



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 more than 110 law firms serving key jurisdictions around the world, it is my pleasure to introduce you to the Doing Business in Latin America Guide, written and produced by member firms representing this key global region. We hope you will find it a valuable resource when considering operations in these jurisdictions. Thus far, Globalaw has produced Doing Business Guides in Asia Pacific, Europe and Latin America, respectively, each of which represents the individual and collaborative expertise of the contributing law firms.

Globalaw's over 4,500 practitioners bring a universe of diverse practice areas in their individual markets. The Guides serve not only to demonstrate this expertise but also to provide a roadmap of 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 the professionals at our Secretariat, MCI, for their time and effort in 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,



Julia M.I. Holden-Davis

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 generate 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 are 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.

TEMPORARY REGULATIONS DUE TO COVID DISEASE

- The Federal Government has issued a package of temporary regulations due to the COVID disease. These regulations modify certain aspects of the above mentioned concepts temporarily and, once this pandemic is over, will probably return to the original legal frameworks previously explained.
- Some of these temporary restrictions affect the following areas:
 - (i) As the Federal Government is paying part of the salaries of private employees and also reducing the social security costs, companies are not allowed to dismiss employees during the time they receive these benefits.
 - (ii) Although financial institutions continue to provide the services they usually offer remotely, there are some restrictions regarding FX, import transactions and payments in foreign currencies.
 - (iii) A mandatory social isolation regime is in force restricting circulation of individuals and working activities that are considered not essential by the Federal Government.

Please check in our website at www.nicholsonycano.com.ar for the latest updates about these COVID related matters.





BOLIVIA

- The official name of the country is Plurinational State of Bolivia (Estado Plurinacional de Bolivia) and it is often referred to as the “heart of South America” because of its location in the middle of the continent and with no direct access to the ocean.
- In accordance to the 2009 Political Constitution Bolivia is a Social Unitary State of Plurinational Community Rights, free, independent, sovereign, democratic, intercultural, decentralized and with autonomies.
- Main principles established and promoted in the Constitution are: ama qhilla (don't be lazy), ama llulla (don't be a liar), ama suwa (don't be a thief), suma qamaña (live well), ñandereko (harmonious life), teko kavi (good life), ivi maraei (earth with no evil) and qhapaj ñan (noble path).
- The country has a population of approximately 10,1 million habitants, covering 1.098.581 km² and it is divided in 9 departments.
- The capital of the country and seat of the Judiciary is Sucre. La Paz is seat of the Executive, Legislative and Electoral Bodies.
- Official languages recognized by the Political Constitution are Spanish and other 36 languages of the indigenous peasant nations and communities.
- Currency: Boliviano (Bs)

THE BUSINESS ENVIRONMENT

- The new constitutional rules implemented in 2009 and its “non liberal” though “plural” orientation made and makes the enactment of numerous implementing laws a necessity. Some have been passed many others are pending. On the economic sectors' front there are for example new laws of Transport and Telecommunications, providing them greater legal stability. Though the hydrocarbons sector has also stabilized and new projects and ventures are under way, a new Law of Hydrocarbons is pending, as is the case with energy and water usage. A new Mining Law was enacted on May 2014, implementing certain constitutional changes in the sector with “formal” recognition of acquired rights for existing companies and operators. The process of change from the old system of concessions to a new form of recognition of rights by means of an administrative contract is underway. New application for free areas are concluding as well by means of said contracts, requiring, in this phase, congressional approval.
- A new Law of Financial Services enacted in August of 2013, a long and complex set of new rules, has substituted the prior Banking Law and its regulations. The financial market is characterized by a greater control and participation of the state. Some changes have occurred for the insurance sector as well.
- New Laws on Arbitration and Investments have been passed, aimed to give national and foreign investors more confidence and clarity in their relations and investments in Bolivia. However, old international treaties for the protection of foreign investment have been denounced. They maintain their validity for various years ahead, depending on each case, in respect of investments made prior to denunciation. Local arbitration and local courts, depending on the subject matter, have become the governing system for controversies of this nature.
- On the social side, a new Labor Code in substitution of a large number of laws and regulations governing labor is expected for the near future. Other new Codes have been approved or new are forthcoming. The most recent one approved is a very relevant Code of Civil Procedure (which entered into full effect on February 2016).
- Since 2006 the Government adopted 2006 a salary increase policy. Increase varied from year to year and was applied until 2019, when the Minimum Wage was fixed at Bs. 2.122. The yearly increase was mandatory for all employers with respect to all employees (except for high ranked officers) and the impact on the budgets was quite important, causing financial difficulties and in some cases the winding up of the companies. For 2020 the salary was not increased given the 2020 COVID 19 Pandemic.

- Given the recognition of indigenous peoples and peasant community rights, a draft law for Prior Consultation is in process, substituting interim ruler governing the matter. Special rules govern the so called Mother Earth Frights. For mining, the new Mining Law contains as complete procedure for prior consultation. This is extremely relevant mainly for the extractive industries which have suffered difficulties for implementing projects and activities as a result of opposition by peasant communities. A revision of the land reform laws is also expected.
- During the period of 2006 – 2019, State fiscalization and control on private companies increased greatly, particularly on taxation, regulatory and corporate compliance. The National Confederation of Private Companies complained to the government in office on excesses by certain authorities, mainly because of unjustified and excessive sanctions. Large controversial tax claims are in process of resolution by administrative or judicial authorities. Given the change of government at the end of 2019, more objective rules and procedures are being implemented.
- In the meantime the general tax legislation and regulations enacted in the past essentially continue in effect, with some important new secondary regulations including new regulations on price transfer. Changes have been introduced to the long term social security system, with some increases in contributions.
- Before the 2020 pandemic, Bolivian economy remained strong. It was considered to be one of the fastest growing in the Latin American region. Exports, especially of natural gas with very favorable prices, provided a substantial income for the state; so did the new hydrocarbons' tax structure. Monetary and fiscal policies are under control for the moment: stable currency and fiscal and commercial accounts surpluses; high international reserves. The economy had witnessed very active commercial and agricultural and agro livestock activity and expansion of public and private construction within a stable and strong private and public financial system. State participation in the economy, by way of old and new state or mixed economy companies on a variety of fronts, where constantly increasing. A new Law of Public Companies (December 2013) introduced important changes facilitating their operations. Private and foreign investment is yet considered insufficient.
- The change of government at the end of 2019 brought new positive attitudes and opening towards the private sector. An interim government, to rule during this year until new elections are conducted, took over with an important political impact regarding the economy in general. However, the process has been seriously affected because of the COVID 19 pandemic. The government has been forced to approve a number of regulations restricting non-emergency economic activity. By the middle of 2020 reanimation of activity of a number of sectors had been authorized, together with guidelines for Biosecurity. The general conditions will continue however to be affected, particularly in the sectors of medium and small companies, a big one in the informal side and others. GDP is estimated to loose approximately 7,5% points compared with 2019. As with many countries, recovery will take quite a long time. Poverty is expected to grow, after years of positive recoveries. What the economic policies will be as from the end of the year highly

depend in the results of a new general election to be held in September 6th, if health conditions do not get seriously worse. Socialists of the old school and new democratic liberals will be in the struggle to conquer power.

BUSINESS PRESENCE

- Most commonly used figures in order to establish a foreign entity in Bolivia are a Subsidiary or a Branch. Adoption of the system of Apostille a couple of years ago, has facilitated legalization procedures for foreign documents.

Subsidiary

- A new entity may be formed in Bolivia, as a Bolivian company, in the form of either a stock company (Sociedad Anónima - S.A.) or a limited liability company (Sociedad de Responsabilidad Limitada - S.R.L.), becoming a subsidiary of the parent company. For that purpose, the company established outside Bolivia, participating as a stockholder or partner, is required to provide evidence that is legally incorporated and in good standing according to the laws of its country of origin. The liability of the shareholder or quota-holder is limited to the capital contributed to the company.
- Formalities to establish a subsidiary depend on the form adopted as a Bolivian company. Other than in the case of some regulated companies, if a stock company, the first requirement is to count with a minimum of three shareholders, companies and/or individuals and two partners if a limited liability company. Special regulations on each type of company include minimum capital requirements, procedures for decision making, officers, supervision of the company and others. A stock company must have a board of directors whilst a limited liability company normally doesn't have one. A stock company also has a "controlling" body called síndico.
- Subsidiaries, as well as other local companies, must be registered at the Commercial Registry and also has to file for registration with the Tax Service to obtain the Tax Registration Number (NIT for its acronym in Spanish). After both registrations are obtained, depending when the company will start operating, other registrations need to take place: (i) Municipal license; (ii) Employer's registration with the Labor Ministry; (iii) Registration with the Social Security Entity; (iv) Registration with the Pension Fund Administrator, and (v) Registration with the corresponding chamber.

Branch

- A company established outside Bolivia in compliance with laws of the country of origin is governed by such laws in regards to its form and legal existence. In order to perform its activities in Bolivia its legal capacity is to be recognized by registration with the Commercial Registry, filing the documents of incorporation, amendments, bylaws and other documents that certify the legal existence of the company in its country of origin as well as the authorization or resolution of the administrative body of the Company resolving the establishment of the branch or permanent representation in Bolivia, and appointment of the person(s) who will hold representation, with wide and sufficient powers in order to develop all the company's

activities, evidenced by a proper Power of Attorney (all documents duly legalized in country of origin). Parent company assumes unlimited liability for acts performed by the branch. Current new regulations will facilitate using virtual means for incorporating and registering new companies and for meeting other formal requirements. A system of virtual signatures has been put in place. The use of electronic means is growing.

- The Procedures for decision making in a branch depend on the parent company's policy and procedures. However, the local representative must have a broad and ample general administration power of attorney. The Branch should be administered by at least one General Manager.
- The legal representative or general manager, both in the case of a subsidiary and branch, if foreigner, must have proper working visas to be registered with the commercial registry and permanent residence to be registered with the Tax Registry. Passport is to be presented for verification.

IMMIGRATION CONTROLS

- As indicated above for subsidiaries and branches, in case the legal representative is a foreigner, he/she must obtain proper visas and permits. It is common to hire a Bolivian Citizen to act as a temporary manager/representative while the permanent officer to be appointed obtains such permits.
- In order to work in Bolivia, depending on the position or the term, foreign employees must obtain the following visas or permits: Fixed Purpose Visa (up to 90 days); Transitory Permanence for a Fixed Purpose (up to 180 days); Temporary Permanence (up to 3 years); Indefinite Permanence.
- Certain visas or permits may be obtained at the Bolivian Consulate in the country of Residency, requirements may vary. There is also a special regime for nationals of countries belonging to the Andean Community of Nations (CAN – Comunidad Andina de Naciones)

KEY EMPLOYMENT LAWS

- All labour rights recognized by Bolivian laws and regulations may not be renounced or waived by the employee under any circumstances. No contractual arrangement can modify the rules which are of a compulsory nature. In case of conflict when the employee claims certain rights or alleges facts, it is the employer who carries the burden of proof in order to respond and demonstrate the contrary. Earned salaries, labour rights, social benefits and contributions to the social security system which are not paid enjoy a privilege and preference for payment over all other credits, are indefeasible and no statute of limitations apply for the employee to file a claim.
- Salaries are negotiated between the parties, but in no case below the Minimum National Wage (Currently BOB 2.122, approx. US\$ 305). All salaries are subject to contributions and retentions established by law. Salaries can be fixed in Bolivianos or in a foreign currency. However, the payroll must be in Bolivianos or reflect the Bolivianos equivalent for purposes of payment of contributions and tax withholdings applicable to workers.

- Other concepts also payable to the workers are:
 - o Seniority Bonus ("Bono de Antigüedad"), which consists in a monthly payment in favor of employers who have completed 2 years of continuous work.
 - o Christmas Bonuses: Worker is entitled to an additional one month salary payment for Christmas ("Aguinaldo") (or a proportionate payment if less than a year work). The average of the salary of three months is applied for calculation of the Bonus. On November, 2013 the Government approved a Second Christmas Bonus, with the same characteristics as the one mentioned above, but to be paid each year if the gross domestic product is over 4.5%, calculated as of October of each year.
 - o Profit Bonus ("Prima"): If a company has annual profits an additional one salary is payable to each employee up to a maximum of 25% of the profits for all employees (if such 25% is not sufficient to pay one month's salary to each worker, then a prorated payment is to be calculated). The average of the salary of three months is also applied for calculation.
 - o Employees working within 50 kilometers of the international borders enjoy an additional border subsidy of 20% of basic salary.
 - o As to rules regarding the employment of foreign workers, only 15% of the workers of any employer may be of a foreign nationality, who also have to be of a technical nature. Also, remuneration of foreign workers of any employer may not exceed 15% of the payroll.
 - o Authorization of Employment Agreements of foreign workers before the Ministry of Labour is mandatory. This is also a requirement in order to obtain a working visa.
 - o The foreign worker who has contributed to the Integrated Pensions System may access to the transfer of the Balance on his/her Personal Account to the social security entity of his/her home country or other if certain required conditions are met upon termination of his/her Employment Agreement.
 - o Since 2006 there is a very strict principle of stability at the workplace and a non-justified dismissal, rejected by the worker may, after an administrative or judicial process, result on the obligation to reinstate the worker with the same salary and position. In case the worker accepts the dismissal he/she is entitled to severance payment in the equivalent of a one-month salary per year of work.
 - o Justified dismissal occurs only in cases established by the law and the cause must be fully demonstrated.
 - o The voluntary resignation which entitles the worker to collect indemnity for the time served is applicable if the worker has served for 3 continuous months or more.
 - o Labor regulations also include rules on types of employment agreements, day's work, extraordinary working hours or overtime, paid leave, home-office and many other matters spread in a large number of laws, decrees and resolutions.

