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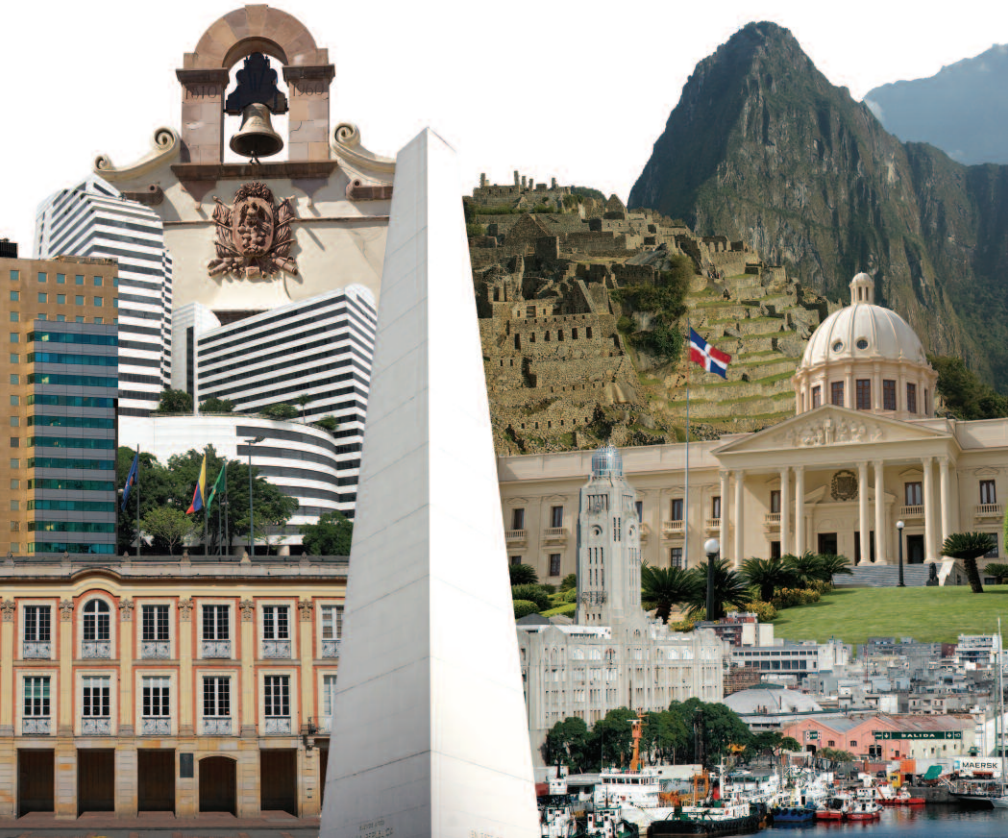

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PREPARED BY MERITAS LAWYERS
IN LATIN AMERICA AND THE CARIBBEAN

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DOING BUSINESS IN LATIN AMERICA AND THE CARIBBEAN

This publication has been prepared by the lawyers of Meritas firms to provide an overview to foreign investors and business people who have an interest in conducting business in Latin America and the Caribbean. The material in this publication is intended to provide general information only and not legal advice. This information should not be acted upon without prior consultation with legal advisors familiar with the specifics of your particular matter.

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The following currency notations are used in this book.

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

Please be aware that the information on legal, tax and other matters contained in this booklet is merely descriptive and therefore not exhaustive. As a result of changes in legislation and regulations as well as new interpretations of those currently existing, the situations as described in this publication are subject to change. Meritas cannot, and does not, guarantee the accuracy or the completeness of information given, nor the application and execution of laws as stated.

Bordering the south Atlantic Ocean, Argentina is the second largest country in South America. Argentina's population is over 40 million people, and the country is organized as a federal republic consisting of 23 provinces and the autonomous city of Buenos Aires. Its legal system is a mixture of U.S. and West European systems with an executive, legislative and judicial branch.

The president and vice president are elected on the same ticket by popular vote for four-year terms. Congress is divided in two houses, the Chamber of Deputies and the Senate. The federal judiciary is headed by the National Supreme Court, and is present throughout the country by trial and appellate courts; federal jurisdiction is predicated on subject matter and personal jurisdiction.

All provinces and the city of Buenos Aires replicate this structure with executive, legislative and judicial branches formally separated from the other.

