties with an area not exceeding three modules, the acquisition will be free of any kind of specific governmental permission, but still subject to the general requirements specified in law.
 - o The acquisition by foreigners of rural property located at the

International Border Area, is subject to the obtaining of a prior consent granted by the national defense council.

- o Foreign individuals living in the country and foreign corporations duly authorized to operate in Brazil may acquire rural land for the implementation of agricultural projects, livestock or industrial, linked to its articles objectives.
- o Foreign corporations and individuals are not allowed to acquire real estate owned by the federal government located in areas essential to national security without prior approval of the president.
- o Foreign companies that desire to own properties in Brazil must be enrolled with the Brazilian federal revenue.
- o For Brazilian legal entities whose majority capital is owned by foreigners, the only limitation is on acquisition of real properties comprised within the International Border Area.

Approvals and Licensing

- Appropriate approvals and licenses are required for the operation of any business activity. These may be obtained from the relevant ministry, government agencies, or local councils.
- Application process and prescribed fee vary depending on the application and geographical location where the activity is proposed.

EXCHANGE CONTROL

- Brazilian law confers on the central bank broad discretion to regulate the flow into and out of Brazil of domestic and foreign currency.
- There are two exchange markets in Brazil subject to central bank regulations, both of which operate at floating rates. They are the following:
 - o Commercial/financial free exchange rate market. This market is reserved basically for (i) trade-related transactions, such as import and export transactions; (ii) foreign currency investments in Brazil; (iii) foreign currency loans to residents in Brazil; and (iv) certain other transactions, involving remittances abroad, which are subject to prior approval by the Brazilian monetary authorities.
 - o Tourism floating exchange rate market. This market was developed initially for the tourism industry, and was later expanded to allow certain other transactions, such as the purchase abroad of software. The applicable regulations indicate the types of transactions whose payments in foreign currency, to and from Brazil, qualify for foreign exchange in this market.

INFRASTRUCTURE

- Companies may contract with federal, state, and municipal governments for the execution of public services through concession agreement, public-private partnership (PPP), or government contracts. Activities which are considered to be public services in Brazil include construction and operation of

roads, ports, airports, railways, urban mass transportation, and environmental services.

- The contracting of private companies by the federal, state, and municipal governments should be preceded by public bidding, in the form of competition, electronic bid, and auction, to evaluate the best proposals based on the following criteria: best price, best technique, or technique and price.
- Foreign companies interested in bidding and contracting with the government should be authorized by the federal government to establish activities in Brazil, or may bid in association with local companies as a consortium.
- The contracting of services and works for government interests may be carried out on the initiative of the public administration, or even by the private sector through the Procedure for Expressing Interest ("PMI"), for submission of projects, for bidding, and contracting for the execution of public work and services.
- Public-private partnerships contracts (PPP) must have as a minimum value the amount of R\$20,000,000 and its term between the minimum of five years and maximum of 35 years.
- The regulation and supervision of public services can be done centrally by the contracting institutions or can also be delegated to regulatory agencies, with the aim of professionalizing regulating services and preventing political interference in the management of contracts.
- Litigation involving public administration and private sector for the execution of administrative contracts can be resolved by the relevant judicial courts or through an arbitration procedure.

INTELLECTUAL PROPERTY

- Intellectual property protection in Brazil comprises patents, trademarks, industrial design, copyright, software, geographical indications, indication of origin, unfair competition, and layout designs of integrated circuits.
- Registered patents, trademarks, service marks, and industrial design enjoy monopoly rights/protection for specific periods of time.
- Unregistered trademarks are protected by the Brazilian courts as unfair competition.
- Copyright protection holds for literary, musical or artistic works, sound recordings, broadcasts, and films, regardless of registration.
- Brazil is a member of the World Intellectual Property Organization (WIPO) and a signatory to major treaties such as the Paris Convention, the Berne Convention, the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), the Patent Cooperation Treaty (PCT), and the Brussels Convention Relating to the Distribution of Program-Carrying Signals Transmitted by Satellite.
- Brazil's intellectual property laws conform to international standards and provide adequate protection to both local and foreign investors.

TAXATION

Corporate Tax

- **Income Tax (IR):** Income tax is due by corporations on their incomes. Corporations pay IR at a base rate of 15% under an actual profit regime, plus an additional 10% on all taxable income exceeding R\$20,000/month, R\$60,000/quarter, or R\$240,000/year. The income tax basis is consistent with all revenue, regardless of how it is earned.
- **Social Contribution on Profits (CSLL):** Profits earned by companies are taxed at 9%, with the same basis them Income Tax.
- **Contribution to Social Security Financing (COFINS):** Intended to finance social security, this contribution is levied monthly at a rate of 7.6% on total revenues obtained by a Brazilian company. This contribution is also due when services or products are imported.
- **Contribution to the Social Integration Program (PIS):** Similar in implementation and purpose to COFINS, and taxed at a rate of 1.65%.
- **Social Contribution to the National Social Security Institute (INSS):** In general, this contribution is paid by the employer at a rate of 20% on payroll.

Personal Income Tax

- **Income Tax (IR):** Individuals are taxed at a progressive rate based on their tax bracket, to a maximum of 27.5%.
- A person is considered a "resident" in Brazil if he or she stays in Brazil for at least 184 days in a calendar year.

Withholding Tax

- Generally, payments made to non-residents are subject to withholding income tax (IRRF) at the rate of 25%.
- Also, payments made to workers are subject to withholding income tax (IRRF) at the rate maximum of 27.5%.
- In this sense, companies are submitted to a withholding social contribution (INSS) of 11% on the salary contribution of the employee.

Other Taxes

- **Federal**
 - **Import Tax (II):** Foreign products entering Brazil are taxed by II and the payment is due the moment goods are declared. The tax is based on the custom value of the product and the rate varies by the nature of the product (goods considered essential are taxed at a reduced rate).
 - **Export Tax (IE):** This tax is related to products which will be exported, and payment is due the moment the goods are declared for export. To encourage the exportation of Brazilian

goods, IE covers only a select few products.

- **Excise Tax (IPI):** This is applicable to all imports and domestically manufactured goods sold within Brazil, with limited exceptions. The rate for the IPI is determined by the IPI table ("TIPI"), which takes into account the tax classification number of the relevant product. IPI is calculated on the aggregate value of the good. It is assessed on the import operation at the time of customs clearance and the manufacturer at the time of shipment of the completed good.
 - **Tax on Financial Transactions (IOF):** This tax has different rates according to the financial transactions in question—those relating to credit, currency exchange, or bonds and securities.
 - **Tax on Rural Property (ITR):** Charged to the owner of property in rural areas. The rates vary according to the location and use of the land.
 - **Tax on Large Fortunes (IGF):** The Brazilian Constitution provided this tax but, until now, there is no law that has imposed it.
 - **Merchant Marine Renewal Tax (AFRMM):** Calculated on goods imported to Brazil by sea, with varying rates (generally 25%).
 - **Economic Domain Intervention Contribution (CIDE):** This tax covers royalty payments on technology transfer agreements, trademark and patent licensing agreements, and supply of technical assistance.¹ The tax is paid on the monthly royalty payments of the party who imports or commercializes the item, at a rate of 10%.
- **State**
 - **Tax on transfers resulting from death or donation of any property or rights (ITCMD):** A tax levied on the sale of any property or property rights at a rate of 4%.
 - **State Value-Added Tax (ICMS):** This is levied on the circulation of goods, in the event of providing services of interstate and intermunicipal transport services, and communication services, including operations initiating abroad. The ICMS should be paid upon the importation of goods, at customs, even if the product is going to be used for personal consumption or as part of a fixed asset. The tax is based on the value affixed by the importation document in addition to the II, IPI, IOF, and other customary expenses. ICMS rates vary from state to state (from 7%–25%) and according to the type of product.
 - **Tax on automobile ownership (IPVA):** The rate may vary from state to state but, in general, is 4% on the value of the vehicle.
 - **Municipal**
 - **Tax on urban real property (IPTU):** This tax is on the

¹ Lei No. 10.168, Art. 2º, caput.

ownership of real property located within city limits, and may have progressive tax rates to ensure compliance with the social function of property.

- o **Property transfer tax (ITBI):** Due on all transfers of real property *inter vivos*, irrespective of the amount of consideration. The acquisition can be by natural or physical accession and the tax is on any *in rem* rights to real property, with the exception of collateral, and the assignment of rights to the property. Rates vary by municipality.
- o **Tax on services (ISS):** Tax on all services not covered by the ICMS. Rates are established by municipality and vary depending on the service provided with a maximum rate of 5%.

International Tax Treaties

- Brazil currently has 29 international treaties relating to income tax² and eight treaties regarding social security.³ Generally, the social security agreements anticipate the applicability of domestic legislation in regards to pension obligations, while the tax agreements (relating to income tax) override domestic law under the CTN.
- In order to stay consistent with the STF, the Brazilian Internal Revenue Service (“RFB”) has required the retention of income tax (“IRRF”) even on remittances to countries with which Brazil has an agreement to avoid double taxation.⁴
- The RFB might withhold income tax to use as a deductible in accord with the Principle of Reciprocity of Tax Treatment, which provides income tax credits for income earned abroad to ensure equal treatment Brazilian citizens and corporations living internationally.
- To obtain this benefit, one must produce a (i) certified copy (accompanied by an official translation) of the tax treaty or (ii) a statement made by Brazilian diplomatic representation located in the home of the expatriate, attesting tributary treatment. The RFB has already officially recognized the right of Brazilians living in the United States,⁵ United Kingdom,⁶ or Germany⁷ to receive reciprocal treatment.

Tax and Investment Incentives

• **General**

- o Various tax exemptions and investment incentives exist to stimulate investment in activities and products such as manufacturing, agriculture, tourism, environmental management, shipping transportation, information and communication technology, and multimedia activities.

- o Categories of investment incentives include industrial adjustment allowance, industrial building allowance, approved agricultural projects incentives, research and development incentives, inbound tour operators’ incentives, incentives for approved overseas investments, and incentives for overseas construction projects.

• **Manaus Free Trade Zone (“ZFM”)**

- o There is express dismissal of II and IPI over the goods acquired to local consumption or industrialization of any kind, with II being due (at a reduced rate) only if the foreign products stored at ZFM are commercialized at any other place in Brazil.
- o The IPI tax benefits are extendable to products imported under international agreement of tax exception, such as the one held among South American countries—Common Market of South (“Mercosul”). Also, there is legal discharge of IPI on goods manufactured at ZFM if the industry had its project approved by the Administrative Council of Supervision of ZFM (“SUFRAMA”).
- o There is exception of PIS and COFINS on the internal operation at ZFM and reduction of such contributions to other operations, once granted by SUFRAMA. Lastly, there is exception from AFRMM and IOF on the importation of goods, also requiring approval by SUFRAMA.
- o The state of Amazonas renders several ICMS tax benefits to projects considered priority for the region, including “credit-stimulate,” deferral, exemption, reduction of tax base, and presumed credit of ICMS, where the state assumes that a certain amount of the ICMS was already collected.

• **Other Free Trade Zones (“ALCs”)**

- o There are other free trade zones in Brazil, such as the Guajará-Mirim in the state of Rondônia; Tabatinga in Amazonas; Boa Vista and Bonfim in the state of Roraima; Brasília and Cruzeiro do Sul in the state of Acre; and, finally, Macapá and Santana in the state of Amapá.
- o Despite the variety of ALCs, all of them follow the same pattern of tax benefits, which expressly dismiss II and IPI over the final goods acquired for local consumption and improvements (not any kind of industrialization, as in ZFM), with II being due (at a reduced rate) only if the foreign products stored at ALCs are commercialized inside the ACLs or elsewhere in Brazil.

² South Africa, Argentina, Austria, Belgium, Canada, Chile, China, Korea, Denmark, Ecuador, Spain, Philippines, Finland, France, Hungary, India, Israel, Italy, Japan, Luxembourg, Mexico, Norway, Netherlands, Peru, Portugal, Slovak Republic, Czech Republic, Sweden, and Ukraine.

³ The Multilateral Agreement of Mercosur (Argentina, Paraguay, Uruguay), Cape Verde, Spain, Greece, Chile, Italy, Luxembourg, and Portugal.

⁴ By the tribulation of IRRF: Consultation Solution n° 554, de 16/11/2004, Disit 07 (RJ); Consultation Solution n° 262, de 24/09/2003, Disit 07 (RJ); Consultation Solution n° 12, de 14/04/2003, Disit 04 (AL, PB, PE and RN).

⁵ Declaratory Act SRF n° 28, of 26/04/2000.

⁶ Declaratory Act SRF n° 48, of 27/06/2000.

⁷ Interpretative Declaratory Act n° 16, of 22/12/2005.

EMPLOYMENT LAW

- For employees in general, maximum working hours are 44 hours a week or eight hours a day. This limit may be exceeded under certain specified circumstances. Minimum overtime allowance is equal to 50% over the amount of the regular hour.
- There is no rule regulating collective layoffs. The statutory severance rights payable to the former employees are the same irrespective of the number of employees that will have their employment terminated.
- Employees within the protection of the Consolidated Labor Law (CLT) are entitled to statutory benefits such as weekly paid rest (DSR), overtime allowance, night work allowance, health hazard allowance, risk premium, public holidays, 30-day vacation pay (plus the payment of a 1/3 vacation bonus), sick leave, annual 13th salary, maternity leave, and termination benefits, such as a 40% fine over the Unemployment Guarantee Fund (FGTS) deposits.
- Wages are determined through market forces, however there is a minimum wage requirement defined by federal law. Notwithstanding, collective bargaining agreements may define a higher minimum wage for a specific category of workers.
- Trade unions in Brazil are mainly regulated by the Brazilian Federal Constitution and by the CLT.
- Formation of employee unions is free provided that the new union meets the criteria set forth by the Brazilian constitution, the forbids that the same category of workers be represented by more than one union within the same city. Upon formation, the union will be entitled to a mandatory annual fee, to be deducted by the company from the employees wages during the month of March. The collective bargaining agreement, which can be for a maximum period of two years, is legally binding and enforceable if it has been upheld by Brazilian labor courts.
- The Brazilian constitution recognizes the right to strike for employees from the private sector in general. The right to strike is regulated by federal law, and breach of said law may subject the aggravating party to the consequences to be defined by Brazilian labor courts, which may include the payment of an indemnity and the termination of employment for cause.
- Employer must make a monthly and mandatory contribution to the FGTS equal to 8% of monthly wages. Upon termination of employment without cause by the employer, the employee is entitled to the release of said deposits, plus the payment of a 40% fine over said deposits.
- National Institute of Social Security (INSS) provides social security protection to employees who are Brazilians or permanent residents, and to their families. An employee contributes up to 11% of monthly wages, limited to a certain amount and according to a progressive rate. The employer, on the other hand, must make a contribution equal to at least 20% over the payroll. Additional social security contribution regarding occupational accident insurance and the "S System" may be due.

IMMIGRATION PROCEDURES

Passport and Visa Requirements

- All persons entering Brazil must possess valid national passports or other internationally recognized travel documents valid for travel to Brazil. These passports or travel documents must be valid for at least six months beyond the date of entry into Brazil.
- Applications for visas (when necessary) may be made at the nearest Brazilian consulate abroad. For countries with whom Brazil does not keep diplomatic relations, the nearest Brazilian consulate will issue a *laissez-faire* on behalf of the foreigner, valid for only one round trip to Brazil.

Business Passes and Work Permits

- Visit passes (business) may be issued to a foreigner entering Brazil for the purpose of looking at business opportunities, investment potential or introducing their goods that are to be manufactured in Brazil. This pass cannot be used for employment.
- Technical passes (for technicians only) may be issued to a foreigner who holds acceptable professional qualification or specialist skills entering Brazil under three different circumstances: emergency situation, or short-term or long-term, normal assignments in Brazil.
- The three kinds of passes are valid for i) up to one extendable year for normal technical passes; ii) up to 90 non-extendable days for express technical passes; or iii) up to 30 non-extendable days for emergency technical passes.
- For passes valid up to one year, it is the sole responsibility of a Brazilian legal entity to submit to the Brazilian Ministry of Labor an application for a technical pass. The foreigner may apply for an emergency technical pass directly at the nearest Brazilian consulate. For a pass valid for up to 90 days, it is the sole responsibility of a Brazilian legal entity to submit an application for a technical pass directly at the nearest Brazilian consulate.
- Employment passes are required for foreigners taking up employment agreements in Brazil being paid directly by a Brazilian legal entity. The wife and children of a foreigner who has been issued with an employment pass may be issued dependents passes. However, these dependents will legally work in Brazil if they receive an employment offer from Brazil and if they obtain a work permit of their own.
- It is the sole responsibility of a Brazilian legal entity to submit an application for a work permit. Work permits are generally valid for two years and after that term the foreigner can apply for a permanent visa. Notwithstanding, please note that during the first four years of his stay in Brazil the foreigner will still be linked to the Brazilian legal entity that applied for the work permit, and thus the foreigner cannot render services to any other Brazilian legal entity.
- Officer passes are required to foreign administrator, manager, director, or executive with the power to manage a civil or commercial association, group, or economic conglomerate. This permanent work permit must be applied by a Brazilian

legal entity, who must prove to have received a direct foreign investment equal to R\$600,000, or R\$150,000, plus the obligation to create ten new jobs within the next two years.

CIVIL LAW AND DISPUTE RESOLUTION

- The constitution of 1998 is the major law in Brazil.
- Historically, Brazil has used Napoleonic law. The principal source of Brazilian civil law is the civil code, which was reformed in 2002.
- Civil disputes at first instance may be heard at the local court, sessions court, or high court, depending on complexity and value. Cases may go on to the court of appeal and then to the superior justice court. When it involves constitutional law, cases may go appeal to Brazilian supreme court.
- The administration of justice is not so fast.
- Alternative dispute resolution (ADR) is available and includes mediation and arbitration.





CHILE

- Geographic location: South America, Chile borders the South Pacific Ocean to the west, Argentina and Bolivia to the east and Peru to the north.
- Political system: The country's official name is the Republic of Chile. Organized as a republic, its executive powers are vested in the President of the Republic, legislative authority in the National Congress (bicameral: Senate and House of Representatives), and judicial power in the courts of law.
- Language: Spanish.
- Currency: Chilean peso (CLP).
- Race/Religion: Multiethnic but mostly Roman Catholic (around 70%).
- Current business environment:
 - Chile is one of South America's most stable and prosperous nations, leading Latin American nations in human development, competitiveness, income per capita, globalization, economic freedom, and absence of corruption.
 - Chile is the first South American country to join the Organisation for Economic Co-operation and Development (OECD).
 - Chile is a safe and secure place to do business, with strong institutions and laws to protect local and foreign investors.
 - Successfully modernized economy, sound and stable regulations and a trustworthy judiciary system.
 - Chile's report card for financial security boasts all As: Standard & Poor's gave Chile an A+ credit rating; Moody's ranked economic stability an Aa3; and Fitch scored the country an A+, In February 2011, Fitch upgraded Chile's credit rating to A+ from A with stable outlook because features of Chilean economy "have allowed Chile to remain very resilient despite the two severe shocks emanating from the global credit crisis and the devastating earthquake of 2010."
 - Foreign investment is accordingly at record levels in Chile. Last year, investment increased 12.5% compared to 2010, reaching US\$17.299 million.
 - The Chilean Economic Development Agency, "Corfo," is a useful source of information and support for foreign investors.
- Investment Growth Areas: Mining, non-mineral exports such as forestry and wood products, fresh fruit and processed food, fishmeal and seafood, and wine.

BUSINESS ENTITIES

- Main types of for-profit business structures in Chile: corporations (*sociedad anónima*); limited liability companies (*sociedad de responsabilidad limitada*); stock corporations (*sociedad por acciones*); limited liability enterprises (*empresa individual de responsabilidad limitada*); general partnerships (*sociedad colectiva*); limited partnerships (*sociedad en comandita*), and silent partnerships (*asociación o cuentas en participación*).
- Other possible options for doing business in Chile: agency or branch of a foreign corporation.
- Quick and simple procedures for incorporating companies.

FOREIGN INVESTMENT

General Regulatory Framework Applicable to Foreign Investment

- Foreign investors typically register their investments in order to ensure the right to repatriate their capital and profits in foreign currencies abroad. In general, there are two ways in which a foreign investor may register his investment in Chile: under Decree Law N° 600 of 1974, the Foreign Investment Statute ("DL 600"), or under Chapter XIV of the Compendium of Foreign Exchange Regulations of the Central Bank of Chile ("Chapter XIV" and the "Central Bank", respectively).
- The main features of these alternative regimes are described in the chart on the right:

	DL 600	Chapter XIV
Administrative Proceedings	<p>Upon receiving approval from the Foreign Investment Committee (the "Committee"), the foreign investor enters into a foreign investment contract with the Chilean government which sets forth the respective rights and obligations of the parties. Between them, an income tax stability system for up to ten years with a rate of 42% that covers all income taxes that may be established.</p> <p>Normally, the investor must execute this contract within six months of the investment being approved.</p> <p>Documentation required: investor's by laws; power of attorney; certificate of good standing; and financial statements, all of them duly translated and legalized; and incorporated to the registry of a notary public.</p>	<p>An investment made through Chapter XIV only requires notice to the Central Bank. The procedure is simple and is managed by the Chilean commercial bank receiving the funds.</p> <p>The notice under Chapter XIV investment takes approximately one day.</p> <p>Documentation required: Power of attorney duly legalized.</p>
Movement of Funds into Chile	<p>Upon execution of the Foreign Investment Contract, unless the Committee has granted a special authorization after a formal review of the application. This authorization takes approximately ten days.</p>	<p>No restrictions other than setting up an account with a local commercial bank to process the transfer and notice to the central bank.</p>
Amount of the Investment	<p>Minimum US\$5,000,000.</p>	<p>Minimum US\$10,000.</p>
Period to Bring in the Investment	<p>This period of time is normally three years, and eight years for mining investments.</p>	<p>No term exists.</p>

Debt/Equity Ratio	Foreign Investment Committee has established a minimum of 75/25 ratio. Local financing is not restricted.	No restrictions.
Forms of Investment	The contribution may be in the form of: (i) freely convertible foreign exchange or national currency (the latter in cases of reinvestments of earnings which may legally be transferred abroad); (ii) new or used capital goods required to carry out the proposed activities; (iii) capitalization of foreign loans; and (iv) technology.	The contribution can be made in the form of foreign currency or through the transfer or contribution of shares or equity rights in companies organized outside of Chile.
Capital and Profit Remittances	DL 600 guarantees the foreign investor the right to remit equity capital overseas after a period of one year. No tax or other levy applies to such remittances up to the amount of the investment materialized. Profit distributions are not restricted.	No restrictions.

- o Any limitation or special requirements to the acquisition, use, enjoyment, and disposal of ownership must be established by a law approved by a minimum of 4/7 of the members of each chamber of the Chilean congress.
- o The legislator cannot establish arbitrary restrictions for the acquisition, use, enjoyment, or disposal of goods.
- o Expropriations can only be authorized by a special or general law, and only for reasons of public use or general national interest. The expropriated party can always oppose the legality of an expropriation by claiming illegality through an action filed with Chilean courts.
- o The expropriated party has the right to receive an indemnification for patrimonial damages which are a consequence of the expropriation. The damages have to be agreed on by the parties, or set by a court's judgment. Also, the indemnification has to be paid in cash at the moment of the expropriation, unless an agreement among the parties provides otherwise.

Real Estate—Restrictions for Bordering Zones (D.L. N° 1.939 art. 7, Law N° 19.256 and D.S. N° 232)

- Nationals from bordering countries are banned from acquiring the ownership and other real rights, the possession or tenure of real estate—of fiscal or private property—totally or partially located within bordering areas. This ban will apply to both individuals and legal entities from said countries with their headquarters in the bordering country, or whose capital is owned 40% or more by nationals of those countries whose administration and effective control is vested in nationals of those countries. This prohibition is also extended to state-owned land located five kilometers from the coast, unless a special authorization from the ministry of defense is granted if the acquirer is a non-citizen domiciled in Chile.
- The President of the Republic, by means of supreme decree (“Decreto Supremo” or “D.S.”) founded in reasons of national interest, may expressly exempt nationals of bordering countries from the aforementioned prohibition and authorize them to acquire or transfer the property or other real rights, or to exercise the possession or tenure of one or more real estate properties located in bordering areas.
- This exception procedure is described in D.S. N° 232 of 1994 of the Ministry of Foreign Affairs, modified by D.S. N° 1.583 of 1994 of the Ministry of Foreign Affairs, which may be summarized as follows:
 - o The applicant must request the corresponding authorization from the President by filing an application in the corresponding *Intendencia* or *Gobernación Provincial* where the property is located.
 - o Said application is then sent to the *Dirección de Fronteras y Límites* (DIFROL), which may request necessary documentation from the applicant and other public institutions.
 - o DIFROL will send the information to the Estado Mayor of National Defense for its evaluation and report. These reports

PROPERTY RIGHTS

General Rule

- Article 19 number 23 of the constitution establishes the basic principle on ownership of private property by stating that “the Constitution guarantees to all people (...) The liberty to acquire the property of all kind of assets, with the exception to those which nature has made common to all mankind or which must belong to the Nation and that are declared as such by law.”
- Additionally, article 19 number 24 of the Constitution guarantees “the right to property in its diverse forms over all kinds of corporeal or incorporeal assets.”
- Ownership rights, as well as all property rights, are well protected by the Chilean constitution. This protection is granted in the following terms:
 - o The freedom to acquire all types of goods, with the exception of those declared non-purchasable by law or which belong to the Nation.

will be delivered to the President, through the ministry of interior.