CONTRACTING WITH THIRD PARTIES

- As part of the Civil Law System, general principles of the Bolivian Civil Code (and the Commercial Code, when applicable) must be followed.
- The minimum legal requirements for Contracts are:
 - The consent of the parties, which may be implicit or express
 - The purpose of the contract, which must be feasible, licit and specific
 - The cause of the contract, which must be licit, and
 - The formalities, when required (only certain contracts are required to be granted by means of a public deed)
- Failure to comply with the minimum requirements as indicated above may result on the nullity on annulment of the contracts.
- According to the Civil Code, applicable to commercial contracts, what is not incorporated into a contract but in respect of which there is an express rule of law, the rule of law is deemed to be incorporated into the contract. So, contracts do not need to expressly incorporate or make reference to rules of law, many of which, particularly for contracts, already preexist in a jurisdiction like Bolivia as a civil and not common law jurisdiction. When the law so authorizes, a rule may be modified by contract.
- Penalty clauses in substitution of compensation for damages can be used. If the penalty is disproportionate with the breach a court of law may reduce the penalty.

TAXATION OVERVIEW

- Companies incorporated in Bolivia, by way of a subsidiary or a branch, are subject to the following general tax regime:
 - The Value Added Tax (13%) on the total amount of the invoice within a system of VAT fiscal credits and debits to be declared and, depending on result, paid to the tax;
 - Transaction tax (3%) on the gross amount of income generated monthly by the company. IT taxes paid can be credited against the 25% annual corporate income tax under certain conditions.
 - Remittances of profits outside Bolivia are subject to a withholding tax of 12.5%, either if paid as a dividend to a foreign shareholder or as profit of parent company. The company in Bolivia is subject to a 25% Tax on Profits. It should be noted that in the case of a branch any profit resulting at year end would be deemed distributed to parent company unless a different resolution from parent company is presented and prepared before the closing of the fiscal year.
 - Employees are subject to Supplementary Regime to the Value Added Tax (RC-IVA) of 13%, applicable to salaries on a monthly basis. However, certain deductions apply and individuals are also entitled to credit against the tax all of the tax credits which they may have generated from purchases of goods and services supported with official invoices (AVT tax).

- Certain economical activities have additional taxes, e.g. hydrocarbons, mining, etc

INTELLECTUAL PROPERTY

- Intellectual Property protection in Bolivia is based on the Andean Community legislation, namely on Decisions 486 and 351, covering both Industrial Property and Copyright. There are also a few local laws that stem from the early 1900s. Bolivia recognizes protection for trademarks, collective marks, certification marks, appellations of origin, commercial names, patents, utility models and industrial designs. These right need to be registered in order to be protected. Also, copyright and related rights are recognized, these do not require a registration to be protected, they are protected as of the date of their creation. Bolivia is member to all major international IP conventions and agreements, including WTO and WIPO. All in all IP rights are well protected under Bolivian legislation, although their enforcement is not easy.
- The Bolivian National Service of Intellectual Property – SENAPI – is in charge of registering and controlling IP rights. Trademarks are registered in renewable periods of ten years, whereas patents are protected for a non-renewable twenty-year period, counted as of the day of application. Each Industrial Property application is published before their formal registrability examination by SENAPI for third party opposition purposes. Once an application is published and has received a third party opposition the applicant may present defense arguments, which will then be considered by SENAPI. SENAPI's decisions are appealable in two further administrative instances and one final judicial instance.

DISPUTE RESOLUTION

- By means of Law No 708 of June 25, 2015 a new Law on Conciliation and Arbitration has been enacted, which substitutes the previous Law No. 1770 (of 1997), which at the time was inspired by the modern tendencies on arbitration and was based on the UNCITRAL Model Law.
- The new law has resulted in rather rigid rules, almost like an arbitral code of procedure, despite of which private entities of administration are confident that such focus will not limit the administration services which they will continue to provide. The law also has an important accent in promoting conciliation, with detailed rules which are expected to contribute to the development of this ADR method.
- Matters which cannot be subject to arbitration (including a number related to state contracts) are detailed in the law and a special regime for investment conflict resolution has been incorporated, which opens up possibilities for arbitration arising in non-contractual and contractual relationships with the state, within a yet incomplete legal framework to be further implemented. A proposed regional center for the settlement of investment disputes should be created to complete the legal framework. This has been in process of negotiation for a number of years now.

- In February of 2016 a new Code of Civil Procedure has also come into effect, introducing new features for dispute resolution. Prior compulsory conciliation is one of the features. Also the introduction of oral proceedings in substitution of the lengthier traditional system. The Code updates rules on international judicial cooperation which is aimed at simplifying procedures for processing and recognition and enforcing foreign courts' orders and awards.





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: 211,752,519.
- 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 limited liability companies ("sociedade limitada"), as foreseen by the Brazilian civil code, or under the rules of corporations ("sociedade anônima"), as foreseen by Law No 6.404/76, as well as sole proprietorships, partnerships, and registered branches of foreign companies.
- The limited liability companies, from 2019 onwards¹ are authorized to be formed with one sole quotaholder, and corporations shall be incorporated by at least 2 shareholders. Those types of company do not have a minimum corporate capital established by law.
- 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.

¹ Law 13,874 of September 20, 2019, which amended article 1,052 of the Brazilian Civil Code.

FOREIGN INVESTMENT RESTRICTIONS AND CONDITIONS

Registry of Foreign Investments

- All investments made by foreign investors shall be registered before the Brazilian Central Bank, in the so-called system SISBACEN, through the Registry of Direct Foreign Investment (RDE).
- Investments in cash are recorded in the amount of the foreign currency invested in Brazil and, subsequently, converted into Brazilian Reais upon the execution of a currency exchange contract. An investment may also be made with assets in-kind, but in most cases an evaluation report is required.

Restrictions in Equity Participation

- Some economic activities such as mail and telegraph, activities related to media, nuclear energy, airlines with domestic flights concessions, sanitation, and the aerospace industry continue to be restricted to foreign investors. Foreign investment in the health sector has been generally allowed by law (not without the expected opposition of interested parties acting in the field).
- 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 federal government.
- Additionally, although there has been some flexibility in the matter, there are still 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.
- Every shareholder or quotaholder residing and/or domiciled overseas must have an attorney-in-fact duly domiciled in Brazil, with powers to receive service of process and to manage assets before the Brazilian Federal Revenue.

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.
- Foreign individuals living in the country and foreign corporations duly authorized to operate in Brazil may acquire rural land for the implementation of agricultural, livestock or industrial projects, if linked to their articles of association.
- Foreign companies that desire to own properties in Brazil must be enrolled with the Brazilian Federal Revenue.
- As a rule, the acquisition of real property in Brazil by foreigners is not permitted or has some restrictions in the following cases:
 - 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. Furthermore, the acquisition of rural property by a foreign corporation authorized to operate in Brazil shall not exceed 100 modules in the same conditions for the foreign individuals. 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 set forth by law.
 - 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.
 - 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.
 - A recent court decision affecting real estate located in São Paulo softens the restrictions applicable to the land purchase by foreign companies and companies controlled by foreign entities. There is a trend that courts of other jurisdictions may follow such decision, but up to now there is no controlling court decision.

Restrictions in Company Management

- Non-residents in Brazil and officers without permanent Brazilian VISA cannot be a member of the Executive Board of any Corporation or administrator of any limited liability company.

- Non-residents in Brazil can only be a member of the Board of Directors of a Corporation as long as they appoint an attorney-in-fact in Brazil, with powers to receive service of process.

Approvals and Licensing

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

EXCHANGE CONTROL

- Brazilian law confers on the Brazilian 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 the Brazilian Central Bank regulations, both of which operate at floating rates. They are the following:
 - 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.
 - Tourism floating exchange rate market. This market was developed for the international tourism industry, being it for business, leisure or study.

ANTI-CORRUPTION LAW

- Federal Law No 12.846/2013, also called the "Anticorruption Law" or "Clean Company Law," sets forth the possibility of making legal entities objectively accountable (and individuals subjectively accountable) for the practice of injurious acts against the principles and property of the national or foreign Public Administration.
- Besides other penalties established by said law, such as the mandatory dissolution of the legal entity, the legal entity engaged in acts corruption may also be subject to a fine that shall vary from 0.1% to 20% of its gross revenue before taxes.
- Moreover, the law determines that the value of such fine shall never be less than the economic advantage obtained by said.
- The sanctions applicable to legal entities may range from 0,1% to 20% of the entity's net revenue, being the amount higher than the undue benefit obtained from the sanctioned acts.
- The law authorizes the authorities to enter into a leniency agreement with the violator, meaning that all administrative sanctions may be dismissed, depending on the information put forth and willingness of the legal entity to bring its conduct in conformity with the law.

- In addition to the fines imposed the entity may be liable for civil sanctions such as the confiscation of assets, rights or amounts representing the proceedings of the illicit act and, in extreme cases, the partial or full suspension of the company's activities, compulsory dissolution and prohibition to enter agreements with governmental bodies.
- The leniency agreement set forth in the Anticorruption Law does not fend off the possibility of criminal sanctions being brought against the company and the individual involved with acts of corruption must contact the responsible authority for the criminal prosecution and enter into a specific agreement.
- The existence of an effective compliance program in the corporate structure is extremely relevant to the calculation of the dimension of the penalty, indicating that the law aims at preventing injurious acts and not simply sanctioning the violator. The legal entity's willingness to implement or improve compliance mechanisms is one of the requirements to enter into a leniency agreement.
- Presidential Decree No 8.420/2015 regulates the applicability of the Anticorruption Law, defining the structure and objectives of the compliance policy that shall be created and enforced by companies to identify and punish illegal activities carried out against either the Brazilian or foreign Administration, such as fraud, embezzlement, and other irregularities.
- Unlike the FCPA (Foreign Corrupt Practices Act), Brazilian laws and regulations against corruption do not set forth any instructions in terms of a gift and entertainment rule. Therefore, there is no objective provision (based in the cost of an asset or property, for example) regarding what may be perceived as an act of corruption or a simple display of affection towards a civil servant.
- Brazilian law and regulation against corruption only set forth instructions for whistleblowing and hotline activities in the recent Guide of "Integrity Program: guidelines for private companies" to assist companies in the fight against corruption. In the Guide, among the subjects and measures proposed, some rules, policies and procedures are listed in order to mitigate the risks related to corruption, for example, policies to direct the relationship with the public sector, policies regarding the offer of hospitality and gifts to national or foreign public agent and others.
- 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 public works for government interests may be carried out on the initiative of the public administration. However, the private sector can propose new infrastructure projects to the government, involving public works and services, through the Private Finance Initiative (PFI), consisting in a procedure by which the private entity may be allowed by the government to evaluate the feasibility studies of those projects. Once the project is approved, it is submitted for bidding and contracting by the public administration to be executed by the private sector.
- Public-private partnerships contracts (PPP) must have as a minimum value the amount of R\$20,000,000 and duration between the minimum of 5 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 professionalising 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 in Brazil comprises patents, trademarks, industrial design, copyright, software, geographical indications, plants varieties, indication of origin, unfair competition, layout designs of integrated circuits, and domain names.
- Registered patents, trademarks, service marks, and industrial design enjoy monopoly rights/protection for specific periods of time.
- In specific cases, the analysis of the trademark protection is not carried out only by the Brazilian Patent and Trademark Office (INPI), but also by regulatory agencies. We can, for example, mention in the application procedure the Brazilian Health Surveillance Agency (ANVISA), which is responsible for medicines.
- Unregistered trademarks are also protected by the Brazilian courts regarding as unfair competition.
- In relation to practices in the market, the Brazilian Competition Authority (CADE) is closely monitoring license agreements affecting competition in the 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.