Argentina benefits from rich natural resources, a highly literate population, an export-oriented agricultural sector and a diversified industrial base. The GDP is estimated at USD435 billion as of 31 December 2011.

FOREIGN INVESTMENT

The Argentine Constitution guarantees foreign persons equal protection with regard to working, investing, and buying, owning and selling property in Argentina. (See Argentine Constitution, Sec. 20). The Foreign Investment Act (Law 21,382, as amended by Laws 22,208 and 23,697; hereafter the FIA) regulates general foreign investment. Under its provisions, foreign investors (i.e., natural and corporate persons domiciled outside Argentina, regardless of citizenship) enjoy the same rights and are subject to the same obligations as domestic investors, regardless of citizenship or the amount and purpose of the investment.

Generally, investments may be made without prior government authorization even when the investment involves the denationalization of the asset, unless specific legislation regulating the activity or asset provides otherwise.

In 2004, the Central Bank created a Foreign Investment Survey System. This system requires all local entities with at least 10% of their equity held by one or more foreign investors to identify the name and domicile of the foreign investor(s) and the investor(s) ownership percentage. The system further requires persons who manage real property investments owned by nonresidents to disclose, in certain cases, the identity of such owners.

Argentina is party to 58 bilateral investment treaties (BITs), 55 of which are currently in effect. These include treaties with the United States, the United Kingdom, Spain, France, the Netherlands, Germany, Australia, Canada, Chile and Mexico. Like the FIA, these treaties provide foreign investors with equal protection and mandate reciprocal benefits and repatriation of capital. Most treaties contain a "most-favored-nation" clause, entitling a foreign investor from a signatory nation of a BIT with Argentina to avail itself of the provisions of a BIT between Argentina and any other country. Additionally, Argentina is a party to investment treaties negotiated within the framework of the MERCOSUR Treaty.

FOREIGN EXCHANGE REGULATIONS AND RELATED ISSUES

As a result of substantial amendments introduced in foreign exchange regulations in 2002, foreign currency proceeds from exports of goods and services, loans and certain types of contracts (e.g., intellectual property licenses and real property leases) must be liquidated in the Argentine free exchange market.

All loans made with foreign lenders must be registered with the Central Bank. Only registered loans may be serviced through currency transfers without prior Central Bank authorization. Repayment of principal may not occur until 365 days after the disbursed loan proceeds have been liquidated in the Argentine exchange market. Interest can be paid by currency transfers on the terms and conditions agreed upon by the parties. In addition, the private sector may access the Central Bank's exchange market to transfer abroad currency to pay obligations for imported goods, to pay for the rendering of services and to distribute dividends declared pursuant to duly approved and audited financial statements. However, such access and transfers may be hampered by informal interference by government officials.

Also, since October 2011, entities authorized by the Central Bank to perform currency transactions are required to register said transactions online with the Federal Tax Bureau; purchases of foreign currency must first be authorized by said Bureau through its website. That website only allows the purchase of foreign currency for certain specific purposes, and it actually does so very restrictively.

A 2005 measure (Decree 616/2005) endeavors to control "capital flight" risk from temporary inflows of foreign capital. This control involves the imposition of a one-year, 30% reserve *(encaje)* on all currency transferred from abroad, subject to specified exceptions related to "direct investments" and the purchase of capital goods. This reserve account is automatically created by the receiving institution as a registered, non-assignable, non-interest-bearing account. The

account funds are maintained in U.S. dollars and the account cannot be used as a guaranty or collateral for any credit transaction.

ANTITRUST LAW

Argentine antitrust regulations are contained in Law 25,156 enacted in 1999 (hereinafter the Antitrust Act). The Antitrust Act enacted an independent body with investigative and adjudicatory powers, the *Tribunal Nacional de Defensa de la Competencia*, which has not been created yet. Competition matters are still controlled by the *Comisión Nacional de Defensa de la Competencia*, which was created by the prior antitrust law and whose members are appointed directly by the Administration.

The Antitrust Act addresses two antitrust issues: anti-competitive practices and control of economic concentrations.

The Antitrust Act is applicable to individuals and legal entities performing business in Argentina and to foreign entities or individuals in connection with their activities in Argentina.