- o The authorization decree will be issued by the ministry of interior and also be subscribed by the Ministries of Defense and Foreign Affairs.

Indigenous Land Restrictions (Law N° 19.253)

- Land that is characterized as “indigenous” is protected and cannot be sold, levied, mortgaged, made subject to an easement, or acquired by a statute of limitations, unless between communities or indigenous persons of the same ethnic group. This limitation includes the lease, borrowing, use, usufruct or management of land owned by indigenous communities.
- The only transfer of land permitted by the law is an exchange (swap) of land. A governmental entity (the *Corporación Nacional de Desarrollo Indígena* or (CONADI) must grant a prior authorization for any exchange of indigenous land, and the exchanged realties must have a similar commercial value.
- Indigenous land owned by indigenous individuals may be leased, borrowed, used, subject to usufruct or managed by non-indigenous persons for a period not exceeding five years. With respect to mortgages and easements, the CONADI may approve a mortgage or easement prior to the corresponding agreement, but the mortgage or easement may not include the home of the indigenous family and the land that is necessary for its subsistence.
- Any act or agreement executed in violation of the rules described herein is void.

CENTRAL BANK EXCHANGE REGULATIONS

Central Bank Act

- Under the law governing the central bank (the “Central Bank Act”), any person may freely enter into foreign exchange transactions. Foreign exchange transactions are defined under the Central Bank Act as “any purchase and sale of foreign currency and, generally, any act or agreement which creates, amends or terminates an obligation payable in any foreign currency, regardless of whether there are any actual transfers or remittances from or to the country.”
- However, under the Central Bank Act (articles 40 and 42), the Central Bank is empowered to require that certain foreign exchange transactions be reported to it in writing or that they be effected in the “formal foreign exchange market.”
- The formal foreign exchange market is exclusively composed of banks established in Chile and exchange entities, stockbrokers, and broker-dealers authorized for these purposes by the central bank.
- The transactions which must be made in the formal foreign exchange market can be made with foreign currency acquired in such market or not.

- The Central Bank Act also empowers the central bank to restrict and impose certain conditions on foreign exchange transactions, such as the obligation to return and convert foreign currency, impose a mandatory deposit “*encaje*,” and others, for a period of time not to exceed one year, but which may be indefinitely renewed at the end of such period for equivalent one-year periods.

Compendium of Rules on Foreign Exchange

- Pursuant to the current rules imposed by the central bank under its Compendium of Rules on Foreign Exchange (the “Compendium”), there are no restrictions on foreign exchange transactions. However the central bank does require the reporting of certain foreign exchange transactions, and that certain foreign exchange transactions must be made exclusively in the formal foreign exchange market.
- Chapter XII of the Compendium governs the investments, deposits, and credits (each as defined therein) that Chilean resident individuals or legal entities—except for banks—may make or grant abroad. Pursuant to these rules, the investments, deposits, or credits made or granted abroad, as well as those transactions made in respect of funds invested, deposited, or credited must be reported to the central bank regardless of whether the funds related thereto are remitted to Chile. The remittance of funds from abroad, or payments made from Chile, whether investments, deposits, or credits, must be made through the formal foreign exchange market.
- Chapter XIV of the Compendium governs credits, investments, and capital contributions in excess of US\$10,000 that were originated abroad, except for those made by local banks. The transactions subject to these rules must be reported to the central bank and settled through the formal exchange market, unless the foreign currency is used directly abroad in which case only reporting is required.
- Both in the case of Chapters XII and XIV of the Compendium, transactions made prior to April 19, 2001, continue to be governed by the provisions then in force even if they change later.

TAXATION

General

- The institution in charge of the inspection and control of taxes in Chile is the Chilean Internal Revenue Service (*Servicio de Impuestos Internos* or SII). The SII is also in charge of issuing instructions, rulings, and interpretation to the tax laws.
- The statute of limitations is three years from the date in which the payment of the corresponding taxes should have been made. In special cases the term extends to six years.
- Law N° 20,322 published in the Official Gazette on January 27, 2009, established the tax and customs courts which will solve the controversies between taxpayers and the SII. These courts are already working in Santiago as of 2013.

Income Tax

- Income taxation in Chile is based on two factors: the taxpayer's place of residence and the source of the income. Any resident or person domiciled in Chile, whether individuals or corporations, will be taxed on their total income whether domestic or foreign. However, non-residents are only taxed on incomes generated in Chile.
- Any foreign person with domicile or residence in Chile will be taxed on Chilean income during their first three years in the country, though this time period can be extended.
- Chilean taxes are classified as follows:
- **Category Taxes:** are those which tax income from certain activities.
 - o **First Category Tax:** (usually known as Corporate Income Tax) Proportional rate applied on income from industry, commerce, mining, real estate, and other activities involving the use of capital. This tax is allowed as a credit against the global taxes due. *Tax rate: 20%, starting January 1, 2013.*
 - o **Special Mining Tax:** Applied on operational income of metal mining, depending on annual revenues. Tax rate: 0–5%.
 - o **Second Category Tax:** Progressive rate applied on income from personal services as an employee. Income of self-employed persons and professionals is classified as second category income but is not subject to second category tax (monthly paid by the employer). Tax rate: 0–40%.
- **Global Taxes:** are those which tax all income.
 - o **Complementary Tax:** Progressive tax on the total income from both categories of resident individuals. Tax rate: 0–40%.
 - o **Withholding Tax:** On the total income from both categories of non-resident individuals or non-resident legal entities when they are withdrawn, distributed as dividends, or remitted abroad. Tax rate: 35%.

Capital Gains

- The general rule is that capital gains realized by a non-resident are subject to the First Category Tax at a 20% tax rate and the Withholding Tax at a 15% tax rate. As mentioned above, the former can be credited against the latter. A capital gain is realized in Chile if the capital asset is located in Chile. The location of tangible assets is easily determined by its presence in the country. However, the location of intangible capital assets such as shares in a corporation or interests in partnerships may be harder to determine, considering special rules that extend the Chilean jurisdiction on capital gain. In these cases, the following rules apply:
 - o Shares in a corporation and interests in partnerships established under the laws of Chile are deemed to be located in Chile.
 - o Exceptionally, income obtained by a non-resident transferor not domiciled in Chile, arising from the sale of rights or securities representing equity of companies incorporated or residing abroad, will be subject to taxation in the cases specified in Article 10 of the income tax law, which refer to that at least 20% of the market value of the sold goods come from Chilean underlying assets
- o Income derived from American Depositary Receipts (ADRs) is not sourced in Chile if the certificates are issued by entities incorporated abroad or by international institutions.
- o Investments in Chilean funds established under law 18.815 (of private investment funds) are not sourced in Chile if they meet certain requirements.
- In addition to the aforementioned rules related to the source of capital gain, Chile's income tax law grants the following exemptions related to the sale of stocks and other capital assets:
 - o The first is related to capital gain realized on sales of stocks that are actively, publicly traded and other instruments representative of debts by a non-resident institutional investor such as mutual funds or pension funds. In order to access this benefit the non-resident institutional foreign investor must meet a series of requirements.
 - o The second benefit is granted to both residents and non-residents with respect to the gain on the sale of issued shares of publicly traded corporations that are actively traded and sold on the Chilean stock market. To apply this tax exemption, the following requirements must be met:
 - The sold shares must be shares of open corporations with a "stock exchange presence."
 - For this purpose, "stock exchange presence" refers to those shares which, on the date they were acquired, complied with all necessary conditions for being the object of investment by local mutual funds.
 - The sale must be made in a Chilean Stock Exchange approved by the *Superintendencia de Valores y Seguros* (SVS), or in a public offer to buy shares under the procedure regulated by securities law.
 - The shares must have been acquired in a stock exchange, or in an initial public offering upon the incorporation of a corporation or an increase in its capital, or in an exchange of convertible bonds or in a rescue of underlying assets of an exchange traded fund.
 - o The capital gain realized in the sale of shares of corporations if the seller has held the stocks for more than a year is subject to the First Category Tax as the sole tax. However, if the seller is engaged in selling shares on a customary basis, or if he sells the stocks to a related party, the Additional Tax is applied in addition to the First Category Tax.
- The capital gain realized in the sale of rights in a partnership is taxed under the general regime, hence subject to the First Category Tax with a 20% tax rate and the Withholding Tax with a 35% tax rate. In this case the First Category Tax is also creditable against the Additional Tax.
- Capital gains realized in certain debt instruments that are publicly traded, or central bank or treasury bonds included in article 104 are exempt of taxes if several requirements are met.

Value Added Tax

- A 19% Value Added Tax ("VAT" or "IVA") applies to sales and other transactions involving tangible personal property, payments for certain services, and certain real estate transactions.
- VAT applies to the sales of all movable physical assets sold by a person who is a customary seller, and to certain services rendered by business entities, as opposed to professionals.
- The tax basis for VAT purposes is the price of the goods or services, including monetary correction, interests, finance charges, and penalty interest.
- All individuals and entities that engage in activities related to goods or services subject to VAT must register with the tax authorities, and must issue stamped and registered receipts or invoices for every transaction.
- The VAT liability is determined on a monthly basis, and is calculated over the amount of VAT charged to the taxpayer on all sales made and services rendered (VAT debit), minus a credit for VAT paid by the taxpayer on acquisitions and services received during the same period (VAT credit).
- The VAT credit must be evidenced with the appropriate and duly stamped invoices issued by the suppliers of goods and services. If the credit during a given month is greater than the tax due, the difference can be carried forward and credited against future payments, after being adjusted according to Chilean inflation. Declaration and payment of VAT is made on a monthly basis with special forms provided by the treasury service.
- Exports are exempted from VAT. Furthermore, exporters may obtain a refund of the VAT charged to them in the acquisition of goods or services destined for the performance of their export activities. The same applies to VAT paid when importing goods for the same purpose.

Special Sales Taxes

- Special taxes are applied to sales and imports of certain goods. These taxes are charged in addition to VAT, using the same tax base.
 - Alcoholic beverages are subject to a surtax of 13–27% depending on alcohol content.
 - Non-alcoholic beverages are subject to a 13% surtax, but it is not levied on retail sales to customers.
 - Luxury goods are subject to a surtax of 15%.

Municipal License

- The Municipal Income Law establishes an annual municipal tax, denominated Municipal License (*Patente Municipal*), which must be paid to the municipality in which activities are undertaken by a taxpayer, including every municipality where branches exist once they have started to carry out activities.
- The base on which the Municipal License applies is the taxpayer's tax base equity ("*Capital Propio*") at a rate that goes from 0.25% up to 0.5%, with a minimum of 1 UTM and a

maximum of 8,000 UTM. This tax must be paid annually within July of every year based on the tax base equity determined by the preceding December 31. However, taxpayers are also allowed to pay it in two installments in July and January of each year. When branches exist, the tax base equity must be divided in proportion to the number of employees working in each branch in order to determine the amount paid to each municipality. If there are no employees currently working in a certain branch, no Municipal License is due therein.

- The Municipal Income Law provides for a deduction from the Municipal License base represented by the investments that a taxpayer may hold in lower tier entities, which are in turn subject to this tax. Hence, when a company has a participation in another company that is also subject to Municipal License, the former is able to deduct from its tax base equity the amount of such investment.

Double Taxation Treaties

- Chile has subscribed to several general and specific treaties to avoid double taxation. Regarding the elimination of double taxation, Chile applies in its domestic law and in its tax treaties an ordinary credit system.
- When no tax convention is applicable, Chile provides an ordinary credit of 30% for the foreign tax paid on dividends and remittance of profits or, when this is less, for the amount of tax paid abroad. This credit may be deducted from the First Category Tax. Any unrelieved credits may be applied against the Complementary Global Tax or the Withholding Tax. With respect to income from permanent establishments or agencies and income from the use of brands, patents, formulas, technical advisory and similar performances received by resident taxpayers from abroad, applies a credit equal to the rate of the First Category Tax (currently 20%) or, when this is less, for the amount of tax paid abroad. The credit for this income may only be applied against the First Category Tax.
- When a tax treaty is applicable, Chile also applies an ordinary credit system. This credit is more extensive than the credit applicable without a treaty, as it applies to all kind of income referred to in the treaty. The credit granted will be 30% or, when this is less, for the amount of tax paid abroad. The credit may be applied against the First or Second Category Tax, and any unrelieved credit may be applied against the Complementary Global Tax or Withholding Tax.
- Currently, double taxation treaties are in force with the following countries: Belgium, Brazil, Canada, Colombia, Korea, Croatia, Denmark, Ecuador, Spain, France, Ireland, Malaysia, Mexico, Norway, New Zealand, Paraguay, Peru, Poland, Portugal, Russia, United Kingdom, Thailand, Sweden and Switzerland. Additionally, Chile has signed double taxation treaties with the United States and Australia, which are not yet in force as they are subject to the approval of the Chilean Congress.
- Chile does not currently have a tax treaty with the United States.
- All the other treaties are based on the OECD model.
- There are several treaties with other countries to avoid double taxation on the transport of goods and people by sea or by air.

EMPLOYMENT LAW

General Legal Framework

- In general, the labor code rules individual employment agreements and legal benefits for employees, trade unions and collective bargaining agreements, as well as the special labor jurisdiction and legal procedure applicable to judicial actions.
- Additional legislation exists in connection with social security and health insurance, regulations for welfare, and the pension system.

The Employment Contract

- Any dependant employee must sign a work contract with their employer in which the terms of their employment must be recorded. Signed copies must be kept by both the employee and employer. The employer is required to keep the employee's documentation in the place or office in which the employee's services will be performed.
- In Chile, work contracts must be executed in writing and they must be signed within 15 days after work begins.
- Types of individual labor contract
 - Fixed Term Labor Contract: Cannot exceed one year, except for managers and professionals whose contracts cannot exceed two years.
 - Indefinite Labor Contract:
 - For employees who have rendered discontinued services under more than two fixed-term labor contracts within a 12-month period.
 - For employees who have rendered discontinued services under three or more fixed-term labor contracts within a 15-month period counted from the first engagement.
 - Contract for a specific task.
- Remember that a fixed-term contract is regarded as an indefinite contract after its second renewal. Furthermore, upon expiration of a fixed-term contract (cases of contracts with durations of under one year), should the employer fail to notify the employee about the arrival of the expiration date (and, consequently, of the employment termination), the contract becomes indefinite from the day immediately following its expiration.

Work Contract Contents

- The labor code requires that the following information be included in the work contract:
 - Complete identification of the parties (employer and employee), including name, address, profession, nationality and date of birth.
 - Description of employer's functions and place where they will be performed.
 - Amount of income, date, and manner in which it will be paid. Pursuant to the labor code, any period of payment beyond a monthly basis is strictly forbidden.

- Duration and distribution of work hours.
- Other agreements that parties may enter into, such as fringe benefits and others.
- Any amendment subsequent to the employment contract must be contained in an annex.

a) Wage

- Salary: Defined as cash payments made to an employee in return for his work. The term is extended to include "pay, wages, remuneration, or emoluments." In everyday usage, such terms are viewed as interchangeable.
- Wages: Monthly wages may not be lower than the minimum wage. The minimum wage is adjusted every year in the month of July. Currently, minimum wage is CLP\$210,000 per month, or approximately US\$420, for a full-time employee, and a proportional amount in the case of part-time work. Wages must be paid in local currency, except to foreign workers when there is an agreement with the employer, and are payable at least monthly, normally within five working days of the end of each month. However, advance payments can be agreed upon between the parties or through collective agreements. Gaps exceeding one month between successive payment dates are not permissible. Presently, the law does not provide for mandatory wage increases. Any adjustment must be the result of free negotiation between employees and employers individually or through a labor union.
- Profit Sharing (Bonus): In Chile, profit sharing is compulsory. However, the parties may agree on the terms of profit sharing in employment contracts. In the absence of such agreement, the law provides that companies must distribute 30% of profits, if any, to the workers. The basis used to determine the percentage is taxable income, less 10% of net worth calculated in accordance with tax regulations (art. 31 of income tax law). However, if the employer pays a bonus of 25% of the yearly income, up to a maximum of 4.75 monthly minimum wages (for August 2013, CLP \$997,500) the profit sharing obligation disappears. Profit sharing constitutes taxable income and is subject to social security contributions. The employer, each year no later than April, may decide which system to adopt.
- Incentives: Employers may, at their discretion, provide employees with incentives. Such incentives may adopt the form of transportation or lunch allowances. These amounts are not treated as taxable income for income tax or social security and health care contributions.

- Payroll Deductions: Employers are not allowed to make any deductions from employees' remuneration other than those resulting from payments in advance, individual agreement with the worker (with a cap of 15% of salary) legal and collective bargaining agreements, and withholding payroll income taxes and social security contributions.

b) Time and Attendance

- The normal working week is limited to 45 hours, which may be divided into six days (7.5-hour days from Monday through Saturday) or five days (nine-hour days from Monday through

Friday) with a maximum of ten hours per day. A minimum break of 30 minutes must be allowed in the middle of the day for lunch. Such a period is not considered as worked time, and therefore is not added to the working week.

- If working conditions require continuity of labor, a shift system may be established with the approval of the labor authorities. The normal working period may be extended by mutual written agreement to a maximum of two additional hours per day, provided such extension is not detrimental to the health of the worker.
- Overtime is paid for work exceeding 45 hours per week and must be paid at the hourly rate plus 50% and at the same time as regular remuneration. Overtime agreements must be written and may not last for a period of over three months, but they may be renewed.
- As a general rule, performance of work on Sundays and holidays is prohibited, with certain exceptions permitted by law.
- Working-hour limits do not apply to certain persons such as:
 - Workers who render services to different employers.
 - Personnel entrusted with certain supervisory, administrative, or confidential matters.
 - All such workers who are not subject to immediate superior control.
- Attendance Registration: The employer is obliged to keep an attendance book or a time clock, in order to record due compliance with the work hours by employees. Any system to control attendance other than those already mentioned must be previously authorized by the *Dirección del Trabajo* (the government agency in charge of labor compliance) before its implementation.
- Pension: Each employee must save 10% of his monthly remuneration, not exceeding 70.3 UF (US\$3.251 approximately), in an individual account administered by a pension fund to finance his retirement plan (men at the age of 65, women at 60). The employer must withhold the 10% from the employee's monthly remuneration and deposit it in the respective pension fund to be credited in his personal capitalization account. The employee may elect to make additional contributions to the fund up to an amount equal to 50 UF a month. In addition, employers can make voluntary tax-free contributions to their employees' accounts.
- Disability and survival insurance: Insurance to cover risk of disability or death. It corresponds to 1.26% of the gross income of the employee and as of July 2011 it must be fully paid by the employer.
- Health insurance contributions: The employer must also withhold 7% of the employee's monthly remuneration not exceeding 70.3 UF (US\$3.251 approximately) to finance a private or state health insurance plan. The employer must withhold the 7% from the employee's monthly remuneration and pay it to the respective health care provider.
- Unemployment insurance: As of October 1, 2002, a mandatory unemployment insurance has been established in favor of employees governed by the labor code. This insurance is financed with an obligatory contribution by the employee of 0.6% plus a mandatory contribution of the employer of 2.4%, both calculated on the employee's taxable income capped at 105.4 UF.
- Insurance against work accidents: The employer must pay a compulsory insurance against work accidents and occupational hazards. The premium equals 0.95% of the taxable remuneration of each employee and must be paid to the Labor Accident and Professional Illness Fund. This percentage is variable and can reach 3.45% depending on the risk of the corresponding activity. The fund pays workers who suffer injuries that are in any way related to their employment, including victims of any one of several work-related illnesses enumerated in social security regulations.

Sexual Harassment

- Since 2005, sexual harassment is a cause for termination of employment.
- Pursuant to the procedure for the investigation and sanction of sexual harassment, the affected employee can take a claim in writing to the management of the employer or to the *Inspección del Trabajo*. The law establishes a procedure depending on where the claim is filed, which includes an investigation by the employer of the facts founding the complaint, the adoption of protection measures, and the presentation of the conclusions or comments of the labor authority. The applicable sanctions that may be imposed include dismissal and fines.
- The employee who falsely invokes sexual harassment could be subject to civil liability and other general legal actions.

Social Security and Insurance

- Social security payments are charged to employees and consist of fixed contributions paid for retirement pension, disability insurance, and surviving dependent insurance. Also, the payment of health insurance contributions according to the health system the employee has chosen must be deducted from the remuneration to which the employee is entitled.

Union Matters

- Unions: The labor code and the rulings of the *Inspección del Trabajo* (the "union law") comprehensively govern and set forth the legal framework for the organization and operation of unions. It is not mandatory for any employee to join a union or remain a member. All Chilean companies are therefore effectively "open shops". Additionally, more than one union may protect employees of the same employer.
- Formation: In establishments with 50 employees or less, no less than eight employees may organize a union. In establishments with more than 50 employees, a union may be organized by no less than 25 employees, who together account for 10% or more of the establishment's work force. Finally, any 250 employees who work for the same employer may form a union, regardless of the fact that they work for different establishments and regardless of the percentage of the work force that they represent.

- **Union Governance and Management:** Unions are governed by union law and by their constituent documents. The affairs of a union are managed for a board of directors that will vary in size (from one to nine) depending on the size of the underlying membership. A company generally may not terminate or relocate a union director during his tenure or for a period of six months thereafter. Additionally, the company must allow a director or his delegate at least six hours per week of company time to attend to union matters. For unions with membership of more than 250 people, this figure is increased to eight hours per week. Moreover, the foregoing time does not include any time that the director is required to spend on union affairs at the behest of a public agency. All of the foregoing time that a director spends attending to union affairs is considered worked for all purposes, but the remuneration that the director receives therefore is at the expense of the union. Unions are supported by the contributions of their members. An employee contribution is usually a fixed percentage of the employee's gross salary. Employers must withhold union dues from members' paycheck and pay them over to the union if the union's board of directors so requests.
- **Unlawful Labor Practices:** Union law prohibits employer and employees from engaging in unfair practices with respect to unions. For example, an employer may not (i) block or prevent the formation of a union; (ii) offer benefits to an employee to dissuade him from joining a union; (iii) employ unfair tactics such as meddling in union affairs or influencing employees to join one union as opposed to another; or (iv) discriminate between union and non-union employees. Similarly, employees and unions are prohibited from engaging in unfair "pro-union" activities, such as petitioning the employer to dismiss an employee who has not joined the union or who has failed to pay his union dues. Any violation of the foregoing prohibitions may subject the liable party to significant fines, and, in certain cases, criminal sanctions.

Collective Bargaining Agreements

- Union law also governs collective bargaining agreements. Such agreements may be entered into on various levels (e.g., between a single employer and a single union, between a single employer and a group of non-union employees, between multiple employers and a single union, etc.). Collective bargaining agreements cover only the parties thereto and do not necessarily extend to all employees. Thus, if a union executes a collective bargaining agreement with an employer that guarantees a particular wage rate for union members, the employer will not be obligated to pay such wage to its non-union employees. However, if an employer decides to extend a benefit obtained by a union in a collective bargaining agreement to all employees, the employer must withhold 75% of the union's dues from the salaries of non-union employees and pay them to the union. This effectively prevents non-union employees from enjoying the benefits of the union's collective bargaining power without having to pay dues.

Collective Disputes

- Under union law, the parties to a collective bargaining agreement may voluntarily submit themselves to mediation or

arbitration. Only in limited circumstances (i.e., when a strike would impact public utilities or national health or security) arbitration is mandatory. We only refer to voluntary arbitration below.

- To initiate voluntary arbitration, the parties must first agree in writing that arbitration is necessary. This document must identify the labor arbitrator who is to decide the dispute or the procedure for designating the same (there is a roster of official labor arbitrators in Chile who are appointed by the President). The parties must submit a copy of this document to the *Inspección del Trabajo* within a term of five days of its execution.
- The parties are free to determine the procedure for the arbitration. In the absence of an agreement, the labor arbitrator will determine the procedure. Each party is responsible for bearing half of the costs of the arbitration. The labor arbitrator's decision is appealable to an arbitral court composed of three additional labor arbitrators chosen by draw. The decision of the arbitral court is final and the loser of the appeal is liable for the costs.

Employee Taxation

- Dependent employees are subject to the Second Category Tax or employment tax (Article 42 No. 1 of the Income Tax Law), which is a progressive tax with a top marginal rate of 40%.
- The tax applies on gross remuneration of employees including all compensation items, in cash or kind, less the mandatory social security contributions.
- Employment tax must be withheld and paid in on a monthly basis by the employer by the 12th of each month. In general, bonuses and additional remunerations are taxable when actually received by the employee and must be added up to the regular monthly remuneration of the employee for purposes of calculating the employment tax. If a dependent employee only receives income from dependent employment, the taxes withheld and paid in by the employer as final taxes, there is no obligation to file personal tax returns.