¹ Law No 10.168, Article 2

- Copyright protection is granted for literary, musical or artistic works, sound recordings, broadcasts, films, databases and software, regardless of registration.
- The administration of the ccTLD “.br” is carried out by the Registro.br (registering entity). Several significant particularities must be observed regarding the registration and maintenance of domains by foreign companies, which are obliged to have a local legal representative and compromise to commence business activities in the country within one year of the domain registration.
- Disputes of domain names are settled through arbitration under the Registro.br, for domains registered in violation of intellectual property rights.
- IP Agreements, including the assignment of rights and/or technology, or other licenses must be duly recorded with the INPI to bear effects to third parties, and to, inter alia, for example, carry out offshore remittances as royalties.
- 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), the Madrid Protocol 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.

DATA PROTECTION

- Brazil has a specific law on Data Protection (Law No. 13.709/18 – “LGPD”), which provides that every company or individual that process data (i) in Brazil; (ii) offers products or render services to individuals located in Brazil; or (iii) collected the data in Brazil shall comply with such Law.
- LGPD is very similar to the EU GDPR, setting forth as individual's rights: (i) confirmation of the existence of data processing; (ii) access to data; (iii) correction of incomplete, inaccurate or outdated data; (iv) anonymization, blocking or elimination of unnecessary, excessive or processed without compliance to LGPD; (v) data portability to another service or product supplier; (vi) elimination of data treated with the consent of the individual; (vii) information from public and private entities with which the controller may transferred data; (viii) information on the possibility of not providing consent and its consequences; (ix) revocation of consent.
- In order to comply with the Brazilian Data Protection Law, some companies seek legal assistance in Brazil for the data assessment of the business' data processing in view to diagnose the regulatory risks that the company may be subject to, and also for the analysis and possible amendment of their internal policies, binding corporate rules and other documents, whenever they are about to start doing business in Brazil.
- In addition, local companies seek legal assistance for the analysis and review of corporate policies and corporate documents considering the standards set forth in LGPD.
- Law firms with specialized data protection teams will assist their clients throughout the process of data assessment and implementing and adapting policies and also in the negotiation and consultation with public bodies concerning data protection issues arising from their clients' business.

TAXATION

Corporate Tax

- In general, companies in Brazil can be taxed under two different taxation methods: Actual Profits method or Presumed Profits method.

Actual Profits method

- Under this method, the taxable income is the company's net book profit, adjusted by some inclusions and deductions as per Brazilian tax legislation. Tax losses, if any, may be carried forward indefinitely but may be used to offset only up to 30% of the company's annual taxable income.

Presumed Profits method (PPM)

- Under this method, the taxable income is the presumed profit (an estimated percentage of gross sales, which varies according to the type of activity the company performs), increased by 100% of non-operational revenues, such as income on fixed investments and capital gains. As a general rule, the presumed profit percentages for Income Tax purposes are 8% for sales companies, 16% for transportation and 32% for service companies. The gross revenue cap for a company to be eligible for this method is BRL 78 million.

• Based on these premises, corporate taxes can be summarized as follows:

- **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 taxable income can be reached under two different methods: Actual Profits or Presumed Profits.
- **Social Contribution on Profits (CSLL):** Profit earned by companies are taxed at 9%, with the same basis used for as the Income Tax (taxable profit can also be reached under the two different methods above mentioned).
- **Contribution to Social Security Financing (COFINS):** Intended to finance social security, this contribution is levied monthly on gross revenue obtained by a Brazilian company (this contribution is also due when services or products are imported). Companies that are taxed under the Actual Profits method are subject to COFINS at a rate of 7.6% upon total revenues, under a non-cumulative system (under this system, the company may use credits usually calculated upon inputs). On the other hand, companies that are taxed under the Presumed Profit method are subject to COFINS at a rate of 3%, under a cumulative system (no credits allowed).

- **Contribution to the Social Integration Program (PIS):** Similar in implementation and purpose to COFINS and taxed at a rate of 1.65% on gross revenue for companies taxed under the Actual Profits method (non-cumulative) and 0.65% for companies taxed under the Presumed Profits method (cumulative).
- **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 or at a rate that may vary from 1.5% to 4.5% (depending on company's activities) levied upon gross revenue. In this case, the employer may choose the most beneficial taxation method (payroll or gross revenue).

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 15%. However, there are some countries considered tax haven and the rate then increases to 25%.
- Also, payments made to workers are subject to withholding income tax (IRRF) at the maximum rate of 27.5% based on the salary bracket of the employee.
- Companies are also submitted to a withholding social contribution (INSS) at a progressive rate that may vary from 7,5% to 14% based on the salary bracket of the employee.

Other Taxes

- **Federal**
 - **Import Tax (II):** Foreign products entering Brazil are taxed by a tax rate that may vary from 0% to 35% and the payment is due at the moment goods are declared. The tax is based on the custom value of the product and the rate varies according to 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 at the moment the goods are declared for export. To encourage the exportation of Brazilian goods, IE covers only selected 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 (NCM Code) 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, while for manufactured goods 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 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 transfer of any property or property rights at a rate that may vary from state to state from 4% to 8%..
- **State Value-Added Tax (ICMS):** This is levied on the circulation of goods, on provision of interstate and inter-municipal transport services, and communication services, including operations originating 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% to 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 due on the ownership of real property located within city limits and may have progressive tax rates to ensure compliance with the social function of property. Rates vary by municipality.
- **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 due 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.
- **Tax on services (ISS):** Tax on all services not covered by the ICMS. Rates are established by each municipality and vary depending on the service provided with a maximum rate of 5%. It is also due on the importation of services.

International Tax Treaties

- Currently, Brazil has 34 international treaties in order to avoid double taxation² and 18 treaties regarding social security³. Generally, the social security agreements anticipate the

applicability of domestic legislation with regard to pension obligations, while the tax agreements (relating to income tax) override domestic law under the CTN.

- In order to stay consistent with the Federal Supreme Court (STF), the Brazilian Internal Revenue Service (RFB) has required the retention of income tax (IR) even on remittances to countries with which Brazil has an agreement to avoid double taxation⁴.
- 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 to Brazilian citizens and corporations living abroad.
- To obtain this benefit one must produce (i) a certified copy (accompanied by an official translation) of the tax treaty or (ii) a statement made by the Brazilian diplomatic representation located in the home-country of the expatriate, attesting tributary treatment. The RFB has already officially recognized the right of Brazilians living in the United States⁵, United Kingdom⁶, 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 for 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 in 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-stimulation", deferral, exemption, reduction of tax basis, 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.

EMPLOYMENT LAW

- For employees in general, maximum working hours are 44 hours per week or 8 hours per day. This limit may be exceeded under certain specific 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 and notice period, in the event of termination of employment without cause by the employer, proportional to the seniority of the individual with the company (in this sense, after one year of employment the individual is entitled to three additional days, besides the mandatory thirty days' notice period, for each full year of employment with the company).

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

³ The Multilateral Agreement of Mercosur (Argentina, Paraguay, Uruguay), the Multilateral Iberoamerican Agreement (Bolivia, Brazil, Chile, El Salvador, Ecuador, Spain, Paraguay, Portugal and Uruguay), Germany, Cape Verde, Belgium, Canada, Chile, South Korea, Spain, France, Greece, Italy, Luxembourg, Japan and Portugal

⁴ By the tribulation of IRRF: Consultation Solution No 554, of 16/11/2004, Disit 07 (RJ); Consultation Solution No 262, of 24/09/2003, Disit 07 (RJ); Consultation Solution No 12, of 14/04/2003, Disit 04 (AL, PB, PE and RN).

⁵ Declaratory Act SRF No 28, of 26/04/2000.

⁶ Declaratory Act SRF No 48, of 27/06/2000.

⁷ Interpretative Declaratory Act No 16, of 22/12/2005.

- The maximum notice period is equal to ninety days).
- Wages are determined through market forces, however there is a minimum wage requirement defined by federal law. However, 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.
- The formation of employees' unions is free provided that the new union meets the criteria set forth by the Brazilian Constitution that forbids the same category of workers being 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 the Brazilian labor courts.
- The Brazilian Constitution recognizes the right to strike for employees of 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 defined by the Brazilian labor courts, which may include the payment of an indemnity and the termination of employment for cause.
- The 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.
- The 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.
- Recently new legislation was introduced allowing for the unrestrained outsourcing of the labor force and allowing more flexible rules to temporary work.
- A very comprehensive bill providing for the modernization of the Brazilian labor legislation has been adopted in 2017.
- Said new legislation, known as the labor reform, introduced the possibility of entering into individual agreements between the employer and the employees that receive a salary higher than BRL11,500.00, which allows differentiated terms and conditions of hiring in relation to the other employees.

IMMIGRATION PROCEDURES

Passport and Visa Requirements

- All persons entering Brazil must possess valid national passports or other internationally recognized travel documents valid for travelling 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-passer 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 foreigners 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, express assignment or normal assignment (short-term or long-term) 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 (permanent or short-term visas due to family reunion). 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 two years of his/her 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 for a 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

Overview

- The Constitution of 1988 is the supreme law in Brazil and divides the judicial system into federal and state court.
- The main source of Brazilian civil law is the Civil Code, which was reformed in 2002.
- A new Brazilian Code of Civil Procedure entered into force in March 2016, abrogating the former one, which was enacted in 1973. Its purpose is to simplify civil procedure in the country, in order to make judicial proceedings faster and more transparent. The new CPP also provides several measures to encourage parties to adopt alternative dispute resolution (ADR) methods.
- The Brazilian judicial system is adapting to this new code and there are still important debates regarding its interpretation and application by the Courts.
- Civil disputes may be heard at the local court (or Court of Appeals), depending on the lawsuit's subject matter, litigants, complexity and the amount involved. Parties are entitled to appeal to the Court of Appeals and to the Superior Court of Justice when the litigation involves the interpretation of federal law, or to the Brazilian Supreme Court whenever the interpretation of the Constitution is at stake.
- The administration of justice is not so fast and a lawsuit can last more than a decade until it is finally finished.
- Foreign parties without residence and/or real estate assets in Brazil must post a bond when filing a lawsuit, according to article 83 of Code of Civil Procedure. This value can vary between 10% to 20% of the amount involved at the lawsuit. This provision ensures the payment or reimbursement of all legal fees in case of the foreign party is defeated in the proceeding.

Enforcement of foreign judgments

- Any final and unappealable judgment rendered by a foreign Court depends on its homologation to be enforceable in Brazil. The procedure will be filed before the Brazilian Superior Court of Justice which does not review the merits of the judgment or impose any modification, but simply verifies whether the judgment obtained abroad complies with certain requirements that Brazilian law deems to be indispensable.
- A judgment that is considered to be contrary to Brazilian core legal principles will not be recognized and enforced in Brazil.
- Once confirmed by the Superior Court of Justice, the decision may be enforcement in Brazil before a lower Court (Federal or State) will conducted the enforcement procedure.

Mediation and ADR

- Alternative dispute resolution (ADR) is available and includes mediation and arbitration.
- Mediation in Brazil is regulated by Federal Law n° 13,140/2015 and it is confidential. Mediations are adopting in general before arbitration and the judicial system. Brazil has specialized centres for mediation and negotiation, which enables parties to hire professionals to assist them in mediation.

Class Action (Public Civil Action)

- In Brazil, the collective action system aims at protecting the environmental, consumers, cultural patrimony (rights of artistic, aesthetic, historic, touristic and landscape value), economic and antitrust rights, as well as other collective rights.
- Class Action in Brazil is regulated by Federal Law n° 7,347/1985 and in its section 5 provides for the standing to sue, which is attributed to public agents (The Federal Government, the States, the Municipalities, state held companies, Public Attorneys' Office and other governmental agencies working for the public interests, like those for the consumer defense), and, in the private sector, to associations which have been pre-constituted for at least one year and which have among their institutional goals the defense of those interests.
- The lawsuit can be filed against any person, public or private, natural or legal, who has contributed to the unlawful act, in offence to the interests protected by Federal Law n° 7,347/1985, the Consumer Protect Code (Federal Law n° 8,078/1990) or by other specific statutes for this purpose.





COSTA RICA

- Republic of Costa Rica, is a country located in Central America, bordered by Nicaragua to the north, Panama to the southeast, the Pacific Ocean to the west, the Caribbean Sea to the east, and Ecuador to the south of Cocos Island¹.
- Costa Rica was sparsely inhabited by indigenous people before it came under Spanish rule in the 16th century. Once a poor and isolated colony, since becoming independent in the 19th century.
- The system of government is a constitutional republic. It is the only Latin American country to have been a democracy since 1950 or earlier -specifically, since 1948-. It constitutionally abolished its army permanently in 1949, becoming the first and one of the few sovereign nations without a standing army.
- Total Area: 51.100 square kilometers.
- Climate: The climate is tropical year round. However, the country has many microclimates depending on elevation, rainfall, topography, and by the geography of each particular region.
- Population: 4.890.379 inhabitants².
- The official language is Spanish.
- The monetary unit is the Colon.