ANTICOMPETITIVE PRACTICES

The Antitrust Act does not follow the per se approach, instead applying the rule of reason. Therefore, there are no practices forbidden per se. The Antitrust Act generally prohibits conduct that may harm general economic interest, expressed in any form, related to production and trade of goods and services, whose purpose is distortion or restriction of competition or access to markets.

The Antitrust Act contains a non-exhaustive list of specific practices that, assuming the above requirements are met, will be deemed anticompetitive and illicit. These include price fixing, manipulation or exchange of information for that purpose, market sharing, bid rigging, boycott, discrimination, predatory pricing, tying and refusal to sell. Abuse of a dominant position is also considered illicit if it harms the general economic interest.

The Antitrust Act establishes fines from ARS10,000 to ARS150 million as well as cease and desist orders. Directors, managers and legal representatives can also be considered jointly liable. The Antitrust Act allows damnified parties to file indemnification claims with ordinary local courts.

CONTROL OF ECONOMIC CONCENTRATIONS

The Antitrust Act requires scrutiny and approval of various transaction types that produce "economic concentration." Economic concentration is defined broadly to cover myriad forms of business transactions, including mergers, the transfer of a business as a going concern, acquisitions of securities, and asset transfers.

Notice to the regulators on an economic concentration must be given for its review if it causes actual or potential effects in the country, and the total volume of business of the group of affected companies in Argentina exceeds ARS200million.

The exceptions to the filing requirement under Argentine law are:

- Acquisition of a company of which the buyer already owns 50% of the shares;
- Acquisition of bonds, debentures, nonvoting shares or other nonconvertible debt securities;
- Acquisition of a single company by a company that did not previously have any other assets in Argentina or shares of an Argentine company;
- Acquisition of liquidated companies that had no activity in the previous year;
- Transactions involving a purchase price and asset value in Argentina, which in either case does not exceed ARS20 million, unless any of the parties were involved in one or more transactions of economic concentration in the same relevant market in an amount exceeding ARS20 million in the previous 12 months or ARS60 million in the previous 36 months.

An economic concentration is not enforceable in Argentina either between the parties or with respect to third parties until it is approved by the Argentine antitrust authorities. However, there is no precedent in which the regulators have disapproved a transaction and demanded its unwinding with retroactive effects.

ENFORCEMENT OF FOREIGN JUDGMENTS

The enforcement of foreign judgments is governed according to the terms and guidelines established in treaties that Argentina is a party to. If no treaty exists with the ruling court's country of origin, Argentina's National Code of Civil and Commercial Procedure applies. Articles 517-519 of said Code outline the following four prerequisites to domesticating a foreign judgment.

- The judgment must be final in the jurisdiction where rendered and arise from a court with proper subject matter and personal jurisdiction according to Argentine law.
- The defendant must have been personally served and must have been guaranteed due process of law.
- The judgment must not violate Argentine public policy.

- The judgment must not conflict with prior or contemporaneous Argentine judgment on the same dispute involving the same parties.

Argentine courts will likely domesticate an arbitration award that satisfies the requirements listed above for the domestication of foreign judgments.

INSOLVENCY AND BANKRUPTCY

The Argentine Bankruptcy Act (Law 24,522, or the ABA) sets forth two different schemes for insolvent individuals or entities: reorganization and bankruptcy.

REORGANIZATION *(CONCURSO PREVENTIVO)*

The ABA provides procedural guidelines for composition proceedings that permit an insolvent debtor under court protection and supervision to craft restructure and repayment agreements with creditors. To initiate the proceeding, an individual or company must file information demonstrating an inability to pay debts as they mature. An intervening court decides whether to open a composition proceeding.

Opening a composition proceeding places a debtor under the supervision of a trustee. The debtor remains in possession of the business, subject to restrictions imposed by law.

Despite their restrictive character, composition proceedings are largely designed to benefit the debtor. Filing a composition proceeding stays accrued interest on unsecured claims as of the filing of the petition. In addition, the insolvent party may request that the court terminate or continue executory contracts. Where no notice of continuation is issued, parties operating under these contracts may terminate them. Though reorganization proceedings do not terminate labor contracts, the commencement of such a proceeding will suspend collective bargaining agreements for three years, during which time the *Administración para la Cooperación Económica* (ECA) will govern labor relations. Reorganization proceedings also ensure the continuation of public services provided to the insolvent party as such services cannot be terminated based on debts existing prior to the commencement of said proceeding.