DISPUTE RESOLUTION

Judicial System

- Chile's judiciary system is independent and includes a court of appeal, a system of military courts, a constitutional tribunal, and the supreme court. In June 2005, Chile completed a nationwide overhaul of its criminal justice system. The reform has replaced inquisitorial proceedings with an adversarial and oral system. However, unlike the United States, court decisions are not binding for future cases
- The judicial branch is comprised of several courts. The main functions of the ordinary courts are to hear and rule on civil and criminal cases and ensure that decisions are applied. They also intervene in non-contentious actions as required by law. The judiciary system also includes the supreme court, courts of appeals, investigative courts (which guarantee the rights of the accused), and oral criminal trial courts.
- The highest authority of the judicial branch is the supreme

court, which elects one of its justices to the position of chief justice every two years by secret ballot.

- o **Supreme court:** The supreme court is the highest court in the judicial branch and oversees all other courts with the exception of the constitutional court and the electoral review board. Its responsibilities include the internal administration of the courts and the appropriate application of the law as expressed in sentences and rulings; the law therefore grants the supreme court the power to direct, correct and govern the economic aspects of the courts. There are currently 21 supreme court justices, including the chief justice. The court is composed of four chambers: civil, criminal, constitutional and labor.
- o **Courts of appeal:** The second level of the judicial branch is courts of appeals. The country has 17 such courts, which are located in Chile's main cities. Each court exercises jurisdiction over a district that includes a group of provinces and municipalities or, in some cases, an entire region.
- o **Courts:** Courts are unipersonal first-instance tribunals composed of a professional judge, a court clerk and a variable number of administrative and secretarial staff members. The respective court of appeal is responsible for supervising these courts. Courts generally have ordinary jurisdiction (and hear all types of matters) though there are also specialized courts in the criminal, civil, family, labor, tax and customs and environmental areas.
- o **Oral criminal trial courts:** Created through the Criminal Procedure Reform, these first instance district courts have one or more chambers, each with three judges. Thus, the number of judges in an oral criminal trial court varies from three to 27, as provided by law. The primary responsibilities of these courts are to hear and rule on cases that reach the oral trial stage, to order pre-trial detention for defendants appearing before them, where so warranted, to resolve all issues related to the oral trial stage, and to hear and resolve other matters as provided for by law.
- o **Investigative courts:** The Criminal Procedure Reform also led to the creation of investigative courts. Each district has one or more investigative courts in which judges act upon and resolve the matters submitted for their review. The main responsibilities of these courts are to ensure respect for the rights of the accused and other individuals involved in the criminal procedure, to direct all hearings, to pass sentence in abbreviated procedures, to hear and pass sentence in simplified procedures, to ensure that sentences and protective measures are enforced, and to resolve related requests and complaints.

Arbitration

- Arbitration proceedings are permitted, except in matters such as criminal or labor controversies, and the awards of arbitration tribunals may be enforced through ordinary courts. Forced arbitration is provided for certain matters, such as conflicts between partners or shareholders of a company.
- Chilean legislation contemplates three different legal character that the arbitrator may have: (i) "amicable compounder", which

will apply to the proceeding, the provisions agreed to by the parties and will grant an arbitral award according to equity and conscience; (ii) "mixed arbitration", which will apply regarding the proceeding, the provisions agreed by the parties and will make the final decision strictly according to Chilean law, and; (iii) "arbitrator bound by legal principles", which will apply in both the proceeding and substance, strictly the Chilean law.

- Advantages of selecting arbitration instead of submitting the dispute to ordinary courts:
 - o Speedy resolution. The arbitrator has to conclude the arbitration in the period set up by the parties, and if the parties do not stipulate a term, within a maximum of two years.
 - o The guaranteed existence of specialized arbitrators at the time the dispute arises.
 - o Advance knowledge of the cost and fees of the arbitration suit.
 - o Flexibility. Parties can choose the rules by which the arbitration proceedings will be regulated.
 - o Confidentiality.

International Commercial Arbitration

- Law N°. 19,971 on International Commercial Arbitration (hereinafter the "Arbitration Law" or simply the "Law") was drafted based on the Model Law of the United Nations Commission on International Trade Law (UNCITRAL) of 1985.
- The law will only apply to those international commercial arbitrations conducted in Chile, except for considerations relative to the "arbitration agreement" and to the recognition and enforcement of awards. This is another application of the "Principle of Territoriality" established in articles 14 and 16 of the Chilean civil code.
- Arbitration is considered to be international when:
 - o The parties to the arbitration have their headquarters in different states at the time they execute an arbitration agreement;
 - o When either the arbitration location, the place of performance of a substantial part of the obligations in the commercial relationship, or the place to which the purpose of the litigation is more closely related; are located outside the state in which the parties have their headquarters; and
 - o The parties have expressly agreed that the matter subject to the arbitration agreement is related to more than one state.
- There is no restriction in the law to submit civil or commercial agreements or relations to foreign laws or jurisdiction, or to arbitration proceedings outside Chile, provided there are some contacts with the jurisdictions whose laws are selected and provided, further, that Chilean law will apply on issues of public policy, for the validity and enforceability of such submission as well as the enforcement in Chile of foreign judgment.

Enforcement of Foreign Judgments and/or Arbitral Awards

- Chilean courts accept enforcing foreign judgments and/or

arbitral awards subject to the conditions contained in the Civil Procedure Code. To enforce a foreign judgment rendered by a foreign court, an exequatur procedure is required before the Chilean supreme court. The supreme court will not review the substance of the foreign decision, verifying instead the following conditions before allowing its enforcement:

- o If any treaties are in effect between Chile and the country where the judgment was rendered, the provisions of such treaty will apply;
- o In the absence of a treaty, the rules of reciprocity will apply in the sense that if the country where the judgment was rendered does not recognize the decisions of Chilean courts, such foreign judgment may not be recognized in Chile; and
- o If the previous rules cannot be applied, the decision of foreign courts will have in Chile the same effect as the judgments given by Chilean courts, provided that:
 - The foreign judgment does not contain anything contrary to the laws of Chile.
 - The foreign judgment does not oppose our national jurisdiction.
 - The party against whom the enforcement is sought has been given due notice of the proceedings.
 - The judgment is final according to the laws of the country where it was given.
- A foreign judgment meeting these requirements, duly legalized by the Chilean Consul in the jurisdiction in which such judgment was rendered and duly translated into the Spanish language, must be presented to the supreme court of Chile. If said court concludes that the aforesaid legal requirements have been complied with, it will order enforcement of the judgment in Chile.

IMMIGRATION PROCEDURES

Visas

- As a general norm, a valid passport is required to enter Chile. However, nationals of Argentina, Paraguay, Uruguay, Brazil, Ecuador, Colombia, Peru, and Bolivia only need to show their identity card.
- **Tourist visas:** Unlike many other countries, Chile does not have a system of business visas and potential foreign investors must, therefore, enter under a tourist visa. This does not generally have to be obtained prior to traveling and is issued on arrival by the immigration authorities. However, nationals of some countries must previously obtain a so-called Tourism Visa, which is available from Chile's consular offices abroad. Tourists are those foreigners entering Chile for the purposes of recreation, sports, health, studies, and business and for family, religious, and other similar reasons, without intending to migrate, take up residence, or undertake remunerated activities. Foreigners entering Chile as tourists may remain in the country for 90 days from their arrival. Immigration authorities can, however, restrict the length of the stay and, in this case, an extension must be requested in order to remain in the country for 90 days.
- Visitors wishing to stay for more than 90 days can apply for an extension with a cost of US\$100.
- **Temporary-resident visas:** Granted to foreigners with family links or business interests in Chile or to foreigners whose residency in Chile may qualify as useful or advantageous to the country (typically, businessmen coming into Chile for business purposes for a period longer than 90 days). Foreigners holding this type of visa may undertake all kinds of lawful activities within Chile. Temporary-resident visas are granted for a one-year period, renewable for another year. At the end of the second term, a permanent-residence visa shall be requested by the interested party in order to remain resident.
- **Working visas:** Only granted for a maximum two-year period, renewable for an equivalent two-year period. Nevertheless, at the end of the period a permanent-residence visa may be requested. The purpose of this type of visa is to enter into Chile to fulfill the stipulations of an employment agreement. In order to obtain a working visa, the following conditions must be considered:
 - o The institution, individual, or company acting as employer must have domicile in Chile.
 - o The foreign employee must enter into an employment agreement with the relevant institution, individual, or company. If executed in Chile, this employment agreement must be executed by the employer and the employee (or a lawful representative of the employer and the employee) before a notary public. But if this contract is executed abroad, it must be executed before the Chilean consul sitting in the city where the same is executed. Once executed, it must then be legalized with the ministry of foreign affairs in Santiago.
 - o In the case of technicians or other specialized professionals, their capacity must be evidenced with a true and accurate copy of their university titles, which must also be legalized with the Chilean consul and then with the ministry of foreign affairs in Santiago. Otherwise, evidence of their capacity must be submitted to the authorities by means of special working certificates or other supporting documentation;
 - o The employee's profession, activity, or services are indispensable or necessary for the development of Chile. Please note that for these purposes (even though unusual) a written report may be requested by the authorities from the relevant professional or technical local association or any other local authorities.
 - o The profession, activity or services that the foreign employee will perform in Chile are not dangerous or otherwise perilous for the national security.
 - o The employment agreement's terms and conditions regarding the services must be within standard labor and social security practices.
- With regard to the procedure, such may be carried out before the ministry of foreign affairs, if the foreigner is abroad, or before the ministry of interior, if the foreigner is in Chile. The former procedure is less time consuming.
- While the foreigner is abroad, the steps to obtain his

temporary-resident visa or working visa, as the case may be, can be carried forward in Chile, with the ministry of foreign affairs. Once approved by the ministry, a cable or other similar communication is immediately sent to the relevant Chilean consul. The visa thus obtained gives the foreigner a 90-day term to enter the country, to start only upon actual entrance into Chile.

- On the other hand, if the foreigner is in Chile, (i.e. with a tourist visa) the procedure will be carried forward with the immigration department of the ministry of interior. Despite its delay, this procedure requires the actual presence of the foreigner.
- Finally, it is important to underline that family members of the foreign business person will be granted the same visa, although it will not allow remunerated activities.





COLOMBIA

- Colombia is located in the northwestern part of South America, bordered to the northwest by Panama; to the north by the Caribbean Sea; to the east by Venezuela and Brazil; to the south by Ecuador and Peru; and to the west by the Pacific Ocean.
- Colombia has a total area of 2,070,408 km², spread over a continental area of 1,141,748 km² and a sea area of 928,660 km².
- The official language of Colombia is Spanish, even though there are more than eight ethnic languages around the country.
- Colombia's government is presidential and representative. It is a democratic republic according to what has been established in the Constitution of 1991.
- Currency: Colombian peso, with free-floating exchange rate, which has been established by the Central Bank.
- Colombia's GDP for the past six years was recorded as follows, 2007: 10.96%, 2008: 10.06%, 2009: 3.88%, 2010: 6.72% , 2011: 12.75% and 2012: 5.66% .
- Colombia has many advantages for investment in several areas. Its geographical location allows fields like agriculture, mining, textile, oil, livestock and fishing among others to easily develop. Coffee (as the main product), gold, oil and its derivatives, emeralds and flowers, are among the major export products.
- Colombia has a modern airport and road infrastructure. Also, its sea and river ports, bordered by two oceans, make imports and exports much easier.

BUSINESS PRESENCE

- Foreign investment is understood as all the investments made with foreign capital as part of a portfolio held in Colombian territory, including Colombian free trade zones, by people who do not reside in Colombia.

Corporation Forms

- The corporation is a legal entity separated and different from the legal entities of those who own interest in the corporation and manage it.
- In Colombia there are different ways to invest with several business models. Currently, the most used type of corporation is the Simplified Stock Company (SAS). This kind of company is known for its flexible procedures and characteristics regarding the company's creation, amendments and other corporate acts.
 - **Simplified Stock Company:** This company can be created with one or more natural or legal persons. The shareholders are liable only for their contributions.
- Other common types of companies that allow foreign

investments are the Limited Liability Company (Ltda), Stock Corporation (S.A.) and Foreign Company Branch.

- **Limited Liability Company:** The associates are liable only for their contributions which are divided in equal quotas that are not represented in negotiable certificates. The corporate structure is between two to five partners.
- **Stock Corporation:** Equity stock is divided in shares represented in negotiable instruments. A minimum of five shareholders are required to create this kind of corporation.
- **Foreign Company Branch:** Business establishment opened by a company within or outside the corporate address, to develop corporate business or part of them, managed by agents with authority to represent the company. The foreign company branch is recommended for mining and hydrocarbon sectors.
- There are other corporate types with specific characteristics which are not commonly used by foreign investors:
 - **General Partnership:** All the associates are liable in an

unlimited, joint and several manners.

- o **Mixed Liability Company:** Generally used for family businesses. There can be two types of companies: Simple Mixed Liability Company, and Stock Mixed Liability Corporation.
- **Creation.** The business companies are created by a corporate agreement that contains basic aspects such as company name, place of business and purpose, meetings of corporate bodies and the scope and limitations of powers.
- **Inspection, oversight and control.** All companies in Colombia are subject to inspection, and eventually to the supervision and control of the Superintendent of Companies; exceptionally and according to his purpose, some companies may be subject to the control of other superintendents.

RESTRICTIONS AND CONDITIONS OF FOREIGN INVESTMENT

- Foreign investment in Colombia is defined as all the external investment capital by non-residents of the country, which includes Colombian free-trade zones.
- The principles are the equality of treatment with the local investment; the universality for any sector of the economy; no authorization except under special regimes e.g., mining, oil and gas, television, which requires prior acknowledgment by authorities, and; stability for the reimbursement of the investment and the transfer of profits for the investor.

Types of Foreign Investment in Colombia

- **Direct foreign investment:** Acquisition of equity participations, shares, corporate interests, or any representative interest in a company's capital; acquisition of real property or investments through real estate funds; taking part in activities or contracts as the case of technology transfer, cooperation, concession, service administration, and licensing contracts; and investments in assigned capital in branches established in Colombia by foreign legal persons.
- **Portfolio investment:** This type of investment is made through foreign capital investment fund shares, bonds, and other securities registered with the National Registry of Securities and Issuers (RNVE) in the public stock market.

Approvals and Authorities

- Foreign investments must be registered with the Colombian Central Bank (Banco de la Republica) as a requirement for the foreign investor to be able to reach foreign exchange rights.
- The Superintendent of Companies has authority to control and sanction operations related to foreign investment that are conducted by companies in general. And also the tax authority (DIAN) is authorized to control and sanction foreign exchange infractions related to foreign trade operations and foreign indebtedness derived therefrom.

Foreign Exchange Rights

- To remit profits generated periodically for the investments.
- To reinvest the profits or retain them in the surplus of

undistributed profits with right of transfer.

- To capitalize sums with right of transfer.
- To remit abroad, in freely convertible currency, sums received either from the transfer of the investment inside the country, from the liquidation of the company or the portfolio, or from a decrease in the capital of the company or the portfolio.

Exchange Control

- Governed by the Exchange Control Department of the Colombian Central Bank (Banco de la Republica).
- The following operations need to be channeled through the foreign exchange market and exchange market intermediaries: importation and exportation of goods; foreign debt operations; foreign capital investments; guarantees and surety agreements in foreign currencies; and derivative operations.

Free Trade Markets and Treaties

- Colombia participates in the negotiation and signing of Bilateral Investment Treaties (BIT) and Free Trade Agreements (FTA) regarding foreign investments clear rules which include international arbitration.
- FTA examples with foreign investment provisions in force with Mexico, Chile, Guatemala, Honduras, El Salvador and BIT with Peru, Spain and Switzerland.
- FTA which includes investment chapters have been signed with the United States, Canada, Iceland, Liechtenstein, Norway, and Switzerland and BIT with Peru (a deeper agreement that the one in force), with India, China, and the UK.
- Colombia is member of the Andean Community of Nations – CAN with Peru, Ecuador and Bolivia.

TAXATION

- The Colombian tax system has different levels depending on the political map division: national taxes (departmental) and sub-national taxes (municipal).

National taxes:

- **Income Tax**
 - o Companies, branches and other bodies established in the country have an income tax rate of 25% for the annual period.
 - o For companies, there is also an income tax for equity (CREE) with a 9% rate for the years 2013, 2014, 2015. It will be reduced to an 8% rate for the following years.
- **Fortuitous Profit Tax**
 - o It is a tax which is supplementary to the income obtained from the disposal of fixed assets owned by the taxpayer for a period equal to or higher than two (2) years. The rate is 10%.
- **Value Added Tax (VAT)**
 - o It taxes the sales of movable property that are not fixed assets, the delivery of services within the national territory and the import of movable property. The general rate is 16%.

- National Consumption Tax
 - o It taxes the sales of food prepared in restaurants, bars or nightclubs at an 8% rate.

Municipal Taxes:

- Industry and Commerce Tax
 - o It is a local tax imposed on revenue generated from industrial, commercial or service activities carried out in the corresponding municipality with a rate ranging between 0.2% and 1%.
- Unified Property Tax
 - o It taxes the ownership of real state property located in urban areas, with a rate ranging between 0.4% and 1.2% of the good's value.
- Agreements for avoiding double taxation
 - o To avoid double taxation and prevent tax evasion, Colombia has signed the Andean Agreement (Perú, Ecuador and Bolivia).
 - o There are treaties signed with Chile, Canada, Mexico, Spain and Switzerland.
 - o Other treaties are also being negotiated with Germany, United States, Netherlands, India, Belgium, Czech Republic, Korea, Japan, France, Israel and the United Arab Emirates.

LABOR REGIME

- The ordinary workday covers a maximum of eight (8) hours per day and forty-eight (48) hours per week, which can be distributed from Monday to Friday or Monday to Saturday. The law also allows reaching agreements with workers on flexible working hours.
- Employment contracts can be classified in different ways. Depending on their duration, they can be classified as follows:
 - o **Fixed-term contract:** Its duration may not exceed three (3) years. However, the parties may extend it indefinitely.
 - o **For the duration of a work or a contracted job:** Its duration is equal to the duration of the assigned task.
 - o **Occasional or Temporary Contract:** Its length is not greater than one (1) month and it refers to tasks that are different from the normal activities of the employer.
 - o **Indefinite Term Contract:** A term is not stipulated and its length is not determined by the work or nature of the contracted job. It does not refer to an occasional or temporary job either.
- Contracts can also be classified in written or oral exams. The following types of contract must always be written:
 - o Fixed term contracts, their extensions and the advanced termination notice.
 - o The contracts signed with foreigners that are non-resident in the country.
 - o Contracts through which ten (10) or more workers are moved

to provide their services out of the country (collective hiring).

- Trial Period is the term corresponding to the initial phase of the employment contract which aims to allow the employer to evaluate the worker skills. It also allows the employee to evaluate the convenience of work conditions. This period may not exceed two (2) months for most of the contracts. In particular, fixed-term contracts with a less than one (1) year length, cannot have a trial period longer that 1/5 of the initial term agreed in the contract.

OBLIGATIONS RELATED TO WAGES AND BENEFITS

Every employer in Colombia, under any type of contract, has the obligation to pay a salary for rendered services as well as the social benefits generated during the validity of the labor relationship, as follows:

Wages

- Every employer must pay its workers the monthly wages agreed in the employment contract. There are several modalities of salary in Colombia, including ordinary wages, which cannot be less than the minimum legal monthly wage in force (for year 2013 it is the sum of COP \$589.500). In addition, another modality is the "Integral Salary", whereby an employee is paid more than ten (10) minimum legal monthly wages (in addition to severance payments, interest on severance, and the legal service bonus). Further to this modality it is agreed in writing that the integral salary includes wage and social benefits in advance, as well as any surcharge for overtime, Sundays or night shifts. The minimum value for the integral salary set by the National Government for 2013 is the amount of COP \$7.663.500. Any sum above this amount can be agreed as an integral salary and the employer shall only be liable for paying vacations.

Social Benefits

- Every worker earning an ordinary salary is entitled to the periodic recognition, by its employer, of the following social benefits:

Benefit	Description	Calculation
Severance	One month of wages, including transport subsidy.	(Average wages of the last 12 months plus transport subsidy, times the number of days worked in the year) / 360
Interest on Severance	12% of the full value of the severance benefit.	(Severance x number of days worked in the year x 12%) / 360
Service Bonus	One month of wages, including transport subsidy. It is paid as follows: 15 days in June and 15 days in December.	(Average wages of the last 6 months plus transport subsidy, times the number of days worked in the half-year period) / 360

Benefit	Description	Calculation
Severance	One month of wages, including transport subsidy.	(Average wages of the last 12 months plus transport subsidy, times the number of days worked in the year) / 360
Interest on Severance	12% of the full value of the severance benefit.	(Severance x number of days worked in the year x 12%) / 360
Vacations	Fifteen (15) business days' paid leave.	(Average wages of the last 12 months x number of days worked in the year) / 720
* Social benefits are originated when the worker is under the ordinary type of salary; in Integral Salary, only vacations are due.		

Item	Monthly Percentage
Labor Risks	From 0.522% up to 8.7% of the monthly wages depending of the type of risk set by the ARL (fully payable by the employer).
Family Welfare Institution Contributions	4% of the full monthly payroll (fully payable by the employer).

IMMIGRATION PROCEDURES

Visa And Foreigner's Identity Card

- If the foreigner comes to Colombia to provide personal services, contracted by a private company with domicile or a branch in Colombia, he/she must apply for a Temporary Work Visa. This type of visa is processed by Colombian Consulates on request and is the responsibility of the company validating the application. It may be granted for a term of up to two (2) years for multiple entries.
- On the other hand, for foreign crew members or members of an international mean of transport, a Crew Member Visa must be processed before the consular offices of the Republic of Colombia for entering and staying in the national territory. The validity of a Crew Member Visa can be up to one (1) year.
- In addition, all foreign persons who enter Colombia with a visa valid for more than three (3) months must appear before the Oficina de Migración Colombia within the fifteen (15) calendar days following their entry into national territory to register as a foreigner and apply for the respective foreigner's identity card.

Types of Visa

- **Business Visa:** It is for retailers, industry people, goods and services suppliers, or people wishing to get into the country for business purposes or in order to carry out market studies, dealing future sales or settling commercial presence in the country. It is also for legal representatives, directors, managers or executives of foreign commercial, service or industrial companies which have an economic link with a national or foreign company in Colombia and that are able to develop activities related to business management.
- **Temporary Visa:** This visa is granted to foreigners hired by local companies to develop activities in which they are experts, such as technicians, journalists, people belonging to artistic groups and legal representatives, among others. It is also granted to those who intend to enter into the country under academic agreements between higher education institutions or inter-administrative agreements in specialized areas.
 - o People designated by a state body or institution. Directors, technicians or administrative staff of public or private foreign bodies, commercial or industrial, who have been transferred from abroad to work in specific positions in their companies.
- **Resident Visa:** It is for people who are able to prove that their foreign direct investment reaches at least US\$100.000, or US\$200.000 in the case of real estate, people who have remained in the country for more than three (3) years. It may also be requested by foreign people who have held a temporary

Social Security And Para-Fiscal Contributions

A company with one (1) or more employee must enroll to the following entities:

- **Family Welfare Institution:** Every company with employees must enrol in a Family Welfare Institution within the city or municipality where the payroll is paid and also Para-Fiscal contributions assigned to the payment of the Family Subsidy on a monthly basis must be paid.
- **Labour Risk Insurer (ARL):** In addition, every company must enroll in a ARL, entity that will arrange and determine the applicable risk to the company according to its economic activity and that subsequently will cover the derived risks from the labour activities of all the employees of such company.
- **Workers Enrollment:** Any company with employees under any kind of contract must enroll its workers in (i) a Health Promotion Entity (EPS) to cover all of the employee's risk due to general disease; (ii) a Pension fund to cover the employee's risk of disability, old age and death; (iii) a Labour Risk Insurer (ARL) to cover all of the employee's risks of professional disease or working accident, and (iv) A Family Welfare Institution to provide welfare to the worker and its family and pay the Family Subsidy, if applicable.

Monthly contributions to the aforementioned institutions are paid as follows:

Item	Monthly Percentage
Health	12.5% of the monthly wages (8.5% paid by the employer and 4% paid by the employee).
Pensions	16% of the monthly wages (12% a paid by the employer and 4% paid by the employee). On top of this, and additional contribution to the Pension Solidarity Fund must be added when the employees earn more than 4 minimum monthly wages and up to 20 minimum monthly wages, in a percentage ranging between 1% and 2%.

visa and have stayed in the country for at least 5 years in a continuous and uninterrupted way. Also for foreigners that are holders of a Qualified Resident Visa who are able to prove an activity or income source and have remained in the country for at least five years in a continuous and uninterrupted way.