LEGAL SYSTEM

- The Costa Rican government is ruled by a series of constitutional controls. The executive responsibilities rest on the president, and a congressman cabinet composed of 57 members in charge of approving the laws, all of them are elected every four years.
- The country has a strong legal system that manages the 'Judicial Power', which ensures law compliance and covers nationals, as well as foreigners within the country's territory.
- The 2012 World Bank Study for Global Governance Indicators ranks Costa Rica in the second place within Latin America for political stability.

THE ECONOMY

- Costa Rica's economy was historically based on agriculture, and this has had a large cultural impact through the years. Costa

Rica's main cash crops, both historically and up to modern times, were coffee and bananas.

- However, since the mid-nineties the strength in the nontraditional export and tourism sector has relegated the traditional sectors, including agriculture. The strength of these areas is based on the trade liberalization, which has allowed exports to surpass its 30% ratio of GDP in 1980 to a 38% rate in 2012 (includes exports of goods and services)
- Hybrid electronic circuits was the leading durable export category in 2013, followed by pineapple, banana, medical equipment, medical bio products, and coffee, juices, prosthetics, and surgery tools; these categories added up to over 50% of exports.
- In 2014, the total amount of exports in Costa Rica, added a number of US \$17.6 billion, to a total of 156 different destinations.
- Currently, over 250 multinational corporations operate in Costa Rica.

¹ Cocos Island is an island which is located in the Pacific Ocean, which is part of Costa Rica.

² Estimated population by June 30th, 2017.

SEVERAL FUNCTIONS OF THE CENTRAL BANK OF COSTA RICA

- The Costa Rica Central Bank main objective is to control inflation, and is also responsible for the issuance and management of bills and coins.
- The Costa Rica Central Bank also seeks to maintain the external value and the currency conversion.
- It is in charge of the custody and administration of the international monetary reserves of the nation.
- Defines and manages the monetary and exchange rate policy.
- Serves as counsel and State bank-teller.
- Promotes the strengthening of favourable conditions, liquidity, solvency and proper functioning of the National Financial System.

TAX REGIME

- Costa Rica tax regime is still ruled by a territorial principle, which establishes that contributors will be subject of taxes only for income generated within the country.
- The ordinary tax fiscal period begins on October 1 of one year and ends on September 30 of the following year (12 months). There are also other tax periods that may be authorized depending on the activity of the taxpayer, which is referred to as "special tax period." The dates for submission of statements vary for different fiscal periods.
- Taxpayers have being divided in four categories: individuals, legal entities, consumers and producers. They are obligated to pay direct or indirect taxes according to their activities.
- There are some exonerations the tax payers may apply if they are subject to it.

FREE TRADE ZONE

- The Free Trade Zone Regime (FTZ) is a collection of incentives and benefits that the State grants to companies making new investments in the country, as long as the companies comply with the requisites and obligations established in the pertinent Free Trade Zone Regime Law, N° 7210 of November 23, 1990 and its amendments and regulations.
- The application to be a beneficiary of the Free Trade Zone Regime is processed by the International Trade Promoter (PROCOMER). Nevertheless, it requires the approval from the Ministry of Foreign Trade, and the President of the Republic.
- The companies that may apply shall be classified under one of the following categories: processing for export, traders, services export, free trade zone park administrators, investigation and

research companies, companies that operate shipyards and docks and processing companies whether they export or not or supplier companies to other FTZ.

COMPANIES STRUCTURES IN COSTA RICA

- In order to register a business enterprise, a public deed has to be drafted by a Notary Public and such deed has to be presented before the Mercantile Registry (physically), or via web or electronically, through the digital platform called "Crear Empresa", with the objective of registering it and to obtain the corporate identification number.
- Even though there are more types of corporate structures, the commonly used structures for corporations in Costa Rica are: Public Limited Company (*Sociedad Anónima*), Limited Liability Company (*Sociedad de Responsabilidad Limitada*), and Branch of A Foreign Corporation.
- Last October 2016, entered into effect Law Number 9392, "Minority Shareholder Protection Act", in Spanish, "*Ley de Protección al Inversionista Minoritario*". The purpose of the Law is to provide the investors with more rights, specifically, the minority shareholders of a Costa Rican company, helping to protect their interests and making sure the majority shareholders comply with their obligations and responsibilities. The approval of the Law benefits the interests and rights of the minority shareholders, and incorporates the Corporate Governance figure, which already existed for the supervised entities (Banks, Insurance Companies, Pension Funds) but now extended to all mercantile companies. As a result, the companies will have a better control of their management policies, as well as their member's relationships.
- According to the newly approved Law 9428, an annual tax should be paid every January by all companies, branches of foreign companies and their representatives, and limited liability companies, in addition to those taxes currently paid for these entities (*educación y cultura stamp, income tax, among others*). The new law will enter into effect on July 1st, 2017. The charge that will need to be paid will vary and depend on whether or not the companies are registered as contributors to income tax and will be calculated according to the amount of income obtained in the last fiscal period. That being, the amounts to be paid will be the following:
 - o Inactive corporations (not registered as Costa Rican tax contributors in front of the authorities): US \$120³ annually;
 - o Active corporations with profits under US \$100,000.00: US \$200 annually;
 - o Active corporations with profits between US \$100,000.00 and US \$210,000.00: pay US \$250 annually; and
 - o Active corporations with incomes of over to US \$210,000.00: US \$400 annually.

³ According to the Law, all amounts are calculated and must be paid in local currency, colones; it is indicated in US dollars in this document, just as a reference according to the current Exchange rate.

OPERATION OF A BUSINESS

- In order to operate a business in Costa Rica, some authorizations and permits must be acquired.
- Taxpayer Registry, after the registration of the company at the Mercantile Registry, it has to be registered as a taxpayer before the General Income Tax Office.
- National Insurance Institute (INS in Spanish, which stands for “*Instituto Nacional de Seguros*”), to conform to the Costa Rican Labor Code, the employer must secure an occupational risk insurance policy for its employees. For this purpose the employer has to underwrite a policy from the National Institute of Insurance (INS). The policy has to be underwritten at the beginning of the operation and has to be in force during the operation.
- Costa Rican Social Security Office (CCSS in Spanish, which stands for “*Caja Costarricense de Seguro Social*”), pursuant to Costa Rican legislation, the employer must contribute to the social security system of its employees. To this effect, prior to paying the social security contributions, it must register as an employer at the central or regional offices of the CCSS.
- Ministry Of Public Health / Sanitary Functioning Permit: Operation Certificate. In accordance with the General Health Law, prior to the initiation of operations, companies must request authorization, or an Operation Certificate, from the Ministry of Public Health.
- Municipal License. All lucrative activities require a municipal license (or permit) from the canton or county in which the activity is developed. The license involves the payment of a tax during the time of operations (Municipal Code, Law N° 7794, Article 79).

EMPLOYMENT

- In Costa Rica, the employment matters are primarily regulated by a Labor Code, which establishes the general rules governing all labor relationships. There are other important laws such as the Law of Labor-Related Risks and the Law for Worker’s Protection, also there are several administrative regulations emitted by the Labor Ministry that must be taken into consideration, such as the decrees establishing minimum wages that is updated every six months.
- Moreover, the companies can create their own internal rulings, to include for example their worldwide policies or manuals. These internal rulings must be approved and registered by the Labor Ministry.
- Salary can be stipulated freely, but cannot be less than the minimum wage set by the National Wages Council for the specific activity or work. The agreement or consent of the employee to be paid a sum less than the salary that corresponds to its services is not allowed.
- The Labor Code establishes a list of justified causes for an employee’s dismissal; in these cases the employer will only be liable for the payment of wages, proportional vacation time and Christmas Bonus or “*Aguinaldo*”.
- Severance Pay (*Cesantía*), it is an economic indemnification for the employee or his/her family, when the labor relationship ends because of an unjustified dismissal, age retirement or death of the employee. In addition, in those case, the employee is entitled to receive a payment called “*preaviso*” or pre-notice, which corresponds to a month of salary if the labor relationship has been in effect for more than a year.

IMMIGRATION

- There are several migratory category options, however just the categories such as executives of a company or workers of a specific field (agriculture, construction or domestic services) or residents with free migratory condition are allowed to work. Therefore is important before come to Costa Rica get an advice, to know which labor categories are immigrants allowed to work.
- A request for residency in Costa Rica should be submitted to the Costa Rican Consulate in the country of origin or residency or at the General Migration and Foreign Affairs Office, in Costa Rica. It’s important to check the requisites for each residency categories, because the requirements may vary.
- Companies which qualify under one of the categories established by law may request a special recognition from the migration authorities once the Migration Office grants the recognition to the company, its executives, representatives, managers and technical personnel, etc. can apply for their residency in a more expedite procedure.
- In addition, there are also two other categories under which a foreigner may apply and obtain a residency in Costa Rica, however, those categories do not allow the person to work in the country; these categories are as a “retired person” (“*Pensionado*”) or as a “renter” (“*Rentista*”) or a person with enough economic means to support himself without the need of working in the country.

INTELLECTUAL PROPERTY RIGHTS

- Intellectual Property in Costa Rica is protected by the different IP Laws and Bylaws, as well as several international treaties.
- The IP Office at the Public Registry is the entity in charge of the administration and regulation of the process for the registration of copyrights, trademarks, patents, industrial designs, geographical denominations, etc.
- The Costa Rican IP Office, the Administrative Court and specialized Courts are in charge of the IP Rights enforcement in Costa Rica.
- IP rights and inscription processes is regulated by special laws and bylaws on every matter and also for international treaties such as CAFTA, PCT, WCT, Paris Convention, and Brussels Conventions among others.

TEMPORARY REGULATIONS DUE TO COVID DISEASE

- As a consequence of the COVID-19, the Republic of Costa Rica has issued a series of normative provisions in response to the social and economic effects that this pandemic has caused in our country.
- In the first instance, the Presidential House issued the declaration of national emergency, commanding mandatory insulation for those who enter the country, as well as the suspension of educational centers throughout the country.
- Concerning labor matters, the Legislative Assembly authorized the education of working hours and salaries for a 50%, as long as the company has an affection of gross income of at least 20%. To request a decrease of 75% it must have an affection of at least 65%.
- In addition, the Presidential House urged banks to reduce interest rates and apply extensions and renewals in payments, among other. The country also approved a moratorium on the payment of the Value Added Tax, as well as for the profit tax, selective consumption tax and taxes for the nationalization of merchandise.





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 defence, 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: 158.665 inhabitants as of January 1, 2019.
- 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 multidenominational.
- The monetary unit is the Netherlands Antillean guilder (NAf). The exchange rate has been pegged to the U.S. 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 dollar. The Caribbean guilder is the proposed currency for Curaçao and Sint Maarten since the constitutional reform in 2010, but has not yet been introduced.

LEGAL SYSTEM

- Curaçao has an independent and high-quality legal system that 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 the Common Court of Justice of Aruba, Curaçao, Sint Maarten and of Bonaire, Sint Eustatius and Saba. The Supreme Court in The Hague is also the Supreme Court for Curaçao, Aruba, Sint 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 1970’s.
- 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, investment institutions and fund administrators, institutional investors and insurance brokers, securities exchange, securities intermediaries and asset management companies and money transfer companies.
- The bank manages the foreign exchange reserves, which includes regulating of 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. These treaties ensure compliance with international standards regarding the exchange of information for tax purposes.

TAX FACILITIES FOR INVESTMENTS

- As of January 1, 2019, a new tax facilities regime for investments entered into force. Tax exemptions apply upon request to identified industry sectors, being: hotel industry, land development, innovations, air, space and shipping industry, education, health care, research and development for process and product innovation, transport and logistics, creative industry, modern agriculture and fishing, green energy, information technology, forestry, mining and minerals, water production, waste and sewage, wholesale and retail, motor vehicle and motor cycle repair, social services, culture, sports and recreation.
- A minimum investment of NAf 5,000,000 (approximately 2,700,000 million USD) and a local workforce employment requirement apply.

CURAÇAO INVESTMENT COMPANY

- The Curaçao Investment Company ("CIC") was introduced in 2018 as a replacement for the Curaçao tax exempt company.
- The CIC enjoys zero percent (0%) profit tax applicable to certain qualifying income.

- The CIC must meet certain substance requirements.
- The CIC status needs to be applied for by a company whose capital is divided into shares and is established in Curaçao (including foreign companies established in Curaçao).