INTELLECTUAL PROPERTY

- In Colombia, intellectual property is regulated by Decision 486 of 2000 of the Andean Community. By means of this Decision, intellectual property matters in Colombia, Peru and Ecuador were given a unified regulation concerning trademarks, commercial labels, commercial names, patents and industry designs, thus simplifying registration proceedings, amongst other benefits.
- Currently, the Superintendence of Industry and Commerce is the designated authority in Colombia for most IP matters and is thusly responsible for almost all of the proceedings concerning trademarks, patents, industry designs and others.

Industrial Property

- Distinctive Signs
 - o **Trademarks:** Trademarks identify products and services within each relevant class of the Nice Classification, and once granted, their owner will enjoy a protection lasting ten (10) years, after which it must be renewed.
 - o **Slogans:** It is the word or phrase used as a complement for a trademark. The registration of a slogan must be requested before SIC and will represent the products and services that identify the trademark.
 - o **Tradenames and business signs:** Designations of origin. The authorization for using a protected appellation of origin shall have a duration of ten (10) years, which can be renewed for equal periods.
- New Creations: Patents
 - o They are property titles conferred by the government of a country which give their holders the right to temporarily prevent others from manufacturing, selling, or commercially using protected inventions.
 - **Invention Patents:** The use right is granted for 20 years.
 - **Utility Model Patents:** The use right is granted for 10 years.
 - **Industrial Design:** 10 years from the last day of the year when the first commercial exploitation of the layout scheme was completed anywhere in the world or the date on which the application for registration was submitted in a member country of the Andean Community, whichever comes first.

Copyrights

- In Colombia, the protection on a new artistic or literary work, including software, is granted through copyright. Copyright protection is equal to the life of the author plus 80 years. Since protection of moral rights is non-transferable and imprescriptible, it is indefinite.

- Unlike with industrial property rights, copyrights over these works are granted with their creation and not their registration. However, works may be registered before the National Copyrights Directorate, to establish a legal presumption of first-use, which is beneficial in the event of copyright litigation.

DISPUTE RESOLUTION

- In Colombia, the Arbitration National Statute was adopted (Act 1563 of 2012), which main purpose is promoting the use of an alternative mechanism for dispute resolution (ADR). The parties shall agree to use an arbitration agreement to solve any further controversy, which implies that the parties renounce to assert their claims before the courts.
- Even though this statute is close to the law model from Uncitral, a division between national and international arbitration was kept. This way the two regimes are kept, which is different from what happens in other countries such as Peru.
- The parties may choose the formation of the Panel, which will be composed of three (3) arbitrators; president, arbitrator for part A and arbitrator for part B. They must be registered in the Chambers of Commerce.
- Since 1997, Colombia has been part of the International Convention for Settlement of International Disputes (ICSID), an institution responsible for supporting the processes of resolution of disputes that may arise between investors and the government.





CURAÇAO

- Curaçao is an island in the southern Caribbean Sea off the Venezuelan coast. It includes the main island plus the small, uninhabited island of Klein Curaçao (“Little Curaçao”).
- Curaçao is one of the five island territories of the former Netherlands Antilles, in existence until the constitutional reform of October 10, 2010.
- Curaçao is an autonomous country within the Kingdom of the Netherlands, which consists of the following four countries: the Netherlands and its three public bodies Bonaire, Sint Eustatius, and Saba (also known as “BES islands”); Curaçao; Aruba; and Sint Maarten.
- Curaçao enjoys self-determination on all internal matters and defers to the Kingdom in matters of defense, foreign policy, and some judicial matters.
- The system of government of Curaçao is a parliamentary democracy based on the Dutch model.
- Total Area: 444 km².
- Climate: Tropical maritime climate with an average temperature that ranges from 25.3°C to 31.2°C.
- Population: 152,760.
- The official languages are Dutch, English, and Papiamentu, a multifaceted Creole language based on Portuguese, Spanish, Dutch, English, and several African dialects.
- Race/religion: Multicultural and multid denominational.
- The monetary unit is the Netherlands Antillean guilder (ANG). The exchange rate has been pegged to the US dollar since 1971 because more than 60% of the Central Bank of Curaçao and Sint Maarten’s international trade relations have been conducted with the United States or using US dollars.

LEGAL SYSTEM

- Curaçao has an independent and high-quality legal system which is based on the Dutch civil law system. As a Netherlands protectorate Curaçao enjoys European Union market privileges.
- Curaçao has a Court of First Instance, and as appellate court a Common Court of Justice of Aruba, Curaçao, St. Maarten, and of Bonaire, St. Eustatius, and Saba. The Supreme Court in The Hague is also the Supreme Court for Curaçao, Aruba, St. Maarten, the BES islands, and the Netherlands itself.

THE ECONOMY

- Tourism, financial services, and oil refining have been the mainstays of the Curaçao economy since the 1970s.
- Shipping, international trade, and other activities related to the port of Willemstad also make a contribution to the economy.
- Curaçao has free access to foreign currencies, such as the US dollar and the Euro.

SEVERAL FUNCTIONS OF THE CENTRAL BANK OF CURAÇAO AND SINT MAARTEN

- The bank's most important objectives are to maintain the external stability of the Netherlands Antillean guilder and to promote the efficient functioning of the financial system in the countries Curaçao and St. Maarten.
- The bank supervises banking and credit institutions to guarantee depositors and other creditors funds at banking and credit institutions in particular and the soundness of the financial sector in general.
- The bank is also entrusted with the supervision of trust service providers and fund administrators.
- The bank manages the foreign exchange reserves, which includes regulating the transfer of payments between residents and non-residents of the countries Curaçao and Sint Maarten.

TAX REGIME

- Curaçao offers a wide variety of zero-, low-, and high-tax solutions for international businesses.
- Curaçao has concluded a large number of treaties such as investment protection agreements, tax information exchange agreements, and agreements for the avoidance of double taxation, crucial to the development of Curaçao's financial services sector.
- For the development of hotels and similar recreational businesses a tax holiday may be obtained if the minimum investment amounts to at least ANG 1,000,000. Similar tax holidays apply to export industries, project development, and large enterprises.

E-ZONE

- The Curaçao E-zone consists of a series of physical locations that are appointed by the Curaçao Minister of Economic Affairs to stimulate the local economy by offering import, export, and general trading incentives, as well as online services.
- Companies established in one of these zones enjoy a complete exemption from import duties and turnover tax.
- Their profits are taxed at a flat rate of 2%.

FINANCIAL SERVICES

- Being a financial center, numerous international companies are based in Curaçao. International companies, also known as off-shore companies, are organized under the laws of Curaçao, or managed and controlled in Curaçao, and do not conduct trade or business within Curaçao or with residents of Curaçao.
- Such companies are considered resident companies for Curaçao tax purposes, but are granted preferential tax rates.
- As of January 1, 2001, aforementioned companies are grandfathered into the off-shore tax regime until the end of the financial year starting on or before July 1, 2019.

- International companies to which the off-shore regime applies may elect to apply for the participation exemption of the new fiscal regime.
- Curaçao is home to all major corporate management providers that offer domiciliation and management to all sorts of international companies.

FUNDS

- Curaçao was named the number one location for hedge fund administration services in 2008, outperforming jurisdictions like Singapore, Hong Kong, Luxembourg, the Netherlands, and the Cayman Islands.

GAMING

- Online gaming is a legitimate business activity provided the e-gaming company has obtained the proper license.
- Basic requirements for applying for a license are compliance with due diligence and KYC policies, full identification of ultimate beneficial owners, as well as a detailed and transparent description of the games.

DUTCH CARIBBEAN SECURITIES EXCHANGE

- In 2010 Curaçao launched the Dutch Caribbean Securities Exchange. The DCSX is an ideal place for the listing and trading in domestic and international securities. Because of its efficient listing procedure, the supervision by the central bank of Curaçao and Sint Maarten and its civil legal framework, the DCSX is quickly becoming a listing destination of choice for especially Latin America. The DCSX has also been identified by European, US, and Asian markets as an attractive alternative for listing of international funds.
- The DCSX is a correspondent exchange of the World Federation of Exchanges (WFE).

PRIVATE FOUNDATION

- In November 1998 Curaçao introduced a new form of Foundation called the "Private Foundation" (in Dutch the "Stichting Particulier Fonds" or "SPF") which differs fundamentally from the traditional foundation.
- This special form of foundation has been introduced with the principal aim to serve as an alternative to the Anglo-American Trust, with a view to separating private assets from private estates by way of transferring these assets to separate legal entities for purposes such as asset protection.
- Assets or capital may for example be protected against political interference or expropriation, criminal risks such as kidnapping, economic risks such as product liability, or other types of risks such as spendthrift.
- An SPF is typically used for purposes of asset protection, estate planning, tax planning, preservation of family assets, holding of shares and investments, and managing assets.

- The SPF is tax exempt. An SPF may, however, not conduct a business or enterprise.

TRUST

- On January 1, 2012, new legislation entered into force which made it possible to set up an Anglo-American Trust pursuant to Curacao Law.
- The trust can be used for many different purposes like estate and inheritance planning, pension or investment fund, finance and security structures, and promoting charitable objectives.

OTHER LEGAL ENTITIES

- The private limited liability company ("BV") is a flexible and highly modern form of corporation. The option of a company "managed by shareholders" is introduced for the BV, comparable to the American member-managed limited liability company. The BV is in principle subject to profit tax. However, a full exemption can be applied for if the activities are investing in debt instruments, securities, and deposits.
- The *Commanditaire Vennootschap* ("CV") is a limited partnership in which there is a distinction drawn between the limited partners and the general or managing partners. The general or managing partners manage the affairs of the CV and represent it in dealings with third parties. They are jointly and severally liable for the debts of the CV. A limited partner contributes to the partnership a certain amount of capital. His liability is limited to the amount of capital contributed.
- The *Vennootschap Onder Firma* ("VOF") is a general partnership in which the individual partners are jointly and severally liable for the debts of the partnership.
- Taxation of the VOF and CV: The VOF is not considered a separate entity for profit tax purposes. Therefore, the partners in the VOF are each individually subject to tax on their share in the profit of the VOF. The same applies to the CV. The exception is the so-called CV by shares. The CV by shares is considered a separate entity for profit tax purposes. The CV is then subject to tax, but only on the profit share of the limited partners. The general partner remains himself subject to tax on his profit.
- A proprietorship (*eenmanszaak*) is a form of business where there is no distinction between the business assets and personal assets. As the owner of a one-man business, you will be personally liable for all obligations of the business.
- A foundation (*stichting*) is a legal entity in its own right with its own assets and liabilities. The *stichting* is still frequently used for religious and nonprofit organizations.

SHIPPING

- Curaçao has been a recognized jurisdiction for the registration of commercial ships for over half a century due to its naturally protected deep sea harbor which makes it easily accessible by large freight ships. Curaçao has the largest dry dock facility in the entire Caribbean and is located outside the hurricane belt.

- To make Curacao even more attractive for the establishment of shipping business, a tonnage tax was introduced limiting taxation to a profit calculated on the basis of a taxable amount per net tonnage.
- A great advantage of the tonnage tax is the very broad definition of "vessel." In principle every legitimate use of a vessel (outside the territorial waters of Curaçao) is eligible for the tonnage tax.
- Thus, specialized ships like survey, fishing, cable-lying and dredging vessels, tugboats, oil rigs, and also ship management all qualify for tonnage-based taxation instead of being taxed on their actual operating results.

INFRASTRUCTURE

- Curaçao enjoys a well-developed infrastructure.
- The telecommunications infrastructure in Curaçao is highly developed with broadband Internet access on a par with world financial services centres.
- The ports of Curaçao are the most modern and efficient container ports in the Caribbean and offer safe, fast, efficient and reliable handling of both ships and cargo.
- In 2010 CTEX was established and together with regional banks, pension funds and private investors the company is operating the region's most advanced datacenters. CTEX is working with companies in the oil & gas, financial services, government, transportation & logistics, utilities and telecom industries located throughout the region. Their goal is to leverage a state-of-the-art facility to deliver highly advanced and specialized industry solutions.

EMPLOYMENT

- Curaçao general labor law is largely regulated in the civil code which contains stipulations about what agreements are considered to be employment agreements, the term of the employment contract, and the ways in which the employment contract can be terminated.
- More specific areas of labor law are regulated in separate national ordinances, for example the obligation to pay overtime, minimum wages, and labor circumstances.
- The labor law has tried to combine flexibility for the employer with security and protection for the employee.
- For certain business sectors that are important to the Curaçao economy the regulations with regard to, for example, overtime are more liberal, to encourage these sectors.
- The collective labor agreement is growing in popularity. This is an agreement between one or more employers and one or more trade unions in which rules are given for employment conditions which have to be observed in employment agreements.
- This collective labor agreement is used to regulate employment conditions and fringe benefits uniformly for a large group or all employees of a company.

- A collective labor agreement is negotiated between the company and the union. The employees are entitled to representation by a union. Representation by a union can be forced by the employees by holding an election within the company to decide which union represents the majority of the employees.

IMMIGRATION

- Foreign nationals require a residence permit as well as a work permit in order to legally reside in Curaçao.
- The National Ordinance on Admission and Expulsion addresses the terms and conditions of admission to Curaçao.
- A prerequisite of obtaining a permit is having a job.
- The application process of a residence or work permit takes approximately three months.
- Tourists are allowed to enter Curaçao without a temporary residence permit for a maximum period of 14 to 30 days. For certain nationals such period is three months.

INTELLECTUAL PROPERTY RIGHTS

- Intellectual Property rights (IP rights) protect intellectual efforts, perceivable through tangible objects, that are deemed to be unique. The intellectual effort is the subject of legal acts, such as transfers of ownership and licensing.
- Although copyright, trademarks, and patents are explicitly provided for in local legislation, this does not restrict nor limit the protection of other IP rights in Curaçao.
- Curaçao is a part of the Madrid Protocol, which allows for international registration of trademarks in the other member states through a single registration in Curaçao.
- The Bureau of Intellectual Property ("BIP") of Curacao is the regulatory authority and keeps the trademark register. Apart from trademarks the BIP also receives and processes applications and keeps a record of the so-called i-envelopes, a closed envelope through which ideas are deposited for evidence purposes.
- Patents are regulated by the Kingdom Patent Act 1995 which also applies to Curaçao.





ECUADOR

- Located in South America, covering a 283,561 km² area.
- Presidential representative democracy.
- The country's religious composition is primarily Roman Catholics and a minority of Protestants, Jews, and Muslims.
- Spanish is the national language. English is written and spoken in urban areas especially, and for business purposes.
- Currency: United States dollar (US\$).
- Investment growth areas include mining, hydrocarbon exploration and exploitation, tourism, infrastructure works, and agriculture.

BUSINESS PRACTICE

- Main types of business entities in Ecuador: locally incorporated companies, domiciled foreign companies, partnerships.
- Locally incorporated companies are the most prevalent form for doing business, and the two most common types are limited liability company and stock corporation.
- Representative offices of foreign companies may be opened in Ecuador. These require the establishment of legal domicile before the Superintendency of Companies and appointing a local legal representative.

FOREIGN INVESTMENT RESTRICTIONS AND CONDITIONS

Restrictions in Equity Participation

- Generally, no restrictions are imposed on foreigners owning equity in Ecuadorean companies. However, foreign companies must file certifications regarding their legal existence in the foreign country concerned and a detailed list of shareholders, disclosing their names and nationalities.

Approvals and Licensing

- Locally incorporated companies and foreign companies must obtain approvals of their line of business by the corresponding regulatory agencies, ministries, and other agencies only if their activities are regulated (i.e. oil and gas, telecoms).

EXCHANGE CONTROL

- As the local currency is the US dollar, there are no currency exchange controls in Ecuador.
- Certain taxes may apply to remittances of funds, such as the tax on overseas transfer of currency.

TAXATION

Corporate Tax

- Companies incorporated in Ecuador as well as branches of foreign companies domiciled in Ecuador and permanent establishments of foreign companies which earn taxable income were subject to a 22% tax rate.
- If profits are reinvested—for purchases of new machinery or equipment, assets to be used for irrigation, plant material, plantlets, and all kinds of inputs for agriculture, forestry, livestock breeding, and flower growing, and for purposes of productive activities, or to purchase goods relating to research and technology aimed at improving productivity, seeking productive diversification, and increasing employment opportunities—by increasing the capital stock of the company that generated such profits, the income tax rate is reduced by ten percentage points from the income tax rate on the sums reinvested. This benefit applies only to companies duly incorporated in Ecuador and to branches of foreign companies domiciled in Ecuador. It does not apply to consortia or permanent establishments.
- The tax base comprises all income earned during the fiscal year (from January 1 to December 31) less costs and expenses incurred for the purpose of obtaining, maintaining, and improving income subject to taxation.

Personal Income Tax

- All people employed or those who earn income deriving from an Ecuadorian source must pay income tax.
- Individuals resident in Ecuador are subject to progressive tax rates up to 35%.
- A person who resides in Ecuador more than 183 days within a fiscal year, continuous or not, is considered a resident for tax purposes.

Withholding Tax

- Dividends paid by Ecuadorian entities to individuals not domiciled in Ecuador or foreign entities not domiciled in tax havens or reduced taxation jurisdictions constitute exempted income once income tax has been paid at source. If the shareholder of an Ecuadorian entity is a foreign individual not domiciled in Ecuador or a foreign entity (domiciled or not in Ecuador), income tax paid by the Ecuadorian entity is imputed to the shareholder who may therefore use it as a tax credit in his home country (to the extent permitted by the corresponding local laws).
- Dividends paid to shareholders that are companies with residence in tax havens are subject to withholding at source in Ecuador by 13% in 2013.
- Generally, other remittances sent abroad which constitute income for the beneficiaries, whether forwarded, paid, or credited on account, are subject to a single income tax rate that must be withheld at source. Some exceptions apply (i.e. import of goods). Exceptionally, in cases where an agreement to avoid double taxation exists between Ecuador and the country of which the recipient is a resident, the withholding rate may be lower, or no withholding would apply.
- Ecuador has entered into tax treaties and agreements to avoid double taxation with the Andean Community countries (Colombia, Peru, and Bolivia), and other countries such as Brazil, Canada, Chile, Germany, Spain, France, Romania, Italy, Switzerland, Belgium, Mexico and Uruguay. Approval is pending for treaties with China and South Korea.

Value Added Tax (VAT)

- VAT is applied on transfers of ownership and on imports of movable property of a tangible nature at all phases of commercialization, as well as copyrights, industrial property and related rights. It is also applied on rendering of services, even on importation of services (services rendered by foreigners with no tax residence in Ecuador to Ecuadorian residents). VAT rate ranges from 0 to 12%.
- VAT paid on local purchases and imports constitutes a tax credit to be offset with VAT originating from local purchases of goods and services subject to this tax. If the goods produced or the services rendered by a company are subject to a 0% VAT rate, the tax originating from purchases constitutes a cost.
- If a company exports goods, it is entitled to a refund of VAT paid in relation to the production of goods that are exported.

Other Taxes

- Import duty: *ad valorem* duty at various rates.
- Tax on overseas transfer of currency: All payments abroad higher than US\$1,000 are subject to 5% tax on overseas transfer of currency.
- The remitter of the currency, rather than the foreign recipient, is legally responsible for paying this tax; therefore, this tax is not subject to withholding at source.
- Payments on imports are subject to this tax, even if paid by a

third party outside Ecuador or if paid with money held by the importer abroad.

- Labor profit sharing: Employees receive 15% of their employers' gross profits, deductible for the employer for income tax purposes.
- Income tax returns or settlements are used to calculate annual profits.
- Municipal taxes:
 - o Municipal tax on total assets. Companies incorporated or domiciled in Ecuador (as well as permanent establishments of foreign companies) must pay this tax to the municipality of the city where they operate. The taxable base for this tax consists of total assets less one-year liabilities and contingent liabilities. The rate is 1.5 per one thousand.
 - o Municipal license tax. All persons engaged in commercial and industrial activities must pay this tax to the municipality of the county in which they operate. The municipal permit tax rate depends on each county and ranges from US\$10 to US\$25,000 per annum.

Tax and Investment Incentives

- Companies organized after the enactment of the Organic Code on Production, Trade and Investment (published on December 29, 2010) for the purpose of making new productive investments will be entitled to income tax exemption for five years commencing on the first year in which income directly and solely attributable to the new investment is generated. The law requires that such investment be made outside the urban jurisdictions of the counties of Quito and Guayaquil and in the economic sectors of production of fresh, frozen and industrialized food products; forestry and agro-forestry products and related manufactured products; strategic replacement of imports and promotion of exports, among others, as established by the President of the Republic.
- The Organic Code on Production, Trade and Investment provides other types of investment incentives to companies duly installed in special economic development zones, exoneration of advance income tax for the next five years, and additional deductions for income tax calculation.

LABOR LAW

- The maximum hours of work are 40 per week, over five working days. Saturdays and Sundays are mandatory rest days, in addition to the following holidays: January 1, Good Friday, May 1, May 24, August 10, October 9, November 2, November 3, and December 25.
- Daytime work: Daytime work is limited to eight hours per day from 6:00 a.m. to 7:00 p.m., divided into two shifts of four hours each, with two hours of rest in between. It is possible to establish a single shift with the Labor Director's or Assistant Director's authorization.
- Nighttime work takes place between 7:00 p.m. and 6:00 a.m. the next day. It may last the same as daytime work and entitles the worker to the same remuneration, increased by 25%.

- Supplementary hours: Supplementary hours cannot be more than four in one day or twelve in one week.
- Workers are entitled to enjoy an uninterrupted 15-day vacation period per year, including holidays.
- Every year, the National Council for Salaries (“CONADES”) or otherwise the Ministry of Labor Relations establishes a unified base salary as well as a unified sector remuneration. In 2013 the minimum wage was fixed at US\$318.
- Two additional remunerations exist. The thirteenth salary, payable no later than December 24 of each year, when all workers are entitled to be paid a bonus by their employers equivalent to one twelfth of the remunerations earned by them during the year (not including profits, per diems, voluntary bonuses, fourteenth salary, and social benefits). This bonus is commonly known as the “Christmas Bonus.” The fourteenth salary is equivalent to one unified base salary and is paid by August 15 in the Highland Region and the Amazon Region, and by March 15 in the Coastal Region and the Galapagos Islands.
- Companies or employers must distribute 15% of their annual net profits among their workers, computed before any reserves, social distributions, taxes, and other participations.
- All employees and workers who have rendered their services for one year are entitled to receive 8.33% of their remuneration monthly, after the year following the first year of work.

INTELLECTUAL PROPERTY

- Intellectual property (IP) protection in Ecuador comprises patents, trademarks, industrial design, copyright, geographical indications, and layout designs of integrated circuits.
- Although rights are territorial in nature, Ecuador shares Andean Decision No. 486 for harmonious protection of IP rights.
- Ecuador maintains a system requiring registration to grant rights over IP, with the exception of copyrights.
- Copyright protection is granted over artistic, literary, musical, or visual arts.
- Ecuador is a member of the World Intellectual Property Organization (WIPO) and is a signatory to the Paris Convention, Berne Convention, the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), and the Patent Cooperation Treaty (PCT).
- Ecuador’s intellectual property laws conform to international standards and provide adequate protection to both local and foreign investors.

DISPUTE RESOLUTION

- Ordinary civil proceedings include two ordinary stages and one extraordinary stage known as cassation. The first stage is heard by a judge with jurisdiction over the county concerned. The second stage is heard by the provincial court of justice, which comprises three justices with jurisdiction over the province concerned. The extraordinary stage—cassation—is heard by

the civil chamber of the national court of justice, comprising three justices.

- Labor disputes are heard by specialized labor courts.
- Alternative dispute resolution (ADR) is available and includes mediation and arbitration.
- Ecuador has withdrawn from the ICSID convention. The announcement was made in July 2009, and withdrawal became effective in January 2010.
- Ecuador is a party to the World Trade Organization, and more than once it has applied state-to-state arbitration as set forth in WTO treaties.

IMMIGRATION PROCEDURES

Passport and Visa Requirements

- Foreign citizens may enter Ecuador as transient visitors using their passports (with at least six months’ validity after the date of entry) during up to 90 days per year. This migration category (transient visitor) allows them to perform the following activities in Ecuador: tourism, sports, health, study, science, art, or to carry out commercial arts not involving simultaneous import of goods.
- Foreign citizens whose nationalities correspond to Afghanistan, Bangladesh, Eritrea, Ethiopia, Kenya, Nepal, Nigeria, Pakistan, People’s Republic of China (except those who have a public passport), and Somalia are banned from entering Ecuador as transient visitors according to the aforementioned procedure. In those cases, before coming to Ecuador foreigners must obtain at the Ecuadorian consulate with jurisdiction over the place of domicile or nationality a visa allowing them to enter Ecuador in accordance with the activities to be carried out.

Business Passes and Work Permits

- Immigrant and Non-immigrant Status:
 - o Immigrant visas are of indefinite validity and are granted to foreigners who legally and conditionally enter the country for purposes of establishing residence and mainly to perform the activities for which they were authorized. The visa is no longer valid upon completion of the activities for which they were granted, save for a few exceptions.
 - o Holders of immigrant visas may “leave and return to the country, but cannot remain outside Ecuador during more than 90 days each year during the first two years after the date of admission as immigrant ...” After those first two years, he may remain up to 18 consecutive months outside Ecuador without forfeiting his immigrant visa. However, with a non-immigrant visa a foreigner has no limitation as regards the time of staying outside Ecuador during the period of validity of his visa.
 - o Non-immigrant visas have limited-term validity (with the possibility of renewal) and are granted to such foreigners who legally and conditionally enter the country without intending to establish residence. Those visas only allow the holder to perform the activities for which they were expressly authorized.