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. As of July 1, 2018, a new tax regime entered into force for E-zones.
- A tax rate of 2% applies to all supplies of goods of a company within the E-zone regardless of the residency of the customers.
- Distinction is made between income derived from local sources and foreign sources. Income derived from local sources is taxed. Foreign income is excluded from the taxable base for profit tax purposes in Curaçao.
- Tax exempt companies will be considered to be Curaçao investment institutions and are subject to 0% profit tax rate, except for income from intellectual property (IP) for which actual research and development work has to be performed in Curaçao or for which a taxable person has instructed the development of the IP to a foreign company that is not part of the group of the taxpayer in Curaçao (Nexus approach).
- The companies need to be domiciled in Curaçao and they have to meet substance requirements appropriate for the nature and size of the activities of the companies.
- Permitted activities are: the export of goods, international trade and services, performing maintenance and repairs on machines located abroad, e-commerce and other services on behalf of foreign clients.

FINANCIAL SERVICES

- Being a financial centre, 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 as resident companies for Curaçao tax purposes, but are being 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 has been named as the number one location for hedge fund administration services, outperforming jurisdictions like Singapore, Hong Kong, Luxembourg, the Netherlands and the Cayman Islands.
- Besides domiciliation of these funds, the administration of such funds also takes place in Curaçao.

DATA PROTECTION

- The constitution of Curaçao ("Staatsregeling") provides that the privacy rights of each individual are to be respected. This principle is addressed in the Privacy Act ("Landsverordening Bescherming Persoonsgegevens") which deals with personal data protection.
- The Privacy Act provides for rules with respect to the handling of personal data, from the collection to the destruction thereof as well as data processing. The basis of the act is that personal data can only be collected for a specific, justified objective.
- Compared to EU GDPR legislation the Curaçao Privacy Act includes some differences, such as with respect to the consequences of non-compliance and the (financial) penalties regime.

GAMING

- Online gaming is a legitimate business activity provided the e-gaming company has obtained the required license and is established in Curaçao.
- Basic requirements for a license application 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.
- Gaming services cannot be offered to Curaçao residents. The offering of online gaming services abroad is (also) subject to gaming legislation in the applicable jurisdiction.

DUTCH CARIBBEAN SECURITIES EXCHANGE

- In 2010 Curaçao launched the Dutch Caribbean Securities Exchange (www.dcsx.cw). The DCSX is licensed by the Minister of Finance and 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 has become 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.
- Licensed listing advisors need to guide the listing process.
- 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" ("Stichting Particulier Fonds" or "SPF").
- 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 in principle tax exempt, but may elect to be taxed. An SPF may not conduct a business or enterprise, but is entitled to make distributions to its incorporators or other identified persons or institutions.

THE CURAÇAO TRUST

- On January 1, 2012 new legislation entered into force which made it possible to set up an Anglo-American Trust pursuant to Curaçao 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, in the form of an investment company it may apply for zero taxation on certain qualifying income.
- 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.
- Taxation of the CV: The CV is not considered a separate entity for profit tax purposes. Therefore, the partners in the CV are each individually subject to tax on their share in the profit of 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. The owner of a one-man business 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 foundation is still frequently used for religious and nonprofit organizations.
- The association (“vereniging”) is a legal person with members, pursuing a particular purpose. An association is formed by means of a more-sided (multilateral) juridical act and it may not distribute profits among its members.

SHIPPING

- Curaçao has been a recognized jurisdiction for the registration of commercial ships for over half a century also due to its naturally protected deep sea harbour 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 Curaçao 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-laying 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 fibre and 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..

EMPLOYMENT

- Curaçao general labor law is largely regulated in the civil code describing amounts other when an agreement can be considered an employment agreements, the term of the employment contract, and how an 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 holiday allowance and labor circumstances.

- The labor laws 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 an agreement between one or more employers and one or more trade unions that aim 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. Employees’ representation by a union can under certain conditions be forced by the employees by holding an election voting for the union that represents the (majority of the) employees..

IMMIGRATION

- Foreign nationals require a residence permit as well as a work permit in order to legally reside and work 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 a period of 3 months applies.

INTELLECTUAL PROPERTY RIGHTS

- Intellectual property rights (IP rights) protect the results of 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 to the Madrid Protocol The Madrid Protocol provides for international registration of trademarks in other member states through a single registration in Curaçao.
- The Bureau of Intellectual Property (“BIP”) of Curaçao 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.
- In Curaçao, patents are regulated by the Kingdom Patent Act 1995.





MEXICO

- Mexico is a federal republic in North America. Mexico's government takes place in a framework of a federal representative democratic republic, whose government is based on a congressional system. The federal government functions per the Political Constitution of the United Mexican States as enacted in 1917. The Mexican federal government has three branches: executive, legislative, and judicial. The seat of the federal government is in Mexico City. Mexico's official language is Spanish and its currency is the Mexican peso (MXN).
- Mexico's population is 129,280,600. Mexico's total area is 1,964,375 sq. km., sharing a 3,141 km border with the United States, it's Mexico's most important trading partner. In fact, in 2019, the Mexican market represented 14.8% of the US total foreign trade. The United States, Mexico and Canada updated and modernized the 25-year-old Nafta, reaching a new agreement: The US-Mexico-Canada Agreement (USMCA), including new conditions for car automakers; stronger labor regulations for Mexico, among other issues. Since the implementation of the North American Free Trade Agreement (NAFTA), Mexico's economy has become increasingly oriented towards manufacturing. Mexico today has Free Trade Agreement with over 50 countries, and already signed the Comprehensive and Progressive Agreement Trans-Pacific Partnership (CCPTPP). It's also a founding member of the Pacific Alliance.
- Mexico's nominal GDP is \$1.27 trillion (2018 est), making Mexico's economy the 15th largest in the world. Its inflation rate is at 3.1% (2020 est) and foreign direct investment (FDI) is currently at a record high with \$31.6 billion (31 Dec 2019 est).

BUSINESS ENTITIES

Representative Office

- Allows a foreign entity to have a presence in Mexico through an office that serves as a link between the foreign entity and its clients in Mexico. Its activities are 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. The foreign entity is not considered a separate entity from its Mexican representative office and is liable for the activities and duties of the Mexican office.

Branch

- A branch may engage in business activities and is subject to tax obligations as Mexican companies. In the same way as the representative office, the parent company is subject to liabilities of the Mexican branch. A permit from the Ministry of Economy needs to be obtained in order to commence operations, except for service related industries. Furthermore, it shall register its bylaws in the Public Registry of Commerce, the Ministry of Finance and with the Foreign Investment Registry.

Subsidiary

- The most common forms of Mexican entities regulated by the general law of commercial companies are the Corporation (Sociedad Anónima, S.A.) and the Limited Liability Company (Sociedad de Responsabilidad Limitada, S. de R.L.). Such entities provides limited liability for the shareholders/partners up to the investment on the capital stock. It is required to have at least two shareholders/partners and in the case of the S. de R.L., a maximum of 50.
- The capital stock of the S.A. is represented by shares which can be freely transferred, and in its case, subject to shareholders agreement. The capital stock of the S. de R.L. is represented by quota holdings evidenced by certificates which are non-negotiable instruments. The transfer of capital stock requires the consent of the partners representing the majority of the capital stock and a right of first refusal is granted by law to the partners.

Securities Law (*Ley del Mercado de Valores*)

- Securities Law implemented on December 2005 to create corporations that promote investment (Sociedades Anónimas Promotoras de Inversión). It aims to provide the possibility to include in its bylaws more flexibility than the standard S.A.
- In addition, this law contemplates the creation of the corporations that promote investment and securities (Sociedades Anónimas Promotoras de Inversión Bursátil) whose main objective is to enter the stock market.

Distribution and Agency Agreements

- There is no specific law which regulates neither distribution nor agency agreements. The parties shall be subject to the terms and conditions of their agreements. Under Mexican Law, there are no provisions for payment of remuneration at termination;

in any case compensation shall be determined under contract or upon judges determination of direct damages and losses. Antitrust Law considers monopolistic practices the obligation of the distributor to sell at a price established by the company granting the distribution, among other cases.

Foreign Investment Law

- Together with NAFTA and as a part of the liberalization of the Mexican economy, the Foreign Investment Law was adopted on December 1993, changing the general rule from 49% foreign investments participation to allow 100% foreign investment on most business activities in Mexico. New USMCA agreement ratifies the liberalization of the Mexican economy allowing foreign participation in most of business activities.

Central Bank Exchange Control

- There are no exchange controls in Mexico. The Mexican peso is subject to free market conditions. There is no restriction, nor any governmental process for repatriation of investments and the free flow of money. Special attention shall be taken on the Anti-Money Laundering Law, which requires notifying certain transactions related to gaming, financial operations, jewelry, real estate transactions, among others when those transactions are for amounts over certain thresholds.

TAXATION

- On January 1st, 2020 some important tax amendments took effect. Those changes include a general anti-abuse rule, the implementation of some Base Erosion and Profit Shifting (BEPS) issues related to permanent establishments, interest deductions and payments to preferential tax regimes and use of hybrid instruments, value added tax on certain digital services rendered by foreign residents, and additional powers to the tax authorities to restrict the use of digital certificates for electronic invoicing,
- The new administration (starting December 1st, 2018) has a compromise of not increasing federal taxes during the first three years, which means that some important additional changes could be implemented by the end of 2021.

a) Federal Taxes

- In Mexico, companies are subject to the following federal taxes: income tax, value added tax, special tax on products and services, international commerce tax, motor vehicle usage tax and sales tax on new automobiles.

Income Tax

- The income tax rate on business legal entity resident income earners is 30% for companies (corporate tax) and up to 35% for individuals. The tax base is similar to the accounting profit subject to certain and specific adjustments.

Capital Gains

- The tax rate on capital gains is the same as the rate imposed upon business profits. The difference between them is the treatment of the set-off. Capital losses can only be offset against capital gains and not against any other type of income.

Branch Profits

- A locally formed subsidiary as a Mexican tax resident has to pay corporate income tax on its worldwide income. A branch of a non-resident company that is a permanent establishment according to Mexican law shall pay income tax only on income attributable to that permanent establishment. Subsidiaries and permanent establishments of non-resident companies are subject to the same taxes, in respect of the constitutional principle of tax equality.
- By January 1st 2019, a Decree of tax benefits for the northern border region was enacted, providing a reduction of the income tax rate for the business developed in such area. The reduction granted is a third of the tax generated in the tax year and the provisional instalments. Certain taxpayers are excluded from benefitting from this Decree.

VAT

- Mexico has a value added tax (VAT) which is levied on the alienation of goods, rendering of independent services, granting the temporary use or enjoyment of goods, and on importation of goods and services. The general rate is 16%.
- Exports and some other specified items are subject to the 0% rate, such as non-industrialized animals and vegetables, some products intended for food, medicines and agricultural services and books.
- For VAT purposes, the Decree of tax benefits for the northern border region referred in the paragraphs related to the income tax, provided a reduction of the tax rate for business developed in the northern region equivalent to 50% of the ordinary rate, which means an effective rate of 8%. Certain transactions are excluded from benefitting from this Decree.

b) Special Taxes

Taxes on production and services are payable on the sale of alcoholic and some non-alcoholic beverages, tobacco, gasoline, diesel and some other specified items. Also the tax is payable on certain caloric foods.

c) Local Taxes

- States are empowered to impose tax on any wealth/income that is not expressly reserved for the federal government.
- The main local taxes are on real property (on new acquisition and on continuing ownership), payroll tax, and taxes on public shows, lotteries and gambling. Currently, States are increasing their taxes since the Federation has reduced its transfers of resources to the States.

Property Taxes

- In Mexico, there exists a state tax on acquisition of real state in most of the states of the Federation and in Mexico City; the tax rate differs in each state ranging between 2% and 5% on the value of the real state.

Payroll tax

- Most states in Mexico have a payroll tax. The rate varies but the average is 2.5%.

Tax and investment incentives

- There are tax incentives for the following: processing, assembly or transformation operations (maquila and manufacture programs, IMMEX); agricultural and land transportation activities; investment in national film and theatrical production; deductions for employers who hire handicapped employees, among others.

Tax Treaties

- Mexico has more than 60 tax treaties currently in force and it is negotiating several more. Most of the tax treaties for the Avoidance of Double Taxation and Fiscal Evasion follow the OECD model with some amendments. Mexico has signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS. In México, tax treaties cannot be overridden by any existing or subsequent domestic law.

LABOR LAW

- On December 1st, 2012, new labor laws took effect in Mexico. These reforms make it easier for companies to hire and dismiss workers, contemplate trial periods and training contracts for employees, and provide the possibility to contract for hourly wages (as opposed to daily wages), among others.

Basic Labor Provisions

Concept of Employment

- Any person rendering services to another individual or entity is considered an employee if that person works under the supervision of, or is subordinate to, the contracting individual or entity in exchange for a salary. Individual Employment Agreement (Mandatory for Employers).