- The main types of immigrant and non-immigrant visas are the following:

o Immigrants:

- 9-I visa: Granted to foreigners who on a permanent basis receive revenues from abroad of at least US\$800 per month.
- 9-II visa: Granted to foreigners who have invested US\$25,000 in Ecuador for the purchase of bonds, securities, shares, debentures, real property, etc.
- 9-III visa: Granted to foreigners who have invested in Ecuador at least US\$30,000 in industry, agriculture, livestock or export trade either in businesses or companies owned solely by the immigrant or in any companies other than stock corporations.
- 9-IV visa: Granted to foreigners holding general powers of attorney for legal, judicial or extrajudicial representation granted by an individual or corporation established in Ecuador, or having approval for non-specific labor activities, or having a mandate from a religious order.
- 9-V visa: Granted to foreigners having academic degrees enabling them to practice a profession in Ecuador.
- 9-VI visa: Granted to a foreigner having an Ecuadorian spouse or Ecuadorian children, or a foreign spouse or children holding immigrant visas other than 9-VI visas.

o Non-immigrants:

- 12-I visa: Granted to diplomatic or consular officials, international officials of international organizations of which Ecuador is a member, and their closest relatives.
- 12-II visa: Granted to high officials of other States and personalities covered by a diplomatic passport and their closest relatives.
- 12-III visa: Granted to private and domestic employees of foreigners covered by 12-I and 12-II visas. Also granted to the closest relatives of the holder of that visa.
- 12-IV visa: Granted to displaced foreigners as a consequence of war or political persecution in the country of origin for purposes of protecting their lives or their freedom.
- 12-V visa: Granted to students wishing to initiate, complete or improve their education in official or private schools with governmental recognition, and to their family companions within the second degree of consanguinity and first degree of affinity.
- 12-VI visa: Granted to foreigners that come to this country to perform temporary work of their specialty. Access to this visa is afforded to professionals with high technical degree, specialized workers, legal representatives of companies incorporated in Ecuador, agents, and persons hired for industrial training purposes, as well as to relatives accompanying the direct beneficiaries of the visa within the second degree of consanguinity and first degree of affinity.

- 12-VII visa: Granted to missionaries, volunteers, or members of religious organizations or religious orders recognized in their countries of origin and in Ecuador in order to undertake work involving assistance, teaching, or apostolate activities; this visa is also granted to direct relatives of the beneficiaries within the second degree of consanguinity and first degree of affinity.
- 12-VIII visa: Granted to foreigners assisted by legally established national organizations to perform such programs and to their relatives within the second degree of consanguinity and first degree of affinity.
- 12-IX and 12-X visas: Granted to temporary visitors and their relatives within the second degree of consanguinity and first degree of affinity coming to perform activities such as tourism, sports, health-related, educational, scientific, artistic, or commercial acts not involving simultaneous import of goods for a period for up to six months each year, in the case of a 12-IX visa, and 90 days each year, in the case of the 12-X visa.





GUATEMALA

- Guatemala is located in Central America, and has an area of 109,000 km².
- Guatemala is a constitutional democracy, with three independent branches of government: executive, judiciary, and legislative. The leader of the government is the President.
- Population: 13,800,000 people comprising mestizos, European descendants, and 23 different ethnicities.
- Religious composition of the country is mainly Christian.
- National language is Spanish; however, there are 23 different native dialects.
- Currency: Quetzal (Q).
- Investment growth areas include agriculture, infrastructure, energy and mining, drawback, and services.

BUSINESS PRESENCE

- The main types of for-profit business structure in Guatemala are corporation ("*sociedad anónima*"), limited liability companies, partnerships, and registered branches of foreign companies and corporations. All companies, corporations, and partnerships require a minimum of two shareholders or partners. In case of corporation ("*sociedad anónima*"), shares must be nominative.
- Other possible options for doing business: agency arrangements, distribution arrangements, franchise agreements, and joint venture agreements.
- Quick procedures for incorporating companies and corporations.

FOREIGN INVESTMENT RESTRICTIONS AND CONDITIONS

Restrictions on Equity Participation

- There are no restrictions on foreign investment and shareholdings in Guatemalan companies. Foreign investment is permitted in all sectors of the economy.

Restrictions on Real Property Acquisition

- Acquisition of real property in Guatemala is permitted to any foreign investor in most cases, except for the following: a) when the real property is located within 15 kilometers of the country's boundaries; and b) real estate properties located within 3 kilometers of the ocean, within 200 meters around lake shores, within 100 meters of either side of the rivers, and within 50 meters of water sources that provide water

to communities. In the cases listed in b), foreigners require authorization from the executive branch of government in order to be able to purchase such real estate properties, as long as they are located in urban areas and their registration occurred before March 1, 1956.

Permits and Licensing

- Since there are no restrictions on foreign ownership of corporate entities, special approval is not required for a foreigner to invest in Guatemala.
- All local business entities as well as foreign corporations or companies who wish to invest in Guatemala through a local branch need to register at the Mercantile Registry.
- All local and foreign companies when doing business in Guatemala, need to register as tax contributors with the Superintendencia of Tax Administration (SAT).

EXCHANGE CONTROL

- The Exchange Control Act (*Ley de Libre Negociación de Divisas*) regulates dealings of foreign currency in Guatemala. According to such law, residents and non-residents are free to contract and deal in any currency (local and foreign) and are able to remit funds into and out of the country, and purchase or sell using any local or foreign exchange.
- Anti-Money Laundering Act is in force, and it requires that all dealings in foreign currency that involve banks for amounts higher than US\$10,000, be reported to the Special Verification Intendance.

TAXATION

General

- The SAT administers most taxes in Guatemala. Real estate property taxes are administered by local municipalities. The fiscal year runs from January 1 to December 31 of each calendar year.

Income Tax

- All individuals and local corporations and companies, as well as foreign branches registered to do business in Guatemala, and who generate income from a “Guatemalan source,” are subject to the payment of income tax. “Guatemalan source” income is any income that is generated by capital, assets, services, or rights of any nature invested or utilized in Guatemala, or that have their origin in activities developed in Guatemala, excluding exchange profits.
- There are two income tax regimes: a) general regime of 5% over gross income; or b) special regime of 31% over net profits. The law specifies the types of deductions that are permissible under the special regime, which are the costs and expenses necessary to produce the source of income that is being taxed. These two regimes will have certain changes beginning January 2013 due to recent amendments to the income tax law and other tax laws that were approved by Congress in February 2012. The amendments include the following topics:
 - o Increase in tax rate of the 5% regime, to 6% and 7%.
 - o Deletion of several deductions currently applicable in the profit regime.
 - o Deduction of tax rate for employee regimes to between 5% and 7%, with the deletion of certain deductions that are currently acceptable.
 - o Introduction of transfer pricing rules applicable to transactions between local companies and foreign companies, which are reviewed under the arm’s length transactions principle.
- Dividend and profit distributions are no longer exempt of income tax.

Personal Income Tax

- Individuals who have labor contracts have to register in the special regime, which imposes tax on net profits. The law includes a list of specific deductions that are permissible to employees (these deductions have been reduced for income received as of January 2013).
- The rates applicable to employees depend on the salary received by each employee, and ranges between 15% up to 31% of net profits (these rates were reduced to 5% to 7% in the income tax law amendments that become effective in January 2013).
- All individuals who develop professional activities, technical services, or non-commercial activities shall pay an income tax equivalent to 5% of gross income (such amounts will increase to 6% and 7%) on January 2013.

Withholding Tax/Income Tax of Non-Domiciled Individuals or Entities

- Income tax of non-domiciled individuals or entities who receive a rent of Guatemalan source will be subject to the following taxes, which must be withheld by the paying contributor:
 - o 10% of interest payments, dividends, profit distributions, and other benefits paid by entities domiciled in the country, as well as commissions, bonuses, salaries, and other compensations, except when the entity paying such benefits, dividends, and profits paid their corresponding income tax in accordance with the law.
 - o 31% on professional fees; payment on royalties and other retributions for use of patents and trademarks as well as scientific, economic, technical, or financial counseling.
 - o 31% of any other rent of Guatemalan source.

Presumed Income in Loans

- The law presumes that in every loan agreement there is an income related to interest unless proven otherwise. The presumed interest rate equals the maximum active bank rate effective during the period of the annual definitive liquidation of income tax.

Capital Gain Tax

- Capital gains are taxed at a rate of 10% or 31% depending on the tax regime applicable to the contributor. This will change in January 2013, when most capital gains will be taxed at a rate of 10%.

Transfer Pricing Rules

- Currently there are no transfer pricing rules in Guatemala. However, the recent tax amendments that will become effective in January 2013 include a wide range of rules very similar to international practices in transfer pricing, applicable on transactions between Guatemalan and foreign entities.

Other Taxes

- Value Added Tax of 12% is applicable to any purchase and sale of assets, personal or real property, services, and contracts. Exports are exempt from such tax, as well as mergers, contributions to companies and corporations, and the transfer of shares.
- Guatemala has a Solidarity Tax (ISO), which is calculated in accordance to one of the following: a) 25% of the net assets of the company; or b) 25% of the gross income. If the assets are four times greater than the income, the tax will be paid based on income. The rate of the tax is 1%. The ISO paid during the four quarters of the calendar year are creditable to the income tax payments, up to a maximum of three calendar years.
- Property tax ranges between 0.20% and 0.90% depending on the value of the property. The tax is paid on a quarterly basis at the municipality where the property is located.
- Stamp tax of 3% is applicable to transactions, documents, and contracts executed in Guatemala or which will have effects in

Guatemala. Transactions that pay Value Added Tax are exempt from this tax. A stamp tax of 3% applies to all real estate property sales, whenever the sale is considered a "second sale" (which occurs whenever the property has had at least one previous transfer of ownership). For "first sales", a 12% Value Added Tax applies.

INVESTMENT TAX INCENTIVES

- There are incentives to encourage certain types of businesses to set up in Guatemala, including:
 - o Law to encourage the development of exportation activities produced in the country and drawback (Decree 29–89), which establishes a general exemption to: a) importation duties on raw materials, packaging, machinery, equipment, semi-elaborate products, fuel consumption, and others; b) Value Added Tax; c) income tax for a period of 10 years.
 - o Free Trade Area Law (Decree 65–89), which incentivizes and regulates the establishment in Guatemala of Free Trade Areas that promote the development of the country through foreign trade, creation of jobs, and technology transfers. It includes an exemption to: a) all taxes and duties related to the importation of equipment, tools, machinery, raw materials, semi-elaborate products, packaging, components and, in general, merchandise used for the production of goods and provision of services; b) all income tax for a period of ten years for industrial activities and for a period of five years for commercial activities; c) Value Added Tax in transfers of merchandise made within and between free trade zones; d) stamp tax applicable to documents for transfer of real property located within free trade zones.
 - o Renewal Energy Sources Incentive Law (Decree 52-2003) which purports to incentivize in the country the development of renewable sources of energy by creating economic, tax, and administrative incentives. The law includes the following incentives: a) duties exemption, including Value Added Tax, on importation of machinery and equipment, used for the generation of electricity, up to a period of ten years; and b) income tax exemption for a period of ten years.

EMPLOYMENT LAW

General Legal Framework

- Labor relations, regulations, employees and employers rights and obligations, conflict resolution methods and, in general, all labor-related regulations are contained in the Labor Code (Decree number 1441).
- Guatemala’s constitution recognizes employment as a right and social obligation. It also establishes the minimum rights of employees, which cannot be waived by employers. All minimum rights may be upgraded, and all clauses or stipulations that lead to a diminution of such rights are null. The minimum labor rights established by the constitution are:
 - o Individuals are free to choose any work position.

- o Any kind of work must be equitably remunerated.
- o Employees performing a job under same conditions must receive the same salary.
- o The employee must be paid with currency, except for agricultural employees, who can be paid in kind up to a 30% of their salary.
- o Respect and comply with the applicable law regarding minimum wage.
- o The ordinary diurnal schedule cannot surpass eight hours daily, nor 48 hours a week. The ordinary nocturnal schedule cannot surpass six hours daily, nor 36 hours a week. Mixed schedule cannot surpass seven hours daily, nor 42 hours a week. All jobs performed outside the ordinary schedule must be paid as overtime.
- o All employees have the right to one free day a week or one free day for each six days they have worked.
- o Fifteen days of paid vacation, after every year of services rendered, except of the agriculture employees who have ten days only.
- o Annual bonuses established by law.
- o Protection to women and pregnant women.
- o Protection and special treatment to workers older than 62 years old.
- o Protection and provision of job opportunities for disabled people.
- o Preference of Guatemalans over foreigners.
- o Severance payment.
- o Payment to the family if the employee dies, except if what caused the death is totally covered by Social Security. In the event the Social Security covers a part only, the employer must pay the difference.
- o Employees are free to form trade-unions or associations.

Minimum Wage and Overtime Payment

- The current minimum wage for agricultural and non-agricultural workers is Q.68.00 (approximately US\$8.16) per day. The monthly minimum wage salary is Q.2,068.33 + Q.250.00 (bonus) = Q2,318.33 (equivalent to approximately US\$293.46).
- The current minimum wage for drawback and export activity employees is Q.62.50 (approximately US\$7.81) per day. The monthly minimum wage salary is Q.1,901.04 + Q.250.00 (bonus)= Q2,151.04 (equivalent to approximately US\$272.28).
- Overtime must be remunerated at a minimum of 50% increase over normal salary.
- Ordinary and extraordinary working days may not exceed a total of 12 hours per day, except in cases determined by the respective regulations or when due to disaster or risk, or if people, sites, machinery, facilities, plantations, products, or harvests are in danger, and when it is impossible to replace the workers or stop the work of those who are working.

Mandatory Bonuses

- *Incentive Monthly Bonus*: Q.250.00 per month, the same for all employees no matter the position they hold.
- *Bono 14*: an annual bonus paid to all employees in July of each year, the equivalent of one salary per year of labor or its proportion.
- *Aguinaldo*: an annual bonus paid to all employees in December of each year, the equivalent of one salary year of labor or its proportion.

Discrimination and Foreign Workers

- The Guatemalan Labor Code prohibits discrimination by reason of gender, race, religion, political views, economic situation, education, or marital or family status.
- The constitution prohibits the preference of foreign workers over nationals. Nationals and foreigners must be treated under the same conditions.
- An employer is allowed to employ foreign workers, but the percentage of the foreign personnel cannot exceed 10% of the total of its employees, and total salary paid to foreign employees may not exceed 15% of the total salaries paid by employer. Officers, directors, and high level employees are not included within these percentages.

Probation Term

- In every contract of indefinite term, the first two months are considered a probationary period except when the parties mutually agree on a lesser period. During this period, any of the parties may terminate the labor relation without any liability to the other party.

Intellectual Property of Employers

- Employees are obligated to keep technical, commercial, or manufacturing secrets of the products in which they directly or indirectly help to develop. The higher the position the employee holds, the stricter confidentiality he must keep. Employees are also obligated to keep administrative matters confidential.

Paid Leave

- Apart from vacation time, there are other paid leaves regulated by Guatemalan law:
 - o Maternity leave consists of a total of 84 days: 30 days prior to childbirth and 54 days after.
 - o In case of miscarriage maternity leave must be reduced by half.
 - o Maternity leave of 54 days for adoptions.
 - o Paternity leave is two days.
 - o Women also enjoy two breaks of half an hour each for breastfeeding. This time may be combined to allow the employee to arrive one hour late or leave one hour earlier from her work schedule. This period is for ten months.
 - o Three days for death of husband/wife, parents, or children.

- o Five days for marriage.
- o To appear in court, half a day if in the jurisdiction of the department of Guatemala and one full day if outside it.
- o To perform a union activity, as long as this activity is not limited to the Executive Committee only and if it does not exceed six days within the same month.

IMMIGRATION

Types of Visas

- *Tourist visa*: This visa is for recreational purposes only. It is valid for 90 days and issued by the Guatemalan Consulates. However, foreigners from countries that do not need a visa to enter Guatemala have a 90-day permit to stay in the country that can be extended for an equal term one time only.
- *Permanent residents*: This residency is valid for a five-year term and is issued by the Immigration Authority in Guatemala. Foreigners with permanent residency are allowed to work in Guatemala, receive a salary, and invest with capital obtained from legal commercial activities carried out in the country. To obtain permanent residency the applicant must already have temporary residency.
- *Temporary residents*: This residency is valid for two years and can be extended for additional two-year terms. It is issued by the Immigration Authority in Guatemala. Foreigners with temporary residency are also allowed to work in Guatemala, receive a salary, and invest with capital obtained from legal commercial activities carried out within the country.
- *Transit visa*: This will be valid for 72 hours and is granted by the Guatemalan Consulates.
- *Diplomatic, consular, courtesy, or official visa*: Granted by the Ministry of Foreign Affairs, in special cases.
- *Business visa*: Issued by the Guatemalan Consulates and the Customs Authority in Guatemala. This kind of visa is granted to those foreigners who are acting on their own behalf or on behalf of a for-profit entity, and need to travel to Guatemala for business purposes. This will be valid for 12 months and can be extended for an equal term, one time only.
- *Student visa*: Issued by the Immigration Authority and the Guatemalan Consulates.

Work Permit

- Foreigners who want to work in Guatemala or companies that want to hire a foreigner to work in Guatemala must obtain a work permit from the Guatemalan Ministry of Labor. Before applying to a work permit, expatriates must already have temporary residency. The work permit is granted for a one-year term and can be extended for equal periods of time.

INTELLECTUAL PROPERTY

- Intellectual property matters are controlled by the Intellectual Property Registry and are mainly regulated by intellectual property law (Decree number 57-2000 – *Ley de Propiedad*

Industrial), copyright law (Decree number 33–98 – *Ley de Derechos de Autor y Derechos Conexos*), as well as the intellectual property international agreements that Guatemala has approved.

- The abovementioned codes cover important international intellectual property protections of trademarks, advertising expressions, commercial names, emblems, denominations of origin, patents, utility models, industrial designs, and copyrights.

DISPUTE RESOLUTION

General Legal Framework and Court System

- Guatemala has a supreme court comprised of 13 magistrates and several general courts that have jurisdiction over particular areas of the law. The judicial system is independent from the other bodies of government (executive and legislative).
- The court system is modeled on a civil law system, in which each party is entitled to legal representation. Proceedings are overseen by a judge or court comprised of three judges, who act as arbiters in questions of law.
- As part of the judicial system, in addition to the supreme court of justice, Guatemala has civil courts, family courts, criminal courts, labor courts, and courts of appeal.
- Guatemala also has a constitutional court to resolve all matters related to alleged breaches of constitutional rights. It is the highest court in the country.

Litigation

- Any local or foreign individual or company may initiate legal actions in the Guatemalan courts. The Guatemalan Constitution guarantees due process of law and the right to a defense.

Alternative Dispute Resolution

- Alternative Dispute Resolution (ADR) has gained acceptance among the general public and the legal profession, especially arbitration.
- Arbitration is regulated under the general arbitration law, which includes the rules and processes that parties may incorporate in their dispute resolution covenants. Parties must indicate in their contracts their desire to have their disputes be solved by arbitration, or may choose to select such ADR method once a dispute arises. Arbitration awards are binding for the parties.
- Normally, arbitration covenants include selection of arbitration rules, seat of arbitration, language of arbitration, and general process of arbitration, including arbitrators' selection and appointment.





MEXICO

- Geographic Location
 - North America, strategic location on southern border of United States of America (US), bounded to the north by the US (from west to east by California, Arizona, New Mexico, and Texas), to the west and south by the Pacific Ocean, to the east by the Gulf of Mexico, and to the southeast by Belize, Guatemala, and the Caribbean Sea.
 - Total area: 1,964,375 km².
 - Climate: varies from tropical to desert.
 - Natural resources: petroleum, silver, copper, gold, lead, zinc, natural gas, timber.
 - Population: 114,975,406 (July 2012 estimate).
 - Population density: 60 people per square kilometer.
 - Ethnic background: mestizo (Amerindian-Spanish) 60%, Amerindian or predominantly Amerindian 30%, white 9%, other 1%.
 - Population by age: about 28% of the total population is less than 15 years of age and 6.5% is greater than 65 years of age. The average age is 27.4.
- Government and Legal System
 - Mexico is a federal republic with two levels of government: federal and state governments.
 - 31 States and one federal district; Aguascalientes, Baja California, Baja California Sur, Campeche, Chiapas, Chihuahua, Coahuila, Colima, Distrito Federal, Durango, Guanajuato, Guerrero, Hidalgo, Jalisco, Mexico, Michoacan, Morelos, Nayarit, Nuevo Leon, Oaxaca, Puebla, Queretaro, Quintana Roo, San Luis Potosi, Sinaloa, Sonora, Tabasco, Tamaulipas, Tlaxcala, Veracruz, Yucatan, Zacatecas.
 - Both the federal and state government are composed of three branches: executive, legislative, and judicial.
 - In contrast to countries such as the United States or England, the legal system in Mexico is a civil law system, with some US constitutional law theory, and judicial review of legislative acts. The primary source of law comes from statutes rather than judicial decisions.
- Language: Spanish (official language) and about sixty indigenous native dialects. English is the most commonly used foreign language.
- Religions: Roman Catholic 76.5%, Protestant 5.2% (Pentecostal 1.4%, other 3.8%), Jehovah's Witnesses 1.1%, other 0.3%, unspecified 13.8%, none 3.1% (2000 census).
- Currency: Mexican peso (MXN).

BUSINESS ENTITIES

Representative Office (RO)

- Representative office allows a foreign entity to have presence in Mexico through an office that serves as a link between the foreign entity and its clients in Mexico. The main purpose of a RO is to represent the parent company in Mexico.
- ROs may not conduct business or generate income, and thus are not subject to income or corporate taxes in Mexico. RO activities is limited to preparatory processes for business carried out by the parent company, such as: receiving or delivering information and rendering advice related to the activities, products, or services of the parent company abroad, as well as to carry out market investigation activities.
- RO is allowed to hire personnel for its activities having to make tax withholding reports to the Mexican tax authorities. In this case, it must register the employees before the social security institute (IMSS) and the National Institute of Housing Fund for Workers (INFONAVIT).
- The foreign entity is not considered a separate entity from its Mexican RO and is fully liable for the activities and duties contracted by the office in Mexico.
- Expenses involved in establishing a RO are also deductible in the home country of the foreign entity, according to the corresponding law.
- To open a representative office, it is necessary to give notice to the ministry of economy, foreign investment authorities, and to register the office before the Mexican ministry of finance.

Branch

- A branch involves a higher level of participation within Mexico than a representative office. It's commonly used by companies that are either not prepared to make a long-term commitment to doing business in Mexico, or merely wish to establish an extension of their company within Mexico.
- May engage in business activities, and is subject to tax obligations as Mexican companies.
- May deduct expenses incurred in Mexico, except for remittances made by the branch to the parent company.
- Foreign entity is not considered a separate entity from the Mexican branch, and is subject to liabilities of the Mexican branch.
- Cannot own real estate within 100 kilometers of the border, or within 50 kilometers of the coast.
- To open a branch, the foreign company must obtain approval of its by laws from the ministry of economy.
- Must register its by laws in the public registry of commerce, the ministry of finance, and with the foreign investment registry.

Subsidiary

- General Law of Commercial Corporations recognizes six classes of commercial companies (only three of them are described

below: S.A., S. de R.L. and cooperative company). The stock companies may be constituted as or transformed into variable stock companies. The law establishes requirements that are mandatory. The rest of the rules governing corporations are either in by laws or agreements of the incorporators.

- Separate legal status from shareholders or partners.
- May engage in business activities, and is subject to tax in Mexico as a Mexican company.
- There is no minimum capital stock.
- Must obtain authorization from the ministry of economy and register before the tax authorities, the public registry of commerce, and the foreign investments registry if there are any foreigner shareholders.
- Must register with the importers' registry if the company will be performing any import activities, and within the IMSS and INFONAVIT if the company will have employees in Mexico.
- All shareholders and partners must register before the tax authorities, unless for foreign companies or individuals residing abroad.

Corporation (Sociedad Anónima, S.A.)

- Provides limited liability for the shareholders.
- Share certificates may be freely transferred.
- Share certificates may be pledged in order to guarantee obligations.
- Shares are not divisible, but share certificates may cover several shares. Share certificates may be divided.
- Corporations must have at least two shareholders.
- Minimum capital stock should be expressed in corporate by laws.
- Shares must be registered because bearer shares are not permitted under Mexican law.
- An examiner must be appointed.

Limited Liability Company (Sociedad de Responsabilidad Limitada, S. de R.L.)

- Possibility of qualifying as a partnership for foreign tax purposes.
- Should have at least two partners, and may have a maximum of 50.
- Partners are liable for the value of their contributions, and the capital stock must be expressed in corporate by laws.
- Capital stock is represented by certificates of participation (*partes sociales*), which are not negotiable instruments: they may not be freely transferred, and may not be pledged to guarantee the obligations of their owners.
- Certificates of participation may have different values, depending on the amount contributed by each partner.
- It is not compulsory to appoint an examiner, but a surveillance committee may be appointed.

Civil Enterprise (Sociedad Civil, S.C.)

- Mostly used by professionals rendering services, as opposed to performing commercial activities.
- Partners agree to join their efforts and resources to achieve a common purpose, which may have an economic objective but may not constitute business speculation.
- Partners are jointly and severally liable for the liabilities of the partnership.

Civil Association ("Asociación Civil, A.C.")

- Basically used for non-profit organizations.
- Partners agree to carry out a common purpose without a preponderantly economic objective.

Cooperative Companies

- Activities pursued for the benefit of its members, they are not allowed to render services to third parties.
- Generally formed by individuals in the agricultural and fishing industries.

FOREIGN INVESTMENT LAW

- Enacted in 1993 to achieve and sustain industrial development, create jobs, and increase industrial output.
- Allows foreign investment in most sectors.
- As a general rule, foreign investors may own 100% of the capital stock of any Mexican corporation.
- Certain sectors are still reserved for the Mexican State.
- Certain sectors are limited to 49% foreign ownership.

Activities Reserved for the Mexican State

- Oil production and refining.
- Basic petrochemical production.
- Sales of electricity to the public.
- Nuclear power and radioactive minerals.
- Telegraph and radiotelegraph services.
- Printing money and minting coinage.
- Mailing.
- Management of ports, heliports, and airports.

Activities Reserved to Mexican Individuals or Corporations With Foreigners Exclusion Clause

- Domestic land transportation of passengers, tourists, cargo.
- Retail gasoline sale and distribution of LP gas.
- Radio broadcasting and television services (excluding cable television).
- Development banks.
- Certain professional and technical services.

Activities With Limited Foreign Ownership

- Up to 10% ownership of cooperative production companies.
- Up to 25% ownership of domestic air transport.
- Up to 49% ownership of the following:
 - Insurance companies, bonding companies, exchange houses, bonded warehouses.
 - Explosives, firearms, cartridges, munitions, and fireworks firms.
 - Private pension fund management companies.
 - Publication of newspapers for circulation in Mexico.

Activities Requiring Prior Approval From the Foreign Investment Commission, for More Than 49% Foreign Ownership

- Port services, such as piloting, mooring, and dock services.
- Naval companies engaged high-seas traffic.
- Management of air terminals.
- Private educational services.
- Legal services.
- Credit information companies.
- Institutions that categorize securities.
- Insurance agencies.
- Mobile phone services.
- Oil and gas well drilling.
- Railroad management and construction

CENTRAL BANK EXCHANGE CONTROL

- There are currently no foreign exchange controls in Mexico; the Mexican exchange commission has established the free flotation regime.
- International reserve policies are determined by the institutional relation between the Bank of Mexico (*Banco de México*) and the public entities regarding the intervention of the market value.
- Occasionally, the federal government also transfers dollars to the Bank of Mexico due to its external debt.
- Another source of foreign exchange comes from the policy on accumulation of international reserves that the Mexican exchange commission determines.

TAXATION

- All individuals residing in Mexico and companies established in Mexico are subject to federal and local taxes.
- While federal taxes are the same in all states, the local taxes may vary from state to state.
- Some states offer tax breaks in an effort to stimulate business development.

a) Federal Taxes**Income Tax**

- 30% as of 2012 on the company's taxable profits obtained on a worldwide basis. Tax rate should be reduced to 29% in 2013 and to 28% in 2014.
- All income obtained by companies is taxed, regardless of the source, except in the case of branches of foreign companies. Branches are taxed based on income attributable to the branches.
- Tax is calculated for each calendar year by deducting allowed expenses and prior losses from total accruable income.
- Deductions basically include discounts and/or expenses strictly indispensable for carrying out business.
- Income tax payments are made on a monthly or quarterly basis, and are credited against the annual income tax return.
- Mexico has signed treaties in order to avoid double income taxes.

Value Added Tax

- The following VAT rates apply:
 - 0% in the case of basic priority activities such as foods, non-industrialized-vegetables and animals, medicines, water, ice, books, newspaper, magazines, exports.
 - 11% when the activities are performed in the border region.
 - 16% for all other activities.
- Goods imported into Mexico will be subject to value added tax; however, temporarily imported goods are exempt.
- The law provides for specific exemptions on certain other activities.

Flat Tax (IETU)

- Tax paid by such individuals or companies residing in Mexico and foreign residents with permanent establishment in Mexico for such income derived from transfer of goods, rendering of independent services and lease of goods.
- Complementary to income tax but payable if greater.
- Applicable tax rate: 17.5% on the income obtained on a worldwide basis.
- Flat tax with limited deductions based on the added value of different sectors of the economy.

Tax Treaties

- Mexico has signed treaties to avoid double income taxes with Australia, Austria, Bahrain, Belgium, Brazil, Canada, Chile, China, Czech Republic, Korea, Denmark, Ecuador, Finland, France, Germany, Greece, Holland, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Japan, Luxembourg, New Zealand, Norway, Panama, Poland, Portugal, Romania, Russia, Singapore, Slovakia, Spain, Sweden, Switzerland, Ukraine, United Kingdom, United States of America, and Uruguay. Mexico is negotiating with Slovenia, Estonia, Hong Kong,

Lebanon, Lithuania, Malaysia, Malta, Morocco, Nicaragua, Pakistan, Qatar, Thailand, and Turkey.

- Mexico has signed tax information exchange agreements with the Bahamas, Belize, Bermuda, the Cayman Islands, Costa Rica, Cook Island, Guernsey Island, Isle of Man, Jersey Island, Netherlands Antilles, and Samoa. Other treaties are being negotiated.

Tax on Cash Deposits (IDE)

- In place since July 1, 2008, the applicable IDE rate for 2012 is 3% on amounts exceeding \$15,000.00 pesos on cash deposits within a month. Electronic transfers, transfers between different accounts, and credit instruments contracted with the financial system are not subject to the IDE.
- This tax can be creditable against corporate income tax, as reduced from the remittance income tax withheld from third parties and/or any other federal taxes.

b) Local Taxes

- Local taxes vary from state to state. The most commonly applied tax is property tax.
- Some states tax wages paid to employees at an average of 2%. In the Federal District (Mexico City), employers (individuals and companies) must pay 2.5% on wages paid to their employees every month.
- Real estate is subject to a bimonthly payment based on the official assessed value of the property. The maximum bimonthly rate amounts to approximately 0.065%.
- Tax on real estate property purchase: a tax of 1% to 5% of the assessed value of the property is paid by the buyer on all purchases of property. The federal government works with the states so that in cooperating states only the local tax applies, with no levy of federal tax.

EMPLOYMENT LAW**General Legal Framework**

- Mexican labor law grew out of an armed revolution that concluded with the adoption of the constitution of the United States of Mexico in 1917. Article 123 of the constitution entitled "Labor and Social Security," expressly recognizes and protects the basic inalienable rights of workers. Thereafter, in 1931, the first federal labor law was enacted to regulate labor relations nationwide. The 1931 law was replaced by the 1970 federal labor law which improved working conditions for workers. The 1970 law was, for all practical purposes, the federal government's "political reward" to worker organizations for not supporting the 1968 student movement.
- Foreign entities contemplating opening operations in Mexico should be aware that labor relations in Mexico are highly regulated.
- Mexican federal labor law applies to all private employees (section A of article 123 of the constitution) and bureaucratic law applies for all government officials and employees (section B of article 123 of the constitution).

- A new federal labor law is being discussed before the legislative power and may be promulgated in 2013.

Minimum Standards for Employment

- The law stipulates minimum standards for employment. It is not possible to contract out of these standards:
- **Maximum weekly hours of work:** 48 hours for day work shift weekly, 45 hours for mixed shift weekly, and 42 hours for night shift weekly. Flexibility is allowed under the law: section 59 gives the parties the right to allocate working hours.
- **Annual leave** is allowed but only in case of maternity: six weeks before and six weeks after birth. Any other paid leave depends on the union contract or each individual labor agreement. No parental leaves, unless it is agreed on by the union contracts for union employees and in individual labor agreements for white collar employees. Community service leave is also provided for (elections, public charges, for example).
- **Fringe benefits:** [1] a year-end bonus equivalent to at least 15 days' wages, payable prior to December 20 of each year; [2] a yearly vacation period, the length of which depends on the worker's seniority; [3] a vacation premium of 25% of the salary payable to the employee during the vacation; and [4] mandatory paid holidays on January 1, February 5, March 21, May 1, September 16, November 20, December 1 [each six years when the new president of the republic is inaugurated], December 25, and any other days established by federal or local law.
- **Employee profit sharing:** All employees are entitled to a share of employer profits. The profit sharing is computed each year at the rate of 10% of taxable income if any. There are certain specific items described in the law which have to be added or deducted from the taxable income for profit sharing computation purposes. Most of these relate to differences in the treatment of inflation accounting. Since 2005, profit sharing paid in one year is deductible from the after-tax profit or loss of the following year.
- **Term:** The law assumes that an employment agreement has been executed for an indefinite term unless the particular type of service to be rendered calls for an employment agreement for a specific job or term. An employment agreement for a specific term may be executed only if the work to be performed so requires, or if the worker is hired to temporarily substitute for another worker.
- **Notice of termination and redundancy pay:** No previous notice for termination with cause must be given the day of termination establishing causes of termination (Section 47 of the law and other applicable depending on the employee's nature). Any individual employment relationship is subject to the principle of job stability. The concept of job stability refers to the idea that once a worker enters into an employment agreement, this agreement is subject to the worker's right to keep the job as long as the employment relationship requires. If the employment relationship is for an indefinite term, the worker cannot be laid off without cause. If the relationship is for a specific job or term, the worker may keep the job until the specific task is completed.
- **Dismissal causes:** Unlike in the United States where employment-at-will is the general rule, an employer in Mexico may only dismiss an employee without liability if there is a cause for the dismissal. Article 47 of the federal labor law strictly enumerates causes for dismissal: [1] use of false documentation to secure employment; [2] dishonest or violent behavior on the job; [3] dishonest or violent behavior against co-workers that disrupts work discipline; [4] threatening, insulting, or abusing the employer or his family, unless provoked or acting in self-defense; [5] intentionally damaging the employer's property; [6] negligently causing serious damage to the employer's property; [7] carelessly threatening workplace safety; [8] immoral behavior in the workplace; [9] disclosure of trade secrets or confidential information; [10] more than three unjustified absences in a 30-day period; [11] disobeying the employer without justification; [12] failure to follow safety procedures; [13] reporting to work under the influence of alcohol or nonprescription drugs; [14] a prison sentence; or [15] commission of other acts of similar severity to those described above.
- An employee may appeal the discharge within two months of the dismissal to the conciliation and arbitration board, an administrative agency charged with resolving labor disputes. The employer shall prove that the worker engaged in conduct described in Article 47 of the Federal Labor Law. If the employer fails to meet this burden, the worker can request either [1] reinstatement to his or her position, or [2] a constitutional indemnification equivalent to three months' full salary, including premiums, bonuses, commissions, etc., and any fringe benefits. The employee also has the right to receive back pay with no offset for interim earnings.
- The employer is not obligated to reinstate an employee if the employee worked for the employer for less than one year, if the employee must work in direct and constant contact with the employer and a normal work-related relationship is impossible, or if the employee rendered domestic services or worked on a temporary basis. If the employer does not reinstate the employee for any of these reasons, the employer must pay the employee a lump-sum indemnification equal to three months' salary plus 20 days' salary for each year of seniority.
- Workers dismissed with or without cause, as well as those who resign with 15 or more years of seniority, are also entitled to a seniority premium equivalent to 12 days' salary for each year of service rendered. However, the seniority premium may not exceed twice the minimum salary in effect in the economic zone where the employer is located [plus prorated vacation, vacation premium, and year-end bonus as described below]. In Mexico City, this currently amounts to approximately seven dollars per day.

Collective Bargaining Agreements

- **Union contracts:** workers may also secure improvements in working conditions through collective bargaining agreements. Collective bargaining agreements are executed by one or more workers' unions and one or more employers, or one or more employers' associations. They may be of definite or indefinite duration, or for a specific project, and may not diminish employee rights under the federal labor law. The collective bargaining agreement must also include the

names and addresses of the parties, the location covered by the agreement, the agreement's term, work shifts, rest and vacation days, salary ranges, and other terms and conditions of employment negotiated by the parties.

- Either party may request the renegotiation of wage clauses in collective bargaining agreements annually and the renegotiation of all clauses in collective bargaining agreements once every two years. A request for renegotiation of a collective bargaining agreement must be made at least 60 days prior to the second anniversary of the agreement or the expiration date for agreements of less than two years. Wage revisions must be requested 30 days prior to the anniversary or expiration date. If no timely request for revision is made, the agreement is extended for a period equal to its original term.
- The provisions of the collective bargaining agreement cover all employees regardless of union membership. However, confidential employees (or white collar workers) may be expressly excluded. Although confidential employees are allowed to have their own collective bargaining agreements, they have not done so as a practical matter.
- Right to strike: the Mexican constitution guarantees to workers the right to strike. However, federal labor law limits this right, and thus strikes are relatively undesirable for both management and labor. These limits include prohibiting employers from hiring permanent replacements, operating during strikes except for essential safety services, or locking out employees. A strike must have one of the following lawful objectives: [1] to attain a balance of rights between the workers and employers; [2] to pressure employers to execute, revise, or comply with collective bargaining agreements; [3] to force compliance with workers' profit sharing provisions; [4] to annually obtain higher wages; or [5] to support a strike in another enterprise aimed at achieving any of the above-mentioned objectives.

Minimum Wage Requirements

- Minimum wages are established by the federal government each year. Currently divided in three areas, depending of the state of the Mexican republic. Currently Zone A is \$62.33.

Statutory Contributions

- In addition to the federal labor law, other general laws regulate labor relationships in Mexico, such as social security and *INFONAVIT* laws.

a. Employer obligations with the social security institute

- To register its employees with the Mexican social security institute (IMSS) within five days after the hiring of such employees.
- To calculate and pay dues owed by the employer and employees are obligated to turn into the IMSS a copy of their financial statements, along with a tax opinion done by an accounting firm in accordance with IMSS requirements and which includes a list of employees benefits given by the employer.

b. Mandatory insurance required by social security law

- Occupational hazards.

- Illness and maternity.
- Infirmity and life.
- Retirement, advanced age retirement, and old age.
- Day care centers and additional benefits.

c. Limitation on the base wage used to calculate social security dues

- With respect to the calculation of dues for the insurance provided by the IMSS for illness and maternity, day care, and additional benefits, retirement and occupational hazards, the "base calculated wage" to be used includes the base wage received by the insured registered with the IMSS plus those benefits to be integrated to the base wage as described by Article 27 of the social security law. However, the maximum "base calculated wage" to be used shall not exceed the equivalent of 25 times the general minimum wage in the Federal District.
- With respect to the separate calculation of the dues for the insurance provided by the IMSS for infirmity and life, advanced age retirement, and old age, the same "base calculated wage" as described in the preceding paragraph is to be used but with a maximum limit of the equivalent of 15 times the general minimum wage in effect for the Federal District.
- For reference to the percentages to be applied to the employee's consolidated salary (the employee's base salary plus certain benefits the employee is entitled to receive by law) to calculate the social security dues to be respectively paid every month by the employer and employee, except for retirement, advanced age retirement, and old age, which are paid every two months until the payment periods contained in the laws are conformed, included is a chart that indicates such percentages for each social security concept: when paying the employee wages, the employer should withhold the social security dues that correspond to the amount that the employer will be responsible for paying on behalf of the employee.
- *INFONAVIT*: this obligation consists of the payment of amounts by the employer to a National Worker's Housing Fund to create a fund for employees which enables them to receive low-cost financing.
- Labor law sets the amount that the employer is required to contribute to *INFONAVIT* at 5% of integrated wages (which is calculated in accordance with Article 27 of social security law) paid to its employees. Further, the law establishes as a maximum wage for the calculation of the employer's contribution of 15 times the general minimum wage in effect for the Federal District, which was annually increased up to 25 times the general minimum wage in effect for the Federal District in the year 2007. This contribution is to be made every 2 months no later than the 17th day of the month following the two-month period that has passed and is due. This payment is to be made together with the social security concept of retirement, advanced-age and old-age.

- Employees Retirement Fund (SAR): consists of the payment by the employer of a contribution to a retirement savings fund which equals 2% over the integrated daily wage (which is calculated in accordance with Article 27 of social security law) of the employee up to a maximum of 15 times the general minimum wage in the Federal District. This payment is to be made together with the social security concept of the retirement, advanced age retirement, and old age and with the INFONAVIT payment.

IMMIGRATION PROCEDURES

- Authority in charge of immigration matters: National Immigration Institute (*Instituto Nacional de Migración*) depending on the Ministry of the Interior (*Secretaría de Gobernación*).
- Applicable law: Immigration law and its corresponding regulations.
- The new immigration law entered into force in July 2011 and its regulation in November 2012.

Classification of Foreigners

- Visitors
- Temporary residents
- Permanent residents

Conditions of Stay as a Visitor, Temporary Resident and Permanent Resident

- **Visitor without permission to engage in lucrative activities:** This migration status authorizes foreigners to travel and/or stay in Mexico for 180 consecutive days, without obtaining permission to perform activities subject to remuneration in the country.
- **Visitor with permission to engage in lucrative activities:** Authorizes foreigners with a job offer, upon invitation by any authority or academic, artistic, sporting, or cultural institutions granting a remuneration in Mexico. This status also applies to a foreigners that come to engage in a remunerated activity for seasonal period, according to inter-agency agreements signed with foreign entities, in order to stay in Mexico for a continuous period no longer than 180 days.
- **Regional visitor:** Authorizes foreigners or residents of the neighboring countries to enter border areas with the right to enter and leave Mexico as many times as they wish, as long as it does not exceed three days and without permission to receive remuneration in Mexico.
- **Visitor border worker:** Authorizes foreigners of the countries with which Mexico shares territorial boundaries, to stay up to one year in the federal states determined by the ministry. The visitor border workers will have permission to engage in lucrative activities within Mexico but only for activities related to the job offer; they may enter and leave Mexico as many times as they wish.
- **Visitor for humanitarian reasons:** Any foreigners, in any of the following circumstances:
 - o Be offended, victim, or witness of a crime committed on national territory.
 - o Be an immigrant child or adolescent unaccompanied, in terms of Article 74 of the law.
 - o Request for political asylum, the recognition of refugee status or complementary protection of the Mexican state until their migratory status is resolved.
 - o When humanitarian or public interest causes require the foreigner's entry or regularization in Mexico, in which case they will have permission to work and be paid for.
- **Visitor for adoption purposes:** Authorizes foreigners linked to a process of adoption in Mexico to stay in the country until a court decision is dictated. If it is a positive order, the foreigner is allowed to stay in Mexico to register the adopted child or adolescent in the civil registry and until the passport is issued, as well as every necessary procedure to guarantee the departure of the child or adolescent from Mexico.
- **Temporary resident:** Authorizes the foreigners to remain in Mexico for no longer than four years, with the possibility of obtaining a lucrative work permit in the country subject to a job offer, with the right to enter and leave Mexico as many times as they desire. They also have the right to preserve the family unit.
- **Temporary resident student:** Authorizes foreigners to remain in Mexico for the duration of studies, research, or training projects stating that they have to take place in educational institutions that belong to the Mexican educational system, in order to obtain the corresponding certificate, record, diploma, or degree. Foreigners under this status will have the right to enter and leave Mexico as often as desired, with permission to engage in lucrative activities in the case of college-level, graduate, and research work.
- **Permanent resident:** Authorizes foreigners to remain in Mexico indefinitely, with permission to engage in lucrative activities in the country. Permanent residents are entitled to the preservation of their family units so they can enter with or subsequently request the entry of the following family members: spouses, parents, brothers and sisters, or long-term partners, who may reside in Mexico under the same conditions of stay, and with the privileges mentioned in the previous article.
- Any visitors, except those who entered for humanitarian reasons or have links with Mexican or foreigners with regular residence in Mexico, cannot change their condition of stay and will have to leave the country once they conclude their authorized term.
- Mexicans will have the right to the preservation of the family unit so they will be able to enter with or eventually request the entry of the following foreign people: spouses, parents, brothers and sisters, and partners.
- The Mexican ministry of the interior may establish a point system for foreigners to acquire permanent residence without complying with the four-year residence requirement throughout general administrative rules to be published in the Official Journal of the Federation.

- Except for those applying for political asylum or recognition of refugee status, or stateless persons, any foreigners shall process the corresponding resident credential within 30 calendar days after entering Mexico.
- Foreign nationals, regardless of their condition of stay and without permission from the institute, will be able to acquire, whether personally or by proxy, fixed or variable assets and make bank deposits, as well as acquire urban real estate and real rights over them with the restrictions set out in Article 27 of the constitution and other applicable provisions.
- No foreign national may hold two conditions to stay simultaneously.
- The Foreigners National Registry contains the information related to all foreigners who acquire the status of temporary resident or permanent resident.
- Foreigners are obliged to inform the institute of any change in their marital status, nationality, address, or workplace within 90 days after such change occurs.
- Foreigners must accredit their regular immigration status in Mexico in legal acts which require the intervention of public notaries or their equivalents, with regard to business or real estate issues.
- The institute may conduct verification visits to confirm the accuracy of the data provided in immigration procedures.
- The immigration authority shall issue a resolution on immigration procedures in a period not exceeding 20 working days from the date the applicant meets all formal requirements provided by the law, its regulations, and other applicable administrative provisions. After this period without the decision was made, it will be deemed negative.
- The issuing of visa applications filed at consular offices must be resolved within ten working days.
- If the applicant does not meet the requirements applicable to the requested immigration procedure, the immigration authorities will notify it according to the federal administrative procedure law and will provide a period of ten working days after being notified to provide any missing requirements.
- Foreigners are entitled to apply for regularization of their immigration status in cases established by the law.
- The institute shall have a term of 30 calendar days from the entry of the corresponding procedure for deciding on an application for regularization of immigration status.





PANAMA

- The Republic of Panama is located in the center of the Western Hemisphere. It is bordered by Costa Rica to the northwest, Colombia to the southeast, the Caribbean Sea to the north and the Pacific Ocean to the south. Panama occupies a strategic location at the southeastern end of the isthmus forming the land bridge between North and South America.
- Area: 75,517 km².
- Population: 3,405,813 (per May 2010 census).
- Political division: nine provinces and five indigenous communities.
- Government: Constitutional democracy.
- Religion: Freedom of religion is protected by the Panamanian constitution. Most Panamanians are Roman Catholics but due to the diversity of the country all kinds of temples of worship may be found throughout the country.
- Language: The official language is Spanish but English is widely spoken as a second and commercial language.
- Weather: Panamanian weather is tropical and uniform throughout the year. The average temperature is 27°C.
- Currency: The official Panamanian currency is the Balboa, fixed at parity with the United States dollar since the country's independence in 1903. In practice, however, the country is dollarized; Panama uses US dollars for all its paper currency and has its own coinage, which is equivalent in size and value to those of the US dollar.
- Panama's dollar-based economy rests primarily on a well-developed services sector that accounts for three quarters of gross domestic product (GDP). Services include the operation of the Panama Canal, logistics, banking, the Colon Free Zone, insurance, flagship registry, corporate legal services, and tourism.

BUSINESS PRESENCE

- Panamanian legislation offers several types of business models in Panama. Amongst the most relevant are the following:

Panamanian Corporation (Sociedad Anónima)

- In Panama, a corporation is usually known as an "S.A.," or Sociedad Anónima (translated literally to "anonymous company"). However, only the shareholders are actually anonymous.
- A Panamanian corporation can have the following suffixes: INC., CORP., Corporation, or S.A.; there is no difference from a legal perspective.

- Two or more natural persons may organize a corporation by executing the corresponding Articles of Incorporation. The incorporators do not need to be citizens or residents of Panama.
- The Articles of Incorporation must contain at least the following information: name of the corporation, general purpose or purposes of the corporation, amount of authorized capital, and the number and par value of the shares into which said capital is to be divided. Non par value shares are also allowed.
- The enumeration of corporate purposes in the Articles of Incorporation does not preclude the corporation from pursuing any other activities not so specified, since Panamanian law

expressly allows a corporation to engage in any business, even though same is not mentioned in the Articles of Incorporation.

- The Articles may provide that the corporation can issue both par value and no par value shares.
- Panamanian corporations can have shares issued in either Bearer form or Nominative form. The form in which the shares are issued is not reported in any public record. A Panamanian corporation can do business and own property and other assets (boats, cars, jewelry, etc.) in any country. Some offshore jurisdictions do not allow IBC's to do business locally. Panamanian corporations can do business inside or outside of Panama.
- Panamanian law requires all corporations to have a Resident Agent domiciled in the Republic of Panama, whose name and address must appear in the Articles of Incorporation. The Resident Agent must be a lawyer or law firm authorized to practice law in the Republic of Panama. Usually the lawyer or law firm that incorporates the corporation acts as such.