- Employment agreements:
 - o For a definite period of time
 - o For an indefinite period of time
 - o For a specific job or task
 - o With an initial training period
 - o With a trial period
 - o Per hour

- The minimum wage is determined by the National Minimum Wage Commission, which sets the minimum wage to be applied annually in the different geographical areas in Mexico. For 2020, the minimum wage is established as follows:

Geographical Area	Minimum Daily Wage
General minimum wage	\$123.22 pesos (USD \$ 6.35)
Northern Board minimum wage	\$185.00 pesos (USD \$ 9.53)

- The National Minimum Wage Commission also determines the specific ranges of minimum wage according to specific occupations. The National Minimum Wage Commission

is composed of employees, employers and governmental representatives.

- Employee and employer with the following rules shall agree to working shifts:
 - A daytime work shift is from 6:00 to 20:00 with a maximum of 8 hours.
 - A nighttime work shift is from 20:00 to 6:00 with a maximum of 7 hours.
 - A mixed work shift is one which includes hours from the daytime and nighttime work shifts as long as the part of the shift that is during the nighttime hours is less than 3 and a half hours, otherwise it should be considered a nighttime work shift. The maximum duration for the mixed work shift is 7 and a half hours.
 - Employees are entitled to have at least a 30-minute break.
- Workers may work overtime for up to 9 hours per week and be paid 100% of wages for the overtime.

Salary

- Salary is composed of daily cash payments, bonuses, housing, premiums, commissions, payments in kind and any other amount or benefit given to the employee. The cash payment shall never be less than the minimum wage.
- Workers shall be entitled to a Christmas Bonus after the first year, which must be paid before December 20th of the corresponding year, equivalent to at least 15 days of daily salary.
- Basic Labor Obligations:
 - Written Contract
 - Registration before Social Security
 - Registration before Workers' Housing Fund (Infonavit 5%) and Pension Fund (Afore – 2%)
 - Pay of at least minimum wage.
 - Christmas Bonus (of at least 15 days of salary)
 - Vacation Time and Vacation Bonus
 - Severance Payment
 - Profit Sharing- Employees are entitled to receive an amount equal to 10% of the taxable income of the Company. (National Commission of Profit Sharing) Exemptions: New Companies during the 1st year of operation (Two years for new products) Mining Companies: exploration period. Payment shall be made no later than May 30 of the following year.
- All employees in Mexico have the right to their share of the profits of the businesses they work for, as provided by Article 123, section A, paragraph IX, of the Federal Constitution.

Unjustified Dismissal

- **Indemnification.** In case of unjustified dismissal, employees are entitled to claim either:
 - 1) Reinstatement
Or
 - 2) Payment of compensation equivalent to three months' salary, seniority premium equivalent to 12 days' salary per year of service, with a cap of twice the minimum salary, payment of back wages from the time of dismissal to the date of the judgment (with a 1 year limit), and the outstanding balance of any earned and unpaid benefits.
- Back wages will be calculated for up to 12 months of employee's integrated salary. After the 12th months, interests must be calculated on a base of 15 months of employee's salary applying a 2% each month.
- In case of employee's death, back pay salaries will stop at the date of death.
- Before the modification of the Federal Labor Law, back pay salaries were calculated for all the time that the labor process took place. Usually it would be around 2 to 4 years depending on the labor case.
- Back pay salaries are calculated based on integrated salary (no base salary). This is the base salary plus the proportional part of Christmas bonus, premium vacation and other benefits paid to the employee.
- Employer has the right to refuse reinstatement of the employee as every employer pays 20 days salary per year of services in addition to the 3 months salary compensation.
- Employee has the right to terminate with cause his employment contract if employer commits any unlawful act such as insults, salary reductions, sexual harassment, unilateral modification to the labor relation conditions and, in such case, the termination will be treated the same as with an unjustified dismissal.
- The General Law to Prevent and eliminate Discrimination, prohibits discrimination for ethnic origin, culture, sex, religion, immigration status,
- pregnancy, family, political orientation, race, sexual preference etc. It also prohibits acts that restrict equal employment opportunities, limit training programs, etc.
- The National Board to prevent discrimination, shall take all required actions to prevent and eliminate discrimination and promote equal treatment.
- There is the obligation for employers to have in place an internal protocol or policy regarding nondiscrimination, non-sexual harassment, and child labor and pregnant women.
- As well, it is mandatory now to have in place an internal policy for avoiding psychosocial risks (NOM 035 STPS).
- Employers have to include in the employment agreement: beneficiary's designation and reference to the existence of CFDI or electronic salary receipts

Trail Period and Initial Training Period

- Trial period when it is an indefinite agreement or when the jobs to be performed does not exceed 180 days.
- With an initial training period, it could be agreed to for 30 days for general employees and up to 180 days for management employees.
- The training period could be agreed to for 90 days for general employees and up to 180 days for management employees.
- In case the employer does not decide to hire this kind of employee once the period ends, then the only formality for the employer is to notify the Mix Commission of Productivity, Training and Teaching.
- This last Commission is mandatory for companies or employers with at least 50 employees.
- These agreements can only be executed once and cannot be agreed to simultaneously or one after another.
- In these new modalities, there is no severance payment at the time that the trial or training period ends, since it is an employer's right to determine whether or not to hire the employee for indefinite period of time

Asset Purchase Agreement/Employer Substitution.

- The acquisition of a business is considered as an employer substitution with respect to the employees and the original employer shall be jointly liable along with the new employer for any labor contingency prior to the transfer of employees and six months later. This term shall be effective as of the date on which the employees or the union is notified of the employer substitution. In order to be effective, it will require a transfer of assets.

Stock Purchase Agreement.

- The relationship between the target company and its employees will continue under the same terms and conditions. There is no obligation to inform or require authorization from the employees nor the union for a transfer of shares; although it is advisable to inform the union at the time of the transfer. The new shareholders shall not unilaterally decide to reduce the labor benefits and if they do, the target company shall make severance payments.

Collective labor agreement (union contracts)

- New rules and conditions have to be met by employers.
- A new Conciliatory and Registry Center has been created as to handle conciliatory process in individual conflicts and to register internal shop rules and union contracts.
- Real representation and union democracy is granted under the new rules and unions have to modify their bylaws as to grant transparency of union fees and accounts.
- Protection union contracts or non-active union contracts have to be eliminated in a period of 4 years counted from May 2019 (May 2023). It is suggested to carefully review the relation with existing unions.

IMMIGRATION LAW

- The immigration law entered into effect on July 2011 established a new classification for the granting of visas under the following main categories:
 - **Visitors without authorization to work** authorize foreigners to stay in Mexico up to 180 days.
 - **Temporary resident** authorize foreigners to stay in Mexico up to 4 years with the possibility to work if having a job offer. Such visa will enable the authorized individual to bring his family.
 - **Permanent resident** authorize foreigners to stay in Mexico indefinitely and to engage in any lucrative activity in the country. Also this visa entitles foreigners to bring their family.
 - **Permanent resident** authorize foreigners to stay in Mexico indefinitely and to engage in any lucrative activity in the country. Also this visa entitles foreigners to bring their family.
- In order to change any of the above mentioned visa categories, it will be necessary for the foreigner to leave the country and request a visa under a different category.
- Any Mexican company having foreign employees shall be registered before the National Immigration Institute and obtain an Employers Certificate.

ANTITRUST LAW⁴

- On May 23, 2014 an Antitrust Law was enacted in Mexico. Its purpose is the implementation of a constitutional reform regarding economic competition that was approved in June 2013.

The Commission

- The aforementioned constitutional reform restructured what is now referred to as the Federal Economic Competition Commission ("Commission") into an independent government agency (previously, it had been a semi-autonomous agency under the purview of the Ministry of Economy) with its own legal personality and assets. The reform also led to the creation of a telecommunications regulatory agency called the Federal Telecommunications Institute, among whose responsibilities is enforcing the Law in matters of telecommunications and broadcasting. The Commission's powers apply to said Institute in matters of economic competition regarding telecommunications and broadcasting.

Investigation Authority

- One of the Law's new features is the creation of an Investigation Authority in the form of an independent agency under the Commission's purview that is responsible for investigating violations of the Law. Once this authority has concluded its investigation and has issued a determination of presumptive liability concluding that the economic agent is presumably liable for a monopolistic practice or forbidden concentrations, it becomes another party to the trial form procedure overseen by the Commission. The head of the authority must be appointed by a qualified majority of five commissioners, serves a four-year term, and may be reelected once.

Monopolistic Practices

- This Law regulates absolute and relative monopolistic practices and it includes a new absolute monopolistic practice consisting of exchanging information for one of the purposes or effects covered by the practices already under regulation. Previously, exchanging information was only addressed regarding practices involving the fixing, raising, combining, or manipulation of prices. Now, this behavior has been included and applied to the remaining absolute monopolistic practices.
- Regarding relative monopolistic practices, two new behaviors have been included that were not present in the previous law. These are the refusal of, restriction of access to, or access subject to discriminatory terms and conditions to an essential raw material, as well as margin squeezes, which consist of reducing the existing margin between the price of access to an essential raw material supplied by one or more economic agents and the price of a good or service provided to the end user by the same economic agents using the same raw material for its production.

Concentrations

- A concentration shall be understood as a merger, acquisition of control or any other act by means of which entities or assets in general are consolidated and which is carried out among competitors or any other economic agent. The Commission investigates those concentrations whose purpose is to harm or impede competition and free market access regarding similar goods or services

The Proceeding

- An investigation into monopolistic practices and forbidden concentrations may commence ex officio by the Commission, at the request of the federal executive branch or the Federal Consumer Protection Agency, or at the request of an individual party. Any person may file a complaint alleging absolute or relative monopolistic practices and forbidden concentrations. Previously, only the affected party could file the corresponding complaint regarding relative monopolistic practices and forbidden concentrations. As mentioned above, the Investigation Authority is responsible for conducting the corresponding investigations. If an economic agent is presumed liable, the proceeding will be carried out in a trial form overseen by the body responsible for the trial stage and in which there will be two parties: the Investigation Authority and the implicated economic agent.
- Among the sanctions that the Commission could impose are the following:
 - o A maximum fine equivalent to 10% of the economic agent annual income, when incurred in an absolute monopolistic practice
 - o A maximum fine equivalent to 8% of the economic agent annual income, when incurred in relative monopolistic practice.
 - o A maximum fine equivalent to 8% of the economic agent income, when incurred in unlawful concentration.
 - o A maximum fine equivalent to 5% of the economic agent income, for failing to notify a concentration.

PERSONAL DATA PROTECTION

- According to the Federal Law for the Protection of Personal Data the treatment of personal data shall be subject to the consent of the individual having rights over such data. The treatment of personal data shall be limited to the specific purpose of the activity involved and subject to the Privacy Notice terms and conditions. Privacy Notice shall include the conditions to transfer data either to national or foreign, individuals or entities.
- Any individual is entitled to ARCO Rights: to access, rectify, cancel and oppose the use of its personal data, according to the procedures established in the law.

ANTICORRUPTION LAWS

- Mexico created an anticorruption national system coordinating federal, state and local authorities for the prevention and investigation of acts of corruption. Such system includes the General Law of Administrative Responsibilities, where companies involved in acts of corruption could be subject to sanctions. Sanctions to the companies could include fines up to 7 million dollars and liquidation of the company. In order to have the possibility to reduce any sanction it is advisable that companies established an integrity policy, which shall be composed of a code of ethics, surveillance and auditing controls, training employees to avoid corruption practices, among others.





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: ten 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. If the company issues Bearer Form shares, they must be given in custody to a duly authorized agent (Lawyer or Bank). 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 residents 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%.

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 Industries. 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 0.5% 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 entered into an Agreement for Taxation Cooperation and the Exchange of Taxation Information with the United States of America and more than sixteen Treaties to Avoid Double Taxation with several countries, in order to meet the current international standards set by the Organization for Economic Co-operation and Development (OECD). Having completed this process, and having been withdrawn of 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

- Panamanian Labor Law sets maximum percentages of foreigners companies can have on their payrolls. Usually the figure is 10% for regular personnel, and 15% for technical workers, managers and area directors. There are certain Permits, such as the ones for specific nationalities and foreign professionals (which will be discussed in the Immigration Procedures section) for which these percentages do not apply (foreigners can be hired by companies regardless of percentages of personnel on these cases). 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 also 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).

INTELLECTUAL 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

- Foreigners from many countries are required a tourist visa to enter into Panamanian territory, which allows them to stay in the country for a 90-day period. There are other countries whose citizens do not need a tourist visa to enter into Panamanian territory, and are allowed to stay as tourists for a 180-day period.

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 Panamanian real property. You can mix real estate and time deposit of US\$300,000. It is possible to hold real estate under a Panama Foundation if the 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\$850.00 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 50 countries: Andorra, Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Israel, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, Monaco, Montenegro, Netherlands, New Zealand, Norway, Paraguay, Poland, Portugal, Republic of Ireland, Republic of Taiwan, San Marino, Serbia, Singapore, Slovakia, South Africa, South Korea, Spain, Sweden, Switzerland, United Kingdom and Northern Ireland, United States of America, Uruguay, 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.
- Permanent Residency for Italian Citizens: This permit grants permanent residency to Italian citizens 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 working. Some Work Permits are not permanent and must be renewed. Foreign workers must contribute to social security.
- Multiple Entry Visas: Are for non-residents who are applying for a Panama residency to be able to leave the Country while their residency request is in process. 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.

- Visa for Foreign Professionals: This visa grants permanent residency to any foreigner who has a college or university diploma in a profession that is not restricted by the Constitution of Panama to Panamanians nationals (among those professions restricted are engineering, architecture, agricultural sciences, economy, accounting, law, sociology, journalism, medicine, chemistry, pharmacy, nursery and nutrition).

Once the residency is approved, a Work Permit may be requested, which is granted for a period of one year, renewable each year until 10 years after having the permanent residency, when an indefinite Work Permit will be granted.





PUERTO RICO

- Puerto Rico, officially known as the Commonwealth of Puerto Rico (Estado Libre Asociado de Puerto Rico), is a self-governing territory of the United States, located in the northeastern Caribbean.
- Puerto Rico (Spanish for “rich port”) consists of an archipelago that includes the main island of Puerto Rico and several islands: Vieques, Culebra, Mona and numerous islets.
- Puerto Rico is the smallest island of the Greater Antilles with an area of 100 miles long by 35 miles wide.
- Puerto Rico is bordered to the west by the Dominican Republic and Haiti (La Española), separated by the Mona Passage (“Mona Canal”), to the east by the Virgin Islands, to the north by the Atlantic Ocean, and to the south by the Caribbean Sea.
- Puerto Rico is a self-governing commonwealth in association with the United States. The head of state is the President of the United States of America. The head of government is an elected Governor.
- Government: Republican form government, with three branches of government: Executive, Legislative and Judicial.
- Population: Approx. 3.194 million (2019)
- Spanish and English are the official languages of Puerto Rico.
- Currency: U.S. Dollar (USD)
- Climate: Tropical, average temperatures year-round between 90 °F (32.2 °C) and 70 °F (21.1 °C).

BUSINESS PRESENCE

- Puerto Rico law allows for the establishment of the following business types: domestic and foreign corporations and limited liability companies, limited liability partnerships, and civil partnerships. Not-for-profit, close and professional corporation types are also widely used. The Puerto Rico General Corporation Law is modelled after the State of Delaware’s General Corporation Law, thus allowing ample reciprocity between US corporate entities and PR corporate entities. The most popular entity forms used are the corporation and LLC. Typically, investors either form domestic entities or authorize their existing entity to do business in Puerto Rico.
- The incorporation process is very similar to that available in the United States. To incorporate in Puerto Rico, you must file the corresponding forms through the online platform of the Department of State of the Commonwealth of Puerto Rico along with the payment of the filing fees. To maintain their “Good Standing” status, entities must annually file a report and/or renewal and pay an annual fee.

FOREIGN INVESTMENT:

- Puerto Rico provides a positive legal framework to promote US and foreign investment. Some of the benefits of doing business in Puerto Rico include:
 - Puerto Rico is a territory of the United States and unless expressly excluded, US laws apply. As a result:
 - Puerto Rico is part of the US free trade zones and customs system.
 - Puerto Rico is protected under the US legal framework for intellectual property protection.
 - Puerto Rico is under the protection of the US Homeland Security Act
 - Puerto Rico’s banking system is regulated by US laws (Federal Deposit Insurance Corporation).
 - Puerto Rico has access to US federal programs and funds.
- There are no restrictions on foreign shareholders.
- US federal government’s restrictions on doing business with certain countries apply in Puerto Rico.

- Puerto Rico does not have any exchange control or currency regulations.

BUSINESS TAX INCENTIVES

- Act 60-2019, known as the Puerto Rico Incentives Code (the “Incentives Code”), codified the tax incentives formerly granted under Acts 20 and 22, as well as many other tax incentives laws, to encourage long-term economic activity in Puerto Rico. The Incentives Code adopted a streamlined legal and administrative framework for the application, assessment, and grant of incentives by the Government of Puerto Rico. The Incentives Code provides unique opportunities to make Puerto Rico a prime destination of international services, including consulting, electronic data processing services, health services, education services, among others.
- To enjoy the benefits granted under the Incentives Code, an eligible business or individual investor must apply for and obtain a tax exemption decree from the Puerto Rico Department of Economic Development and Commerce. Such decree is a binding contract with the Government of Puerto Rico not subject to subsequent legislative changes. The following is a brief overview of the most significant tax benefits available to businesses and individual investors under the Incentives Code.

Term

- Tax exemption decrees have a term of 15 years, renewable for 15 additional years, provided certain conditions are met.

Employment

- An eligible business with an annual projected or actual volume of business greater than \$3 million must maintain at least 1 employee if it is an export services grantee (previously Act 20-2012), and 3 employees if it is an industrial incentives grantee (previously Act 73-2008). The Act allows for current grantee holders under Act 20 and Act 73 to submit a grant amendment to request the employment requirement set forth in the Incentives Code. All other businesses are not subject to an employment commitment.

Income Tax

- Eligible businesses providing export services will be subject to a 4% flat income tax rate on net income related to such services.

Property Taxes

- Real and personal property used in eligible export activities will enjoy a 75% exemption.

Municipal Taxes

- Eligible businesses will enjoy a 50% exemption on municipal taxes, such as municipal license and construction excise taxes. Municipalities may levy a gross receipts tax of up to 0.5% (1.5% for financial services).

Tax Exemption on Passive Income

- Distributions from earnings and profits derived from the export services income of eligible businesses are 100% tax exempt

from Puerto Rico income taxes. Similarly, individual investors will enjoy a 100% tax exemption from Puerto Rico income taxes on all dividend and interest income. Interest and dividends that qualify as Puerto Rico source income will not be subject to federal income taxation in accordance with Section 933 of the U.S. Tax Code.

Tax Exemption on Eligible Investments

All capital gains accrued from eligible investments after the individual becomes a bona fide resident of Puerto Rico will be 100% exempt from Puerto Rico income taxes. To qualify for this tax preference, all capital gains must be recognized prior to January 1, 2036.

- These benefits are available to bona fide residents who were not residents of Puerto Rico for the 10-year period preceding the Incentives Code’s enactment in 2019. Generally, a bona fide resident must: (i) be present in Puerto Rico for at least 183 days during the taxable year, (ii) not have a tax home outside of Puerto Rico during the taxable year, and (iii) do not have a closer connection to the United States or a foreign country other than to Puerto Rico.
- In addition, qualifying individual resident investors must make an annual \$10,000 contribution to a duly organized and registered non-profit organization in Puerto Rico, as well as satisfy a one-time \$5,000 fee payable to the Department of Economic Development and Commerce. A residential property must be purchased in Puerto Rico within the first two years after obtaining the decree.
- The Incentives Code is effective from July 1, 2019. Changes incorporated by the Incentives Code will not affect current Acts 20 and 22 grant holders. Commencing on January 1, 2020, all tax incentives applications will be subject to the provisions of the Incentives Code.

TAXATION:

- Taxation in Puerto Rico takes the form of both Federal (US) and Commonwealth taxes. Puerto Rico has independent tax-levying authority by provisions of 48 U.S.C. § 734 of the United States Code, and the Puerto Rico Internal Revenue Code.
- Correlation with the United States Tax Laws. Though the Commonwealth government has its own tax laws, Puerto Ricans are also required to pay most U.S. federal taxes:
 - o Individuals Residing in Puerto Rico. Residents of Puerto Rico pay into Social Security and are thus eligible for Social Security benefits upon retirement. Other federal taxes paid by Puerto Rico residents include import/export taxes, and federal commodity taxes. Like residents of the United States, residents of Puerto Rico are subject to federal income tax on their worldwide income. However, U.S. Code Section 933, for tax purposes, allows a bona fide individual resident of Puerto Rico to exclude Puerto Rico source income from his/her gross income. The process for determining and establishing bona fide residence for income tax purposes hinges on the result of three tests found in U.S. Code Section 937: (a) the presence test, (b) the tax home test and (c) closer connection test.

- o Employers in Puerto Rico. Are subject to both Federal Insurance Contributions Act (FICA) tax (a payroll withholding tax, which funds Social Security and Medicare) and the Federal Unemployment Tax Act (FUTA). Employers in Puerto Rico are legally obligated to withhold the employee portion of FICA taxes from their employees’ wages and contribute the employer portion of FICA.
- o Puerto Rico Corporations. Puerto Rico corporations are treated as foreign corporations for U.S. income tax purposes. Thus, Puerto Rico corporations are subject to a 30% U.S. income tax withholding on, among others: interest, rents, wages, premiums, annuities, compensation, remuneration, emoluments and other fixed or determinable annual or periodical gains, profits and income from sources within the United States. Dividends received by a Puerto Rico corporation from a U.S. corporation, however and provided certain conditions are met, are subject to a reduced U.S. income tax withholding instead of the 30% rate applicable to other foreign corporations. Puerto Rico corporations are subject to regular U.S. tax rates on their income effectively connected to a trade or business in the United States.

Puerto Rico Tax System.

- The Puerto Rico Internal Revenue Code is based on the IRC. Resident individuals (those domiciled in Puerto Rico) and domestic corporations (those organized under the laws of Puerto Rico) are taxed on their worldwide income, unless expressly exempted. Nonresident individuals and foreign corporations are taxed only on Puerto Rico source income or income effectively connected with the conduct of a trade or business in Puerto Rico (“ECI”). Generally, non-Puerto Rico source income is not ECI, but such income constitutes ECI if (i) the non-resident individual or foreign corporation is engaged in a trade or business in Puerto Rico through an office or other fixed place of business in Puerto Rico; (ii) the foreign source income is attributable to such Puerto Rico office; and (iii) the foreign source income consists of (a) royalties on intangibles derived from the active conduct of such Puerto Rico business, (b) dividends, interest or gain or loss from sale of securities in a banking or finance business or income received by a corporation whose principal business is trading securities for its own account, and (c) income received from the sale of goods outside of Puerto Rico through the Puerto Rico office (unless the goods are manufactured outside Puerto Rico by the non-resident individual or foreign corporation, or a related person, and is sold for use, consumption or disposition outside of Puerto Rico).

Personal Income Tax

- Individuals are taxed on a graduate rate based on their tax bracket, which ranges from 0% to a maximum of 33%. A person is considered a “resident” of Puerto Rico if he or she lives in Puerto Rico for at least 184 days in a calendar year. Capital gains earned by resident individuals are also taxed. Long-term capital gains are gains earned from an asset, which is held for more than 6 months. The taxable gain is computed by deducting the acquisition costs from the gross selling price.

o **Preferential Tax Rates**

- Net long-term capital gains are subject to a 15% tax rate, but the taxpayer may elect the regular rate if lower.
- Dividend distributions by domestic corporations and other entities subject to taxation as corporations, as well as by foreign corporations whose Puerto Rico source income or ECI is at least 80% of the total gross income of such foreign corporation or partnership for the prior three taxable years, are taxed at a 15% tax rate.
- An alternative tax rate of 10% applies to non-exempt interest paid or credited on interest bearing deposits (or those registered with a brokerage house as nominee) in certain local financial institutions; a 17% tax rate applies to interest paid or distributed by an individual retirement account. An alternative tax rate of 10% is imposed on interest accrued or paid on obligations issued by domestic corporations or by foreign corporations whose Puerto Rico source income or ECI is at least 80% of the total gross income of such foreign corporation for the prior three taxable years. This 10% alternative tax rate also applies to interest paid on certain mortgages on residential property located in Puerto Rico. These alternative tax rates are available only if the individual agrees to have withholding done at the source of the tax. Also, the individual may elect to apply the normal tax rates if such tax rates are more beneficial than the alternative tax rates.

o **Non-residents**

- U.S. citizens are subject to Puerto Rico income taxation at the same income tax rates that apply to Puerto Rico residents, but only on Puerto Rico source income. Certain payments of Puerto Rico source income are subject to a 20% withholding tax. Proceeds from the sale or exchange of stock (if Puerto Rico source income) and real estate located in Puerto Rico are subject to a 15% withholding tax rate.

Puerto Rico corporations.

- Corporations are subject to income taxation on their net income at a normal tax rate of 20%. In addition to the normal tax, a surtax applies on net income in excess of \$25,000 at the following tax rates.