Panamanian Branches of Foreign Companies

- A foreign company can register a branch in Panama by depositing the following documents at the Public Registry Office:
 - Articles of Association;
 - Board minutes authorizing the Panamanian registration;
 - Copies of the most recent financial statements;
 - A certificate from a Panamanian consul confirming that the company is organized according to the laws of its place of incorporation;
 - Notification of the allocation of capital to the Panamanian operation.
- All the above mentioned documents, if not originally issued in Spanish, must be previously translated to Spanish by a Panamanian Authorized Public Translator. All signatures must be legalized before a Panamanian consulate or by Apostille.

Panamanian Limited Liability Company (LLC)

- Limited Liability Companies (*sociedad de responsabilidad limitada*) must have a minimum of two partners.
- There is no restriction on the nationality of the partners or their domicile.
- The names of the partners must be registered in the Public Registry Office along with details of the amount of capital committed and paid in (in cash or kind) by each of them.
- The partners can appoint administrators for the company, who may or may not be partners, and whose names must also be registered at the Public Registry.

Panamanian Civil Company

- The Civil Company (*sociedad civil*) has legal personality, although the liability of the partners is unlimited. This type of company is often selected by professionals such as lawyers and accountants.

Panamanian Private Interest Foundation

- This legal entity was created based on the Liechtenstein Family Foundations. Private Interest Foundations are used mostly for the protection of assets and protection of minors and disabled persons, protecting the objectives of the Founder with regard to the destiny of its patrimony even after his or her death. The Private Interest Foundation cannot be profit-oriented. Nevertheless, it can engage in a non-habitual manner in commercial activities if the economic result is used towards the foundation's objectives.
- It can be defined as a donation or assignment of assets by a Founder for specific objectives, determined in a document known as the Foundation Charter, and carried out by the Foundation Council, which is similar to a board of directors in a corporation. The members of the Foundation Council must be designated in the Foundation Charter.
- The Foundation Charter must be registered at the Public Registry. Since the moment of its registry, the Foundation starts its existence without the need for previous approval from any governmental authority. The regulations or rules do not require registry and therefore can be maintained as a private document.
- The Foundation Charter must specify the names of the Foundation Council (who administer the foundation on behalf of the beneficiaries), the property of the Foundation, its domicile, the name of its Panamanian-registered agent and other details; but the names of beneficiaries and principles of operation can be contained in separate regulations or rules, and can remain as a private document.
- The minimum capital requirement is US\$10,000.

Panamanian Trusts

- A trust is a juridical act by which a person called settlor transfers assets to a person called trustee for its administration or disposition in favor of a beneficiary, who may be the settlor.
- Panamanian trusts (*Fideicomiso*) must be expressed in writing, so cannot be constructive. The trust shall be executed via private document, with the only formality being that the signature of settlor and trustee must be authenticated by a Panamanian notary, guaranteeing confidentiality. The trust instrument must be executed via public deed and registered before the Public Registry in such cases where real property located in Panama is given in trust.
- Trusts can be stated to be revocable but otherwise are irrevocable.
- The settlor, trustees, and beneficiaries need not be Panamanian nationals or resident in Panama.
- A Panamanian lawyer must act as registered agent for the trust.
- Trusts may be established for existing or future property; additional property may be included after the settlement either by the settlor or a third party.
- Assets in trust constitute an estate separate from the assets of the trustee. Therefore, they cannot be seized, sequestered, or

subject to any lien as a result of the trustee's obligations. The assets of the trust can only be affected by the liabilities of the trust itself.

FOREIGN INVESTMENT RESTRICTIONS AND CONDITIONS

- Panama's investment regime offers foreigners national treatment with some exceptions.
- The Constitution reserves for Panamanian citizens the acquisition of land located less than 10km from the country's borders, as well as retail trade, fishing in Panamanian territorial waters, and broadcasting.
- The operation of games of chance and gambling, along with postal and telegraph services, are reserved as state monopolies. In the case of games of chance and gambling, the tax code gives the Gaming Control Board of the Ministry of the Economy and Finance (MEF) the power to regulate the operation of casinos, bingos, hippodromes, and other related activities by signing contracts with private Panamanian or foreign-owned firms.
- Foreign investment in the air transport sector is also subject to restrictions.
- In Panama there is no specific legal statute on foreign investment, and the general legal regime is applied equally to national and foreign investors alike.
- The constitution provides that foreigners in the national territory shall receive the same treatment as nationals, but it allows the authorities to impose special conditions or deny access to certain activities to foreigners in general for reasons of employment, health, morality, public safety, and national economy.
- According to the constitution, salt pans, mines, underground and thermal waters, hydrocarbon deposits, quarries, and mineral deposits of all kinds may not be privately owned, but they can be exploited by private enterprise through concessions or other types of contract.
- Law No. 54 of July 22, 1998, (Law on Legal Stability for Investments) promotes and protects investments made in Panama, including foreign investment. It states that foreign investors and the enterprises in which they participate have the same rights and obligations as national investors and enterprises, without any restrictions other than those established in the constitution. The same law allows foreign investors to freely dispose of the proceeds of their investment, guaranteeing free repatriation of capital, dividends, interest and profits arising from the investment, and freedom to market their production.
- There are also certain restrictions relating to the nationality of a corporation's executive staff and workers. Up to 10% of a firm's total work force may be foreign nationals, and up to 15% in the case of technical or specialized personnel. The proportion of foreign technical or specialist staff may be increased, for a predefined period, with due authorization from the Ministry of Labor.
- Although foreign investment does not need prior authorization, registration and licensing requirements exist in certain activities that generate investments, for example, banks, insurance, and reinsurance.
- Disputes are settled through the national courts and the foreign investor has access to the same procedural remedies as the local investor.
- Panama has signed agreements for the reciprocal promotion and protection of investments with several countries. It also has double taxation agreements with other countries.

EXCHANGE CONTROL

- There are no exchange controls in Panama and there is no central bank. Foreign investment is welcomed, and profits may be freely repatriated.

TAX COMPLIANCE—TAXATION

Corporate Income Tax

- The taxation system of the Republic of Panama is based on the territoriality system, by which only Panamanian source income is levied with income tax. The general corporate income tax rate is 25%, although some activities such as generation and distribution of electrical services, telecommunications, insurance, reinsurance, financial entities, cement manufacturing, games of chance and gambling, mining, and banking, among others, have a different rate.

Individual Income Tax

- Individuals who earn less than US\$11,000 per year pay no income tax. Those earning between US\$11,000 and US\$50,000 pay a 15% tax rate while those earning more than US\$50,000 pay a 25% rate.

Social Security Tax

- Employers and employees pay social security taxes on the employee's salary. Currently, employers pay 12.25% and employees pay 9.75%. Employers are required to withhold a percentage from each employee's pay for income tax and for social security tax.

Educational Tax

- An additional 1.25% of an employee's wages are withheld as an "educational tax" while the employer pays 1.5%.

Capital Gains Tax

- The capital gains tax rate differs by the type of property being transferred. Only properties located in Panama are subject to the capital gains tax. The standard rate is 10% of the realized gain from the sale.
- Transfer of shares of a Panamanian entity that obtains Panamanian source income requires the buyer to withhold 5% of the purchase price and remit it to the Ministry of Economy and Finance within ten days. This is considered as an advance of the seller's capital gains tax. The seller can declare the 5% to

be the total capital gains tax or if the amount withheld exceeds the normal 10% rate of the actual gain, the seller can claim a tax credit for the excess amount when filing his/her annual tax return.

Dividends Tax

- There is a 10% dividends tax levied to entities that have a commercial operations permit and have Panamanian source income. Dividends distributed to holders of bearer shares must pay a 20% dividend tax. The dividend tax is only 5% if the earnings come from foreign sources, are export-related, or other specific laws exempt the income. Companies located in the free trade zones pay a 5% dividend tax for all income. The entity declaring the dividend withholds the tax and remits it to the tax authorities. There is no additional income tax levied to those receiving the dividends.

Commercial Permit Tax

- All persons and entities engaging in business activities within the Republic of Panama must obtain a commercial operation permit (“Aviso de Operacion”) which is issued by the Ministry of Commerce and Industry. The annual tax for the permit equals 2% of the company’s net worth with a maximum payment of \$60,000. Companies located in special economic or development zones within free trade zones pay a rate of 1% with a maximum payment of \$50,000.

VAT

- Value Added Tax or sales tax is known in Panama as the “ITBMS”. This tax applies to imported goods, products sold or services rendered in Panama. The ITBMS is 7%. Higher rates exist for other activities such as the sale of alcoholic drinks (10%), tobacco products (15%), and specific services such as housing services (10%). Exceptions to paying this tax include free trade zone transactions, power generation and distribution services, and cargo and passenger transportation by sea, air, or land.

Real Estate Taxes

- Property tax applies to the value of the land and all registered improvements. The standard property tax rate begins at a value of \$30,000 up to \$50,000 at a rate of 1.75%, while the rate is 1.95% between \$50,000 and \$75,000, with everything over \$75,000 at a 2.1% rate.

Other Taxes

- Stamp taxes can be applied based on the value of certain documents, such as contracts. Panama banks and some financial institutions pay a yearly tax based on the type of institution or total assets. The usual stamp tax levy is \$0.10 for each \$100.00 or fraction of \$100.00 of the value of the document.

Avoiding Double Taxation

- Panama has recently completed a process by which it entered into an Agreement for Taxation Cooperation and the Exchange of Taxation Information with the United States of America and fifteen Treaties to Avoid Double Taxation with several countries, in order to meet the current international standards set by the Organisation for Economic Co-operation and Development (OECD). Having completed this process, and

having been withdrawn off the OECD’s “grey list” of tax havens, Panama continues to negotiate and sign tax treaties with other countries to avoid double taxation of foreign investors on their Panamanian source income.

TAX AND INVESTMENT INCENTIVES

- Certain industries receive tax incentives to encourage foreign investment in areas including agriculture, tourism, mining, exporting non-traditional goods, power generation, construction and operation of government concessions, processing and storing oil-related products, maritime, manufacturing, and reforestation.

ESTABLISHMENT AND OPERATION OF REGIONAL CENTERS FOR MULTINATIONAL ENTITIES

- Law 41 of August 24, 2007, creates a special regime for the establishment and operation of Regional Centers for Multinational Entities in the Republic of Panama, with the purpose of attracting and promoting investments, the generation of employment, and the transfer of technology, as well as to make the Republic of Panama more competitive in the global economy by means of using its optimal geographical position, its infrastructure, and its international services.
- A Multinational Entity is such juridical firm that, having its head office in a given country, develops important productive, commercial, financial, and service activities in various other countries. In addition, they will be considered as such companies that, despite operating only in one country, have important operations in different regions of such country, and decide to establish a branch, subsidiary, or related company in Panama in order to develop commercial transactions in the region. For immediate reference, the law establishes that in order to be able to apply, the assets of the commercial group must be equal to or greater than US\$200,000,000 and in the event of establishing a headquarters or branch in Panama, minimum initial capital of US\$2,000,000 is required.
- Services to be rendered by the Regional Centers for Multinational Entities are the following:
 - o Direction and/or administration of business operations, globally or in a specific geographical area, of any company of the business group.
 - o Logistics and storage of components or parts, required for the manufacturing or assembly of manufactured products.
 - o Technical assistance for companies of the business group or clients that have acquired some product or service from the company.
 - o Accounting for the business group.
 - o Elaboration of plans that are part of the designs and/or developments, or part thereof, related to typical business activities of the head office or any of its subsidiaries.
 - o Counseling, coordination and follow-up on marketing and advertisement guidelines for goods and/or services produced

by the business group.

- o Electronic processing of any activity, including the consolidation of operations of the business group.
- o Financial management (treasury) for the business group.
- o Operational and investigatory support and development of products and services for the business group.
- o Any other service approved previously by the Licensing Commission of the Ministry of Commerce and Industries of the Republic of Panama.
- The main function of a Regional Center for Multinational Entities is to render services only to the business group to which it belongs, in attention to the aforelisted activities.
- Regional Centers for Multinational Entities have the following tax benefits:
 - o Exemption on the payment of income tax in the Republic of Panama, for services rendered to entities of any kind domiciled abroad, that do not generate taxable income in the Republic of Panama. This exemption will only apply to the company and not to its employees.
 - o Exemption on VAT Tax on services, as long as such services are rendered to persons domiciled abroad, who do not generate taxable income in the Republic of Panama.
- Income of Regional Centers for Multinational Entities will be deemed produced in the Republic of Panama as long as the services rendered are incident to the production of Panamanian source income or its conservation, and its value has been considered as a deductible expense by the person that received them. In such cases, Regional Centers for Multinational Entities will pay their income tax at 50% of the rate established by the Fiscal Code of the Republic of Panama.

EMPLOYMENT LAW

Panamanian Regulatory Environment

- The main piece of employment legislation in Panama is the Labor Code of 1971, which deals with labor relations and the rights and duties of employer and employee.
- There is a contract between employer and employee, whether written down or not, and it can include elements from a collective agreement. Unions are allowed, and can negotiate on behalf of employees collectively. Strikes are lawful under defined circumstances and after a majority vote. Conciliation is mandatory before a strike. However, only around 11% of private sector workers are unionized.

Panamanian Work Permits

- The employment market is quite closely regulated in Panama: the law sets maximum percentages for the employment of foreigners. Usually the figure is 10%, and 15% for technical workers. For workers in senior positions of companies that are dedicated exclusively to perform transactions that are perfected or whose effects take place abroad, it may be possible to agree a higher percentage with the Ministry of Labor, which is

responsible for issuing work permits.

- A Panamanian worker is privileged with a wide variety of legal benefits:
 - o For every 11 months of continuous employment employees are entitled to an annual paid vacation of 30 days.
 - o The “thirteenth month” rule: In Panama workers get paid 13 months for every twelve months worked, or one day’s salary for every 11 days worked. This bonus is payable in three equal installments in April, August, and December.
 - o There are 11 public holidays per year. An employer will be expected to pay a 150% surcharge calculated over the salary, plus an additional day of rest, if he or she requests that employees work on a national holiday.
 - o Termination of employment compensation includes, among other sums, a week’s salary for every year worked.
 - o Paid maternity leave of 14 weeks (paid by social security, not by the employer).

INTELECTUAL PROPERTY

Copyright Law

- The National Assembly in 1994 passed a comprehensive copyright bill (Law 15), based on a World Intellectual Property Organization (WIPO) model. It was issued to protect the intellectual property rights of literary, educational, scientific, or artistic works. The law modernizes copyright protection in Panama, provides for payment of royalties, facilitates the prosecution of copyright violators, protects computer software, and makes copyright infringement a felony.

Patent Law

- An Industrial Property Law (Law 35) went into force in 1996 and provides 20 years of patent protection from the date of filing. Pharmaceutical patents are granted for only 15 years, but can be renewed for an additional ten years, if the patent owner licenses a national company (minimum of 30% Panamanian ownership) to exploit the patent. The Industrial Property Law provides specific protection for trade secrets.

Trademarks

- Law 35 also provides trademark protection, simplifying the process of registering trademarks and making them renewable for ten-year periods.

Treaties

- In addition to its membership in the WIPO Panama is a member of the Geneva Phonograms Convention, the Brussels Satellite Convention, the Universal Copyright Convention, the Berne Convention for the Protection of Literary and Artistic Works, the Paris Convention for the Protection of Industrial Property, and the International Convention for the Protection of Plant Varieties. In addition, Panama was one of the first countries to ratify the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.

DISPUTE RESOLUTION

Legal System

- Based on a civil law system. Acceptance of foreign tribunals' jurisdiction with some reservations.

General Legal Framework

- The constitution establishes the supreme court as the highest judicial body in the land. Judges must be Panamanian by birth, be at least 35 years of age, hold a university degree in law, and have practiced or taught law for at least ten years. The number of members of the court is not fixed by the constitution. There are nine justices, divided into three chambers, for civil, penal, and administrative cases, with three justices in each chamber. Magistrates (and their alternates) are nominated by the cabinet council and subject to confirmation by the legislative assembly. They serve for a term of ten years. Article 200 of the constitution provides for the replacement of two judges every two years. The court also selects its own president every two years.
- The constitution defines the supreme court as the guardian of "the integrity of the constitution." In consultation with the attorney general, it has the power to determine the constitutionality of all laws, decrees, agreements, and other governmental acts. The court also has jurisdiction over cases involving actions or failure to act by public officials at all levels. There are no appeals of decisions by the court.
- Other legislation defines the system of lower courts. The nation is divided into three judicial districts: the first encompasses the provinces of Panamá, Colón, and Darién; the second, Veraguas, Los Santos, Herrera, and Coclé; the third, Bocas del Toro and Chiriquí. Directly under the supreme court are four superior tribunals, two for the first judicial district and one each for the second and third districts. Within each province there are circuit courts (civil and criminal). The lowest regular courts are the municipal courts located in each of the nation's 65 municipal subdivisions. In the tribunals, the judges are nominated by the supreme court, while lower judges are appointed by the courts immediately above them. Additionally, there are courts of special jurisdiction such as family law court and admiralty court.
- The constitution also creates a public ministry, headed by the attorney general, who is assisted by the solicitor general, district and municipal attorneys, and other officials designated by law. The attorney general and the solicitor general are appointed the same way supreme court justices are. Lower-ranking officials are appointed by those immediately above them. The functions of the public ministry include supervising the conduct of public officials, serving as legal advisers to other government officials, prosecuting violations of the constitution and other laws, and arraigning officials before the supreme court over whom the Court "has jurisdiction."
- Several constitutional provisions are designed to protect the independence of the judiciary. These include articles that declare that magistrates and judges are independent in the exercise of their functions and are subject only to the constitution and the law; that positions in the judicial organ are incompatible with any participation in politics other than voting; that judges cannot be detained or arrested except with a written order by the judicial authority competent to judge them; that the supreme court and the attorney general control the preparation of the budget for the judicial organ; and that judges cannot be removed, suspended, or transferred from the exercise of their functions, except in cases and according to the procedures prescribed by law.

Alternative Dispute Resolution

- Although, as of 1984, Panama has been a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, Panama's alternative dispute resolution law, which implemented and regulated arbitration, conciliation, and mediation as alternative dispute resolution mechanisms, was only passed in 1999. At first, the law was not well perceived by the judiciary, who considered rendering justice was its exclusive function (arbitration proceedings were previously governed by the Code of Civil Procedure). But in 2004, the National Assembly approved a series of amendments to the Constitution including certain provisions relevant to the acknowledgment of the use of arbitration in the resolution of disputes. The Constitutional amendments were approved and as a result, an important step forward was made in the promotion of the use of arbitration in the resolution of commercial disputes as well as in contracts with the government.
- In addition to acknowledging that arbitration was also a means of administering justice, the amendments acknowledged the arbitration tribunal's capacity to decide, on its own, if it was competent or not to decide on a matter submitted to arbitration and not the ordinary civil courts. It was also acknowledged that approval from the cabinet of ministers was not necessary as a formality to initiate arbitration proceedings, provided the public contract object of dispute already had an arbitration clause.
- Ever since the constitutional amendments were adopted, the Panamanian government has been proactive in promoting the use of arbitration as an alternate dispute resolution mechanism for private matters as well as in public contracts, and has incorporated its use in various areas of the law. For example, in recent amendments to the Code of Maritime Procedure, the use of arbitration was acknowledged as a mechanism to resolve maritime litigation disputes, establishing the duty of the maritime judge to refer disputes to the arbitration tribunal when evidence of the existence of an arbitration clause was provided by one of the parties; the Consumer Protection law of 2007 introduced a chapter on Consumer Matters Arbitration (a matter yet to be regulated).
- Panama's dominant arbitration centers are the Center for Conciliation and Arbitration hosted by the Panamanian chamber of commerce, Industries and Agriculture (CeCAP), and the Center for Resolution of Controversies of the Panama Construction Chamber (CESCON). Both have extensive experience in national and international commercial arbitration, as well as in disputes related to the public and private sector. In addition the International Chamber of Commerce (ICC) has established a Panama Chapter with the Panamanian Chamber of Commerce, Industries and Agriculture, and actively promotes ICC arbitration for the resolution of commercial disputes.

IMMIGRATION PROCEDURES

- The law establishes four categories of foreigners entering the Panamanian territory:
 - Non-residents: tourists, transit passengers and crew, fishermen, workers shows, casual workers, domestic workers, short stay visas.
 - Temporary residents: those who come into Panamanian territory for work, for reasons of investment, special policies, for reasons of education, for religious reasons, for humanitarian reasons, and for family reunification.
 - Permanent residents: those who enter Panama, for economic or investment purposes, or by special policies or for family reunification.
 - Foreigners under protection of the Republic of Panama: refugees, asylum seekers, stateless persons accepted on humanitarian grounds.

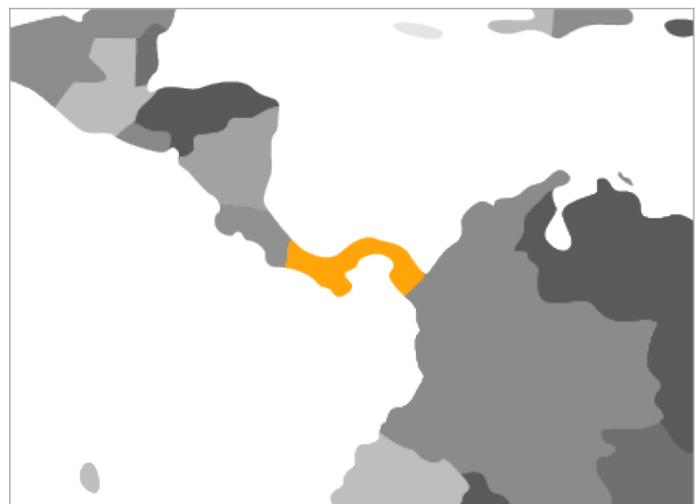
Tourist Visa Requirements

- Most foreigners enter Panama, with a tourist visa or a tourist card, which allows them to stay in the country for a 90-day period. There are exceptions for citizens of several countries who do not need a tourist visa or tourist card to enter the territory.

Visas/Permits

- Tourist Visa: Runs for 90 days with a possibility for a 90-day renewal for good cause, not an automatic renewal.
- Reforestation: The temporary visa is US\$60,000 minimum with a 3-hectare requirement. The permanent reforestation visa is US\$80,000 with a requirement of 5 hectares.
- Self-Solvency Visa (bank time deposit): US\$300,000 in a three year time deposit at any Panamanian bank.
- Self-Solvency Investor Visa (real estate): requires US\$300,000 in titled Panama real property. You can mix real estate and time deposite of US\$300,000. It is possible to hold real estate under a Panama Foundation if primary applicant is the beneficiary of the foundation or if the founder.
- Rentist Visa: Requires a time deposit in the National Bank of Panama or Caja de Ahorros for five years that yields US\$2,000 per month.
- Pensioned Person Visa (Retirement Visa): The applicant must show a government or private pension income guaranteed for life of US\$1,000 per month. You can be any age and is permanent, no renewals needed. Applicants can apply for citizenship after five years. There is a provision to mix property up to US\$100,000 in personally held Panama real estate.
- Permanent Residency for Specific Nationalities: This permit grants permanent residency to citizens of the following countries: United Kingdom, Germany, Argentina, Australia, South Korea, Austria, Brazil, Belgium, Canada, Spain, United States of America, Slovakia, France, Finland, Netherlands, Republic of Ireland, Japan, Norway, Czech Republic, Switzerland, Singapore, Uruguay, Chile, Sweden, Poland, Hungary, Greece, Portugal, Croatia, Estonia, Lithuania, Latvia,

- Cyprus, Montenegro, Israel, Denmark, South Africa, New Zealand, Hong Kong, Luxemburg, Liechtenstein, Monaco, Andorra, Taiwan, San Marino, and Costa Rica, who wish to pursue any economic, labor, or professional activities in Panama. Once the permanent residency is approved, an Indefinite Work Permit may be requested, thus allowing the foreigner to work in Panama.
- Work Permits: Work visas must be approved before the foreign employee can start. Any foreigners caught working without permits will be fined and deported. Some work permits are not permanent and must be renewed. Foreign workers must contribute to social security.
- Multiple Entry Visas: Are required for the provisional processing card, for non-residents who are applying for a Panama residency. Approved temporary and permanent residents are not required to have this visa.
- Visas for Permanent Personnel of Multinational Company Headquarters: These visas are granted to foreign personnel at the management staff or executive levels, and their dependents. Visas are issued for five years, renewable for the same period of time. It is not necessary to obtain a work permit with these types of visas.
- Visas for Dependents of Personnel of Multinational Company Headquarters: These apply for spouse, underage children, or students under 25 years of age, and for parents who will remain in Panama under the responsibility of the executives of Multinational Company Headquarters. The term of the dependent visa is equal to the term of the visa granted to Permanent Personnel of Multinational Company Headquarters whose application covers.
- Special Visas for Temporary Personnel of Multinational Company Headquarters: These visas are issued to any personnel of a Multinational Company Headquarters that has to come to Panama for activities related to the Multinational Company Headquarters, like technical services or training, and has a maximum term of three months, renewable only once for the same period of time. This type of visa also eliminates the requirement of obtaining a working permit or any other permit from any governmental authority.





PERU

- Strategically located on the west central coast of South America, with total land area of 1,285,215.60 km² (third largest country in South America).
- Population: 30 million, over 75% living in urban areas.
- Constitutional democratic republic with a multiparty system. President is head of state and government.
- Dominant religion is Roman Catholic (81%). Peru allows for freedom of religion.
- Spanish is the main language with Quechua, Aymara, and other indigenous languages also having equal official status (majority of business sector also speaks English).
- Currency: Nuevo Sol, with free-floating exchange rate.
- Peru has obtained Investment-grade status from all three credit rating agencies (Standard & Poor's and Fitch in 2008, Moody's in 2009).
- Peru's GDP has shown steady growth in the past six years, with an average of 7.1% growth per year. In 2010 alone the GDP grew 8.8% and in 2011, 6.9%.
- Several ports, airports, and a road system provide infrastructure to serve as a connecting bridge between South American, Asian, and United States markets.
- More than 50% of Peruvian exports come from mining, mainly copper, gold, molybdenum, silver, and zinc. However, the country has substantially increased agricultural exports, becoming a world-leading exporter of asparagus and dried paprika. Forestry, fishing, hydrocarbons and chemicals, textiles, clothing, manufacturing, jewelry, metallurgy have all increased as exports.
- Major suppliers of the Peruvian government are as follows: U.S. (19.5%), China (16.8%), Brazil (6.4%), Ecuador (5.0%), Argentina (4.9%), South Korea (4.0%), and Colombia (3.9%).
- Investment growth areas include mining (gold, silver, copper, zinc, lead, iron), telecommunications, finance, fisheries, agriculture, oil and gas, manufacturing-related industries, tourism, and wood resources.

BUSINESS PRESENCE

- Main types of business models: The most commonly used corporate forms by investors are corporations ("*sociedad anónima*") of different modalities (open and closely held corporations), as well as limited liability companies. Locally incorporated companies are used in most activities. Foreign companies can establish branch offices in Peru, but they are required to appoint a permanent legal representative in the country.
- Peru's corporate laws allow foreigners, both domiciled and non-domiciled entities and/or individuals, to own equity in local companies in almost every sector. Those where restrictions apply are referred to below.
- Corporate laws make no restrictions between local and foreigner Board Members allowing non-domiciled foreigners to serve as Board Members. Local laws allow board meetings to be held even if board members are not physically present and votes can be cast through electronic means.

- The closely held corporation ("*sociedad anónima cerrada*") is the most widely used corporate form.
- Procedures to incorporate any form of corporate entity are generally similar with the requirement that all entities be incorporated by public deed. The incorporation process will take anywhere from seven to 14 days, no minimum capital required (usually a company is incorporated with initial capital of S/.1,000 or US\$255).

FOREIGN INVESTMENT RESTRICTIONS AND CONDITIONS

- Peru offers a favorable legal framework that promotes and protects foreign investment. Foreign investment laws guarantee the possibility of investing in almost every economic sector, granting the same rights to local and foreign investors, with equal property rights for foreign investors and nationals as established by the Peruvian constitution. The shareholders with the restrictions below indicated can be foreign as well as the general manager. Peruvian residence is required for the general manager, though not for the members of the board.

Restrictions on Equity Participation

- Freedom to purchase stocks from local persons/companies, free access to internal and external credit and free transfer of capital. Certain restrictions apply to radio, television, and air transport sectors.

Investments That Require Government Authorization

- Investment in areas located within 50 km of the country's frontiers, as well as in arms, ammunition, and explosive industries requires prior approval from the appropriate government agency.

Approvals and Licensing

- No authorizations are required to incorporate a company, except in the case of Superintendence of Banking and Insurance.
- Approvals and licensing are required for the operation of regular business activity. These may be obtained with the local authorities (city hall, taxpayers registry, for example) companies entering into regulated markets (i.e. banking, regulated by

EXCHANGE CONTROL

- There is no foreign exchange control. The Peruvian constitution guarantees freedom to hold and dispose of foreign currency.
- There are no restrictions on remittances of profits, dividends, royalties, and capital although investors are encouraged to register foreign investment with *ProInversion* to secure the investment.
- Exporters and importers can conduct transactions freely on the open market and are not required to channel foreign exchange transactions through the Central Reserve Bank of Peru.

Free Trade Markets and Agreements

- Peru maintains a proactive position of free trade with other markets including a free trade area among the Andean nations of Peru, Colombia, Ecuador, and Bolivia (*Comunidad Andina*).
- Economic Complementation Agreement No. 58 (ACE 58) signed by Peru, Argentina, Brazil, Paraguay, and Uruguay, States of MERCOSUR.
- Peru is a member of APEC (Economic Cooperation Forum Asia-Pacific).
- Free trade agreements with the U.S., China, Singapore, Canada, Japan and South Korea, Panama, Mexico, Thailand, Cuba, Chile, EFTA (European Free Trade Agreement) have been signed and are in full force and effect, while free trade agreements with Venezuela, the European Union, Costa Rica, and Guatemala are about to take effect. Negotiations are currently in course for free trade agreement with Honduras and El Salvador.

TAXATION

Corporate Income Tax

- Domiciled corporations are taxed at a rate of 30% on a worldwide income basis. Branches and permanent establishments of foreign corporate bodies are taxed at a rate of 30% on Peruvian source income only. Domicile in the case of corporate bodies and permanent establishments is based on place of incorporation or place of establishment concept, respectively.
- Corporate income tax is assessed on the yearly taxable profit derived from financial statements after operating proper tax adjustments.
- Dividends and other profit distribution schemes, as received from domiciled corporate bodies, are subject to 4.1% withheld by payer in a final manner, except where a domicile corporate body is the beneficiary.

Personal Income Tax

- Domiciled individuals are subject to personal income tax on a worldwide income basis.
- Domicile in the case of individuals is based on but not limited to the civil domicile concept. Foreign individuals are deemed as domiciled in Peru for tax purposes if they have resided in Peru for over 183 calendar days within a 12-month period.
- Domiciled individuals in Peru are subject to progressive tax rates (15%, 21% and 30%) on a yearly net income basis.
- Capital gains and income derived from capital, both sourced in Peru, are subject to a 5% effective tax rate.

Non-domiciled Income Tax (Withholding Tax)

- Non-domiciled corporations and non-domiciled individuals are taxed only on Peruvian source income.
- Non-domiciled corporations are subject to a general flat rate of 30% on their gross Peruvian-source income. Some allowance

could be deducted from the gross income (base cost in capital gains) provided that an invested capital certificate issued by the Tax Authority is rendered. Some other flat rates apply depending on the type on income obtained.

- Non-domiciled individuals are subject to a different set of flat rates depending on the type of Peruvian source income, such as 4.1% (dividends), 4.99% (some interests), or 30% on their gross Peruvian-source income. Some allowance could be deducted from the gross income (base cost in capital gains) provided that an invested capital certificate issued by the Tax Authority is rendered.

Value Added Tax

- Peruvian valued added tax (IGV) is applied on the sale of movable property, commercial services rendered, commercial services utilization in Peru, construction contracts, the first sale of real property by the constructor, and the import of goods.
- IGV is levied at a 16% rate, although this tax is actually imposed jointly with a Municipal Promotional Tax of 2%. Therefore the effective rate charged is 18%.
- Although the tax will be applied on each level of the commercialization chain, it is designed to transfer to the final consumer.
- In that sense, IGV paid upon acquisition of goods and services can be deducted as a fiscal credit for the domiciled company when determining its tax due.

Excise Tax

- Excise tax is applied on the consumption of luxury goods, produced or imported, alcoholic beverages, soft drinks, gambling, and games of chance. Tax rates vary depending on the type of good (0% to 50%) or the assessment system (sale value basis, final consumer price, fixed rate).

Real Property Taxes

- *Alcabala Tax*, as it is called in Peru, is applied on the purchase of real property at a rate of 3%.

Other Taxes

- Temporary Tax on Net Assets is a tax applied on net assets, entered into the books on December 31 of the previous year. The tax effectively paid can be used as a credit against advance payments or against the regularization payment of the income tax. The rates are: (i) 0% over the net assets for S/.1,000,000 and (ii) 0.4% over the excess.
- Financial Transactions Tax is a tax levied at a 0.005% rate on banking operations in national or foreign currency (both debits and credits). It can be deducted as an expense for income tax purposes.
- Customs Duties levy the import of foreign goods and are calculated on the import CIF value. The rates go from 0% to 11%, depending on the type of imported goods. Some goods are subject to additional customs surtax.

Double Taxation Agreements

- In order to solve problems with international double tax

burdens, Peru has signed bilateral agreements with Chile, Canada, Brazil, and with states within the Andean Community (Ecuador, Bolivia, and Colombia).

TAX AND INVESTMENT INCENTIVES

- Special regulations for export-processing zones provide for tax exemptions on income tax, IGV, and excise tax, use of temporary labor as needed, greater flexibility in labor contracts, and for setting wage rates based on supply and demand.

IGV Early Recovery Regime – Legislative Decree N° 973

- Special Early Recovery Regimes applicable to development and/or exploitation of natural resources activities were articulated.
- This system consists of the refund of the tax credit generated on imports and/or local purchases of certain goods and services during the pre-production stage, to be used directly by the regime's beneficiaries in the execution of projects contemplated under investment agreements and destined to the performance of transactions taxed with the VAT.

IGV Definitive Recovery Regime – Law N° 28754

- The definitive recovery regime consists on the refund of IGV that has been transferred or paid on import operations and/or local acquisitions of certain goods and services during the preoperational phase of infrastructure public work and public services, provided they will be destined to non taxed transactions and used directly in the implementation of investment projects in public infrastructure and utilities.
- Under this regime, the concessionaire is entitled to recover the VAT levied on the investments in the preoperative stage, provided that its purchases were intended for the conduct of operations not taxed with IGV.

Legal Stability Agreements

- Investors may enter into Legal Stability Agreements with the government whereby the investor is able to obtain certain guarantees for the companies and towards their investment with respect to (i) income tax levied on investors and companies; (ii) free exchange of foreign currency and the remittance of capital and profits (only for investors); (iii) hiring of workers (only for companies); and (iv) export promotion measures, including drawback (only for companies receiving investments).
- As per applicable laws, Legal Stability Agreements can be signed by those investors who undertake to make either financial contribution to the capital stock of already constituted companies or to-be-constituted ones, or risk investments under agreement with third parties, through the National Financial System, for which the least amount is as follows: (i) US\$10 million for the mining and oil sectors; and (ii) US\$5 million for the other sectors.
- Concession agreements entered into with the Peruvian government on infrastructure projects and/or public services in which investors hold an interest may obtain legal stability for the same term during which the concession is granted.

EMPLOYMENT LAW

- Maximum working hours are 48 hours per week. A full-time workday may vary from four hours up to eight hours maximum.
- Statutory minimum wage is currently set at S/.750.00.
- Overtime pay is a surcharge of 35% for the first two hours. Afterwards overtime work is paid at a 25% surcharge. Management personnel and workers earning non-wage compensation (not subject to control by employer) are not entitled to overtime benefits. Overtime should be agreed upon between employers and employees.
- Local labor laws require the withholding of income tax from salaries and wages of both residents and non-residents. Non-resident employees income is withheld at a flat 30%. Resident wages are subject to withholdings from 15% to 30% depending on the amount of wages.
- Employers are required to observe and grant the following mandatory benefits to employees: 30 days paid vacation, 20 days medical leave per calendar year, legal bonuses equivalent to one monthly salary each in July and December, life insurance (0.53% of monthly wages), family allowance (10% of minimum wage), complementary risk insurance (in high risk activities).
- For severance or unemployment protection (*Compensación por Tiempo de Servicios*) employers must pay one monthly salary per year. This amount must be paid in the bank account established by the employee.
- *Essalud* provides social security protection to Peruvian employees. Contributions to *Essalud* must be paid by employers equivalent to 9% of the employee's monthly wages.
- Labor unions are part of the collective rights of employees. Strikes are allowed in matters covered by collective bargaining.
- Employers can hire foreign employees but must not allow the number of foreign employees to exceed 20% of the total number of employees in the company. Likewise total foreign employees' salary cannot be above 30% of the total payroll. There are exemptions related to managing positions.
- Companies with more than 100 employees, must have internal labor regulations (*Reglamento Interno de Trabajo*) that must be approved by the Labor Authority.
- Companies with more than 20 employees must have a Health and Security Internal Regulations.

INTELLECTUAL PROPERTY

- Intellectual property protection in Peru covers trademarks, patents, utility models, industrial design, business secrets, trade names, slogans, designations of origin, layout of integrated circuits, licensing, and assignment of trademarks.
- The Industrial Property Agency (*Indecopi*) provides equal treatment to national and foreign owners of trademarks. The law does not distinguish between individuals or corporations.
- Trademark registration entitles the holder exclusive use for ten years and may be renewed for successive ten-year periods.

Trademark renewal does require proof of trademark use and may be granted automatically on the same terms as the original registration.

- Patent protection is given for a term of 20 years and that of the utility patent is for a period of ten years from the filing date of the corresponding application with the Inventions and New Technologies Administration at the *Indecopi*. Once the term has expired, the patent shall assume a public nature. It is not possible to grant more than one patent for the same invention.
- Peru is a member of the World Trade Organization and is a contracting party of the Paris Convention and Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS).

DISPUTE RESOLUTION

- Peru adopts a civil law system with a hierarchical justice system headed by the supreme court, superior courts (with jurisdiction over several entire departments), specialized civil criminal and mixed courts, and justice of peace courts. Peruvian courts can prove to be a complicated system to navigate.
- Alternate dispute resolution is available and widely utilized through mediation and arbitration. Parties may agree to a choice of applicable laws, provided the selected laws are compatible with international public policy.
- The 2008 Peruvian arbitration law is based on 1985 UNCITRAL Model Law and applies internationally used arbitration rules and principles.
- Peru has also joined the International Convention for Settlement of International Disputes (ICSID) as an alternative to settle disputes arising between investors and the government.

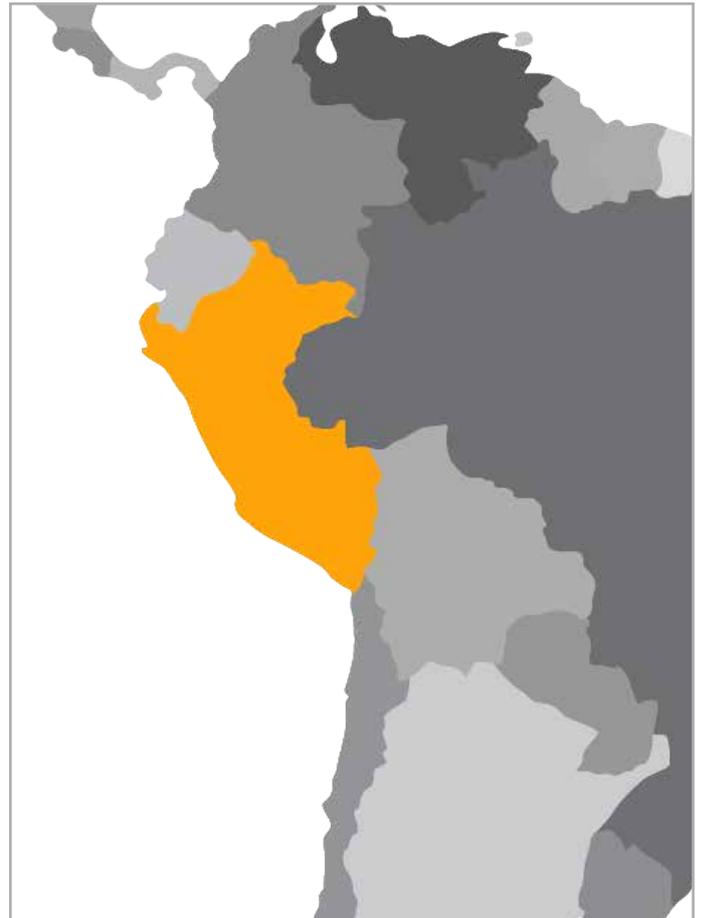
IMMIGRATION PROCEDURES

Business Visa Requirements

- All Consulates require an Invitation Letter from the Peruvian Company. Depending on the Consulate where the visa is issued, there are different requirements. This kind of visa allows foreign citizens to sign any kind of document in Peru.

Working Visa Requirements

- Working Visas are granted to foreign employees who have a labor agreement and will develop activities as an employee. Foreign citizens should enter Peru with a temporary business visa in order to sign the labor contract. If not, we would need to ask for a special permit to sign contracts. To start the immigration procedure it would be necessary to have the approval of the labor contract by the Labor Authority.
- The immigration procedure takes at least three months.





URUGUAY

- Centrally located in South America, with an area of 176,215 km².
- Population comprises those of European descent 93%, African descent 5%, Mestizo 1%.
- Spanish is the national language; English is widely written and spoken, especially in urban areas and for business.
- Currency: Uruguayan Peso.
- Investment growth areas include agribusiness, forestry, logistics, real estate, energy, finance, tourism.

BUSINESS PRESENCE

- Main types of business entities in Uruguay include corporations and limited liabilities companies; less frequently used are partnerships.
- Corporations may be newly incorporated or purchased “off the shelf.”
- Branches of foreign companies may also be opened in Uruguay.

FOREIGN INVESTMENT RESTRICTIONS AND CONDITIONS

- Generally no restrictions are imposed on foreigners owning equity in Uruguayan companies. Directors may be Uruguayan nationals or foreigners.
- The hiring of foreign personnel is not restricted, except in some areas such as shipping, and on entities located within free trade zones.

EXCHANGE CONTROL

- Uruguay maintains a long tradition of not restricting the purchase/sale of foreign currency.
- Likewise, the remittance of capital and profits is free and not restricted.

TAXATION

Principal Taxes Applicable in Uruguay Include:

- **Income Tax:** Income Tax in Uruguay consist of: (i) business tax, at an annual rate of 25% on net profits derived from Uruguayan-sourced business income; (ii) personal income tax, is a direct tax applied to resident individuals with Uruguayan-sourced income. The tax is applied under a dual system that distinguishes income derived from capital source (taxed at proportional rates that range from 3% to 12%), and from the labor source (taxed at progressive rates from 0% to 25%); and, (iii) non-resident

income tax, an annual tax applied to Uruguayan-sourced income of non-residents (individuals and legal entities). This tax is applied at proportional rates that range from 3% to 12%, depending on income type.

- Regulations require withholding and retentions for various types of income.
- **Value Added Tax (VAT)** is imposed on the circulation of goods and services, as well as imports. The basic rate for this tax is 22% and the minimum rate is 10%, which is applied to prime necessity and medical products.
- **Property tax** is applied to assets located in the country at year end (after deduction of certain liabilities), at a general rate of 1.5%.
- **Specific internal tax** is applied to the first sale of certain goods, such as beverages, tobacco, fuel, cosmetics, and vehicles at different rates according to the product.

INVESTMENT INCENTIVES

- The current investment promotion system declares that the promotion and protection of investments made by domestic and foreign investors in the country is an issue of national interest.
- Investment promotion law created streamlined procedures under which investments may qualify for substantial tax exemptions, based on objective and transparent criteria, such as the extent to which a project incorporates national added value, fosters territorial decentralization, creates quality jobs, enhances the activity of small to medium-sized companies, and promotes and diversifies exports, *inter alia*.
- Basic principles of the investment promotion law include: (i) equal treatment to national and foreign investment; (ii) investments do not require prior authorization or registration, although an environmental impact study is required in certain cases; (iii) free transferability of capital and profits overseas.

- Investment promotional law also establishes other automatic benefits: (i) exemption from property tax of moveable goods directly used in production and equipment for electronic data processing; (ii) exemption from value added tax and specific internal tax for certain imported goods; and (iii) return of VAT included in local purchases of moveable goods for production and equipment for electronic data processing.
- In addition, investment promotion law empowers the executive branch to exempt from property tax the following assets: (i) fixed assets for manufacturing and agribusiness; (ii) intangible goods such as patents, industrial models, copyrights, goodwill, trade names and concessions granted for prospecting, crops, extraction and exploitation of natural resources; and (iii) other goods, procedures, inventions or creations that incorporate technological innovation and facilitate technology transfers.
- **Temporary Admission:** Products may be imported into Uruguay under temporary admission or drawback provisions, exempt from import duties, in order to be processed, assembled, transformed or integrated, but they must be re-exported within 18 months. The system applies to raw materials; parts and accessories; motors; packaging and packaging materials; matrix, molds and models; intermediate goods; products that are part of the manufacturing products.
- **Free Trade Zones:** These are areas within the Uruguayan territory which are geographically delimited and in which industrial, commercial, and services activities may be carried out (e.g. warehousing, call centers, logistics and distribution, manufacturing, financial services, software and data processing), under a special legal system of customs and fiscal exemptions. These activities are considered to take place outside Uruguayan territory.
- Those operating in the free trade zones are exempted from: (i) all national taxation created or to be created except, as applicable; (ii) outgoing and ingoing goods are exempted from all taxes; (iii) tax exemptions do not apply to social security contributions, except for foreign personnel who may opt not to join the national social security system. At least 75% of the personnel must be composed by Uruguayan citizens, though this percentage can be reduced under authorization by the executive power.
- Goods introduced into a free trade zone from Uruguayan territory, are considered to be exports, and goods introduced from a free trade zone into Uruguayan territory are considered to be imports, thus paying the corresponding tariffs and taxes.

EMPLOYMENT LAW

- The constitution guarantees workers' right to work, to organize themselves in associations, and the right to strike.
- The maximum working hours are 48 hours per week, or eight hours per day. These limitations do not apply to management positions. The hours worked beyond those limits are considered to be overtime and are paid at a rate double that for normal hours. Overtime on holidays or day off, is paid at 2.5 times the value of normal hours.
- Complementary benefits to employees established by law are: (i) paid holidays; (ii) an extra monthly salary, divided into two halves, payable in June and December; (iii) a holiday partial salary, which is paid before the worker takes his or her annual holiday.
- Union members are protected by law against dismissal for union activities.
- The social security system currently allows for retirement at age 60 for both men and women, 30 years of working.
- Workers who become disabled on the job receive a monthly pension from the government equal to 2/3 of their salaries. Uruguay has ratified most conventions that protect workers' rights, and generally adheres to their provisions.
- The government provides six months of unemployment benefits.

INTELLECTUAL PROPERTY

- Intellectual property protection in Uruguay comprises patents, industrial design, patents for utility models, industrial designs, trademarks, copyright, commercial names and geographical indications.
- Patents are protected by law and have a 20-year term of protection from the filing date. Patents for utility models and industrial designs have a ten-year term of protection from the filing date and may be extended for an additional five.
- Under Uruguayan law a registered trademark lasts ten years and can be renewed as many times as desired.
- Copyright protection includes literary, musical or artistic works, sound recordings, photography and other works, and lasts 50 years.
- Other assurances offered by Uruguay to investors derive from its membership with the World Intellectual Property Organization (WIPO), together with its ratification of the Bern and Universal Copyright Conventions, as well as the Paris Convention for the Protection of Industrial Property, and from its membership with the International Center for the Settlement of Investment Disputes (ICSID).

DISPUTE RESOLUTION

- Under Uruguayan procedural law, prior to initiation of any action in an ordinary proceeding a settlement hearing has to be called.
- Civil and commercial disputes may be heard by a district court or by a peace court, depending on the amount of the claim.
- Employment disputes are heard in a district court for labor matters.
- Legislation recognizes the full effectiveness of foreign findings and sentences, which are submitted to exequatur procedure for their enforcement.
- Arbitration tribunals may be guided by Uruguayan law or by foreign law, without distinction.

- Uruguayan law regulates the right of the parties to resolve their commercial disputes through arbitration. According to these rules, the parties may validly stipulate arbitration clauses providing for the settlement through arbitration of future disputes that may arise between them out of their contractual relationship. Uruguayan laws on execution of foreign judgments are also applicable to execution of foreign arbitration awards. Therefore, in the absence of a treaty, or similar convention, execution of foreign awards will follow the rules described herein for the execution of foreign judgments.
- Uruguay is a member to the 1979 Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards, to the 1975 Inter-American Convention on International Commercial Arbitration, and to the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

IMMIGRATION PROCEDURES

- Entry to Uruguay is free, and there are no prior permits, invitations, visas (in most cases), nor vaccinations required.
- Foreigners arriving in Uruguay may remain for 90 days without paid employment. This may be extended to a further 90 days at the request of the interested party.
- There is no discrimination in law or in fact between nationals and foreigners, except as regards those political rights which are inherent to citizenship.
- Migrants admitted as temporary residents or as permanent residents have equal treatment as nationals with regard to labor rights.
- Those migrants that have not completed the residence process may request from the national direction of immigration a reentry permit to travel and reenter Uruguay.





DOING BUSINESS IN LATIN AMERICA

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