If Net Income Subject to Surtax is	Surtax Rate
Not higher than \$75,000	5%
In excess of \$75,000, but not higher than \$125,000	\$3,750 plus 15% of the excess over \$75,000
In excess of \$125,000, but not higher than \$175,000	\$11,250 plus 16% of the excess over \$125,000
In excess of \$175,000, but not higher than \$225,000	\$19,250 plus 17% of the excess over \$175,000
In excess of \$225,000, but not higher than \$275,000	\$27,750 plus 18% of the excess over \$225,000
In excess of \$275,000	\$36,750 plus 19% of the excess over \$275,000

Unless otherwise exempt, corporations and other entities subject to taxation as corporations are also subject to an alternative minimum tax ("AMT") of 30% on the alternative minimum taxable income ("AMTI"). The AMTI is calculated by making various adjustments to the regular taxable income, which has the effect of accelerating the recognition of income. The tax liability is the greater of the AMT or the regular tax liability. Net long-term capital gains are subject to an alternative tax rate of 20%, but the taxpayer may elect the regular rate if lower.

Municipal Taxes; Property Taxes

- o Municipal License Tax. The municipal license tax ("patente") is imposed on the gross receipts of a business conducted in a municipality. The tax rate, which is set by each municipality, cannot exceed 1.5% for a financial business and 0.5% for all other types of businesses. A foreign tax credit is available in the case of financial businesses or other industries with branches outside of Puerto Rico that are subject to a similar tax in other jurisdictions on the same volume of business. Other credits and exemptions are available. A 5% discount is granted if the tax is paid with the timely filing of the Volume of Business Declaration.
- o Construction Tax. Most municipalities impose a construction tax on new construction and demolitions based on the cost of the work. Tax rates vary depending on the municipal ordinance pursuant to which the construction tax is imposed.
- o Property Tax. A property tax on real and personal property is payable to the Municipal Revenue Collection Center ("CRIM" for its Spanish acronym). Municipal property tax rates vary among the 78 municipalities in Puerto Rico; effective rates range from \$5.80 to \$9.83 per \$100 of reported value of personal property for fiscal year 2016-2017. Personal property is self-assessed by the taxpayer. Real property is assessed by the CRIM based on 1957/58 fiscal year values, which are well below present market values.

Franchise, Sales, Use and Excise Taxes

- o Franchise Tax. Puerto Rico does not have a franchise tax.
- o Sales and Use Tax. A general sales and use tax of 11.5% (10.5% state portion and 1% municipal portion) is imposed on the retail sale, use, consumption or storage of taxable items in Puerto Rico. A special 4% sales and use tax is imposed on certain services. The general and special sales tax generally must be paid by the purchaser of the goods or services at the time of sale. But in some instances, the general or special sales and use tax must be self-assessed. Taxable items include tangible personal property, taxable services, admission fees, and bundled transactions.
- o Excise Tax. Special excise taxes apply upon the introduction, sale, consumption, use, transfer or acquisition of cement, cigarettes, petroleum, gas oil, jet fuel, diesel oil, petroleum products, motor vehicles, sugar, alcoholic beverages, vessels, heavy duty equipment and certain plastic products manufactured outside of Puerto Rico that do not comply with certain specifications. The excise tax is to be paid only once. Licences are required for the sale of certain products and

services, as follows: (i) cigarettes; (ii) vehicles and parts; (iii) gasoline; (iv) cement; (v) oil importer, distributor or retailer; (vi) public events promoter; (vii) arms and ammunition; (viii) the operation of coin-operated and entertainment machines; (ix) sea, air and land carriers; (x) duty-free retailers in air or maritime terminals; (xi) precious metals; and (xii) public bonded warehouses.

- o Act No. 154. A foreign entity will be deemed to be engaged in trade or business in Puerto Rico and therefore subject to Puerto Rico taxation under special rules if it purchases certain tangible property manufactured by a member of the controlled group in Puerto Rico and certain thresholds are met. If the local manufacturing entity member of the controlled group has gross receipts in excess of \$75,000,000, the special income tax rules will not apply, and instead an excise tax of 4% on purchases between affiliates will apply. The 4% excise tax sunsets in 2017, but the special income tax rules do not expire.

INTELLECTUAL PROPERTY:

- Puerto Rico is protected under the US legal framework for intellectual property protection:

Patents.

- Applications for and issuance of patents are governed exclusively by the laws of the United States: Title 35 U.S.C. Ownership of a patent is governed by state law and, a claim of patent infringement raised as a counterclaim in a suit under state law may be decided under state law. One who invents a new machine, device or manufacturing process may be able to obtain a U.S. patent. A U.S. patent provides the inventor with the exclusive right to exclude others from making, using, offering for sale, or importing into the U.S., the patented invention. In general, these patent rights protect the invention, even if another party independently conceived an identical invention, beginning on the date on which the patent issues and ending 20 years from the earliest date on which the patent application was filed. The patent term is subject to adjustments for certain delays. A design patent, which covers the design or appearance of an article of manufacture, is enforceable for 14 years from the granting date of the patent. A provisional patent, which is filed before a regular patent application, establishes a priority filing date and provides up to 12 months to further develop the invention without filing a regular patent application. Anyone without authority from the patent holder who makes, uses, imports, or sells in the U.S. the patented invention during the life of the patent is considered to infringe the patent and may be liable for damages.

Trademarks.

- A trademark or service mark is a designation used by a business to identify its goods and services and to distinguish them from those of others. A mark can be a name, number, slogan, symbol, device, logo, trade dress, color, sound, scent or combination of any of those. A trademark should not be confused with a trade name. Although the same designation may function as both a trademark and a trade name, a trade

name refers to a business title or the name of a business; a trademark is used to identify the goods or services offered by the business. Generally, service marks and trademarks receive the same legal treatment.

- Trademark rights can be used to prevent others from using the same, or very similar mark in connection with the same goods or services that are sold under the trademark. Trademarks enjoy protection under United States Trademark Act, as amended, and under Act 169-2009, as amended, known as "Puerto Rico Trademark Act". If merchandise is used in inter-state commerce owners of trademarks can register them with the United States Patents and Trademarks Office. Applications for the registration of trademarks in Puerto Rico must be filed with the Registry of Trademarks and Commercial Names of the Puerto Rico Department of State. In Puerto Rico, registration with intent to use is allowed.
- Under the trademark laws of the U.S. and Puerto Rico, the principal method of establishing rights in a trademark is actual use of the trademark. "Registration" of a trademark is not legally required but can provide certain advantages. Federal registration of a trademark is presumptive evidence of the ownership of the trademark and of the registrant's exclusive right to use the mark in interstate commerce (which includes Puerto Rico), strengthening the registrant's position. After five years of continued use of the mark following federal or local registration and upon submission of a particular affidavit, the registrant's exclusive right to use the trademark becomes virtually conclusive. Federal registration may assist in preventing the importation into the U.S. of foreign goods that bear an infringing trademark. There are also other less tangible advantages of registration, such as the goodwill arising out of the implication of government approval of the trademark.

Copyright

- Copyright is available for authors of original works, including literary, dramatic, musical, artistic, and certain other intellectual works. Copyright is governed by Federal (US) and Puerto Rico law (Visual Artists Rights Act, and PR Author's Moral Rights Act, Act 55-2012). Copyright protection subsists from the time the work is created in fixed form and immediately becomes the property of the author of the work. Copyrights can be registered with the US Copyright Office of the Library of Congress and with the Copyright Registry Office of the Puerto Rico Department of State.
- Copyright protection automatically attaches to a work the moment it is created. However, registration of the work with the U.S. Copyright Office provides advantages. A certificate of registration is prima facie evidence of the copyright's validity, provided that registration occurs no later than five years after first publication. With respect to works whose country of origin is the United States, registration is a prerequisite to an action for infringement. With respect to all works, regardless of the country of origin, statutory damages and attorneys' fees may not be awarded in certain infringement actions. Registration is also a useful means of providing actual notice of copyright ownership to those who search the copyright records.

LABOR LAW:

- The Constitution of the Commonwealth of Puerto Rico establishes the framework for the Labor Laws of Puerto Rico, through its Articles 15, 16, 17 and 18. The Constitution provides the minimum range of protection that can be granted to employees. These provisions cannot be modified by a written employment contract unless it grants workers further favorable conditions than the ones that are set as a minimum by the Constitution and related laws.
- Act No. 180-1999, as amended, known as the Minimum Wage, Vacation and Sick Leave Act statutorily incorporates, as a substantive right the automatic and immediate application of the Federal Minimum Wage to all workers in industries in Puerto Rico covered by the Fair Labor Standards Act (FLSA). However, certain dispositions of the FLSA only applies to those employees who work in industries covered by the FLSA. As such, not all employees in Puerto Rico are covered by the FLSA.
- Both the Constitution and the Laws of Puerto Rico establish that eight (8) hours of work within a period of 24 consecutive hours constitute the legal and regular workday in Puerto Rico. Forty (40) hours of work constitute the regular workweek. If an employee was hired prior to January 26, 2017, Act 379-1948 requires payment of work in excess of eight hours a day or forty a week at an hour and a half (1 ½) the regular rate of pay after an employee worked a shift of eight (8) consecutive hours on a 24-hour period. However, if the employee was hired after this date, Act No. 4-2017 establishes that payment of work in excess of eight hours a day or forty a week will be paid at an hour and a half the regular rate after an eight (8) hour shift during any calendar day. If the employer is covered by the Fair Labor Standards Act, the employer has to pay for each overtime hour of work in excess of the legal eight hours per day, a wage rate of not less than one and a half time the wage agreed upon for regular hours unless otherwise established by mandatory decree or collective bargaining agreement. In addition, the employer and employee have the option to agree to a flexible work schedule as regulated by the "Flexitime Act", Act 83-1995. This law allows for flexibility in determining the beginning of an employee's regular workday or the beginning of his meal period.
- Meal Period are regulated by Act No. 379-1948, which states that the meal period shall not be less than one hour that the employee cannot work for more than five hours consecutively without taking his meal period.
- If the employee was hired prior to January 26, 2017, they are entitled to accrue vacation leave with full pay to be made effective when the employee begins to enjoy the same, at the rate of one and one fourth (1¼) working day for each month in which he has worked at least one hundred and fifteen (115) hours. Employees shall accrue sick leave at the rate of one (1) working day for each month in which they have worked at least one hundred fifteen (115) hours for. The use of sick leave will be considered as time worked in the accrual of this benefit. If the employee was hired after January 26, 2017, according to Act 4-2017, they are entitled to accrue vacation leave at the rate of half (1/2) day per month during the first year, three-fourth

(3/4) day per month from year two (2) to year five (5), one (1) day per month until year fifteen (15) and one and one-fourth (1 ¼) day after fifteen years of service. Employees hired after the enactment of Act No. 4-2017, shall accrue sick leave at the rate of one (1) working day for each month in which they have worked at least one hundred and thirty (130) hours. Other Puerto Rico labor laws issues are governed by Act No. 80 of May 30, 1976, as amended known as the "Unjust Dismissal Act"; Act No. 3 of March 13, 1942, as amended, known as the "Working Mother's Protection Act"; Act No. Act No. 427-2000, as amended, known as the "Act to Regulate the Period to Breastfeed"; Act No. 74 of June 21, 1956, as amended, known as the "Puerto Rico Employment Security Act"; Act No. 45 of April 18, 1935, as amended, known as the "Compensation System for Work-Related Accidents Act", also known as the "Workmen's Accident Compensation Act"; and Act No. 428 of May 15, 1950, as amended, known as the "Non-Occupational Disability and Social Security for Chauffeurs". Additionally, Act No. 100 of June 20, 1959, as amended, prohibits discrimination based in age, race, color, sex, national origin, social origin or condition, military or veteran status, sexual orientation, sexual identity, political or religious ideas, marriage or for being a victim or being a victim or being perceived as a victim of domestic violence, sexual aggression or stalking. Furthermore, additional laws concerning veterans and employee on military service leave, jury duty, witness leave for criminal cases, sports leave, accident disability leave and "Christmas Bonus" are applicable, depending on the individual. Furthermore, additional laws concerning veterans and employees on military service leave, laws governing jury duty, witness leave for criminal cases, sports leave, automobile accident disability leave and "Christmas Bonus" Act are applicable, depending on the individual.



FOREIGN EMPLOYEES:

- As a territory of the United States, Puerto Rico is governed by US immigration law. All foreign employees require work permits and/or residency permits issued by the United States Citizen and Immigration Services, ascribed to the Department of Homeland Security.

IMMIGRATION:

- U.S. immigration laws are fully applicable in P.R. With the globalization of world markets, employers located in the U.S. (including Puerto Rico) often seek to employ foreign nationals. A variety of permanent and temporary work visas are available depending on various factors such as the job proposed for the alien, the alien's qualifications, and the relationship between the U.S. (Puerto Rico) employer and the foreign employee. U.S. permanent residents are authorized to stay and work for indefinite terms in the U.S. where and for whom they wish. Temporary visa holders have authorization to remain in the U.S. for a temporary time and often the employment authorization is limited to a specific employer, job, and even specific work sites.



DOING BUSINESS IN LATIN AMERICA

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