For the allowance of claims *(verificación de créditos)*, all creditors must submit proofs of claims stating their credits and preferences to the trustee. The court will subsequently determine the admissibility of each claim. Approval requires an absolute majority of creditors representing at least two-thirds of the claims allowed in each class.

Within three days of the filing of the acceptance, the court must rule that a reorganization arrangement exists.

OUT OF COURT RESTRUCTURING *(ACUERDO PREVENTIVO EXTRAJUDICIAL)*

Sections 69 to 76 of the ABA offer parties a means to restructure without judicial involvement. These sections allow a debtor to agree with the majority of its creditors on a "prepackaged" out-of-court reorganization plan (*acuerdo preventivo extrajudicial*, or APE) which, upon judicial confirmation, becomes binding on creditors. Despite their appeal to debtors, as well as major creditors looking to efficiently restructure without a bankruptcy proceeding, APEs leave bondholders in a much more tenuous position.

APEs are negotiated between the debtor and its unsecured creditors, subject to judicial endorsement. Once endorsed, the APE is enforceable against all unsecured creditors, including those refusing to be party to the agreement.

The APE is favorable to reorganization because it affords the parties more flexibility in resolving disputes. Likewise, it presents far fewer limitations to the debtor. However, it does present certain disadvantages as the debtor has a smaller negotiating voice when contrasted against its creditors. Furthermore, interest and tax obligations are not suspended as a result of the agreement.

"CRAMDOWN" PROCEDURE

Argentine insolvency law also provides a process (referred to by statute as "cramdown") by which dissenting creditors or other third parties may acquire control of a debtor that fails to obtain approval for a restructuring plan.

Registered parties, as well as the debtor, must present a reorganization plan to creditors. The reorganization must be approved by an absolute majority of creditors representing at least two-thirds of the claims allowed in each class.

BANKRUPTCY

The second scheme set forth by the ABA is bankruptcy, in which the insolvent debtor must liquidate and distribute his assets to satisfy creditors' claims. Debtors must be insolvent before bankruptcy becomes a viable option for a company in financial distress. A bankruptcy proceeding is available after the failure of a reorganization proceeding or if a debtor voluntarily seeks bankruptcy or upon request of at least one creditor. A request by the creditor requires evidence that the debtor failed to pay debts as they matured. The debtor has five days to challenge the creditor's petition.

Declaring bankruptcy immediately imposes obligations and restrictions on the debtor, its representatives and its administrators.

Ascertaining the date of insolvency is critical in a bankruptcy proceeding. Depending on the date of insolvency, the bankruptcy court may grant a

retroactive reach-back period (*período de sospecha*) not exceeding two years prior to the declaration of bankruptcy or the filing of a reorganization plan.

In bankruptcy, creditors may only enforce rights in divested assets in the manner prescribed in the ABA. All creditors must file proofs of claims, requesting the verification of respective credits and preferences.

Some creditors may enjoy a preference with respect to the distribution of the debtor's assets. A "special" preference refers to specific assets over which the creditor holds a preferential right (e.g., the mortgagee—creditor—in relation to the mortgaged asset).

A "general" preference typically refers to a class of claims (e.g., wages, social security and taxes) payable first out of the debtor's estate.

The receiver may elect to continue a company's operations. Within 20 calendar days of accepting the charge, the receiver must inform the court of the practicability of maintaining the company as an ongoing concern.

The preservation of jobs is a cause for the immediate continuation of the company's operations or of the operations of any of its business concerns, if two thirds of the employees or labor creditors, organized as a cooperative (even in process of being formed), request so to the receiver, or to the judge if the receiver had not accepted his appointment yet, after the bankruptcy declaration and until five days after the last publication of notices in the official journal of record corresponding to the location of the business concern.

The receiver also possesses the right to liquidate the company. There are three methods of liquidation available to the receiver: sell the entire company as an ongoing concern, sell company assets in bulk or sell company assets gradually.

Proceeds from these sales will be applied to administrative costs, with any surplus being distributed to creditors, according to their preferences.

LITIGATION

If a lawsuit becomes necessary, there are two types of proceedings used to sue for mature debts: ordinary proceedings and summary proceedings (*vía ejecutiva*). Both require a plaintiff to pay a court tax, which is typically 2% to 4% of the amount in controversy, depending on jurisdiction. This tax, though ultimately recoverable from the debtor should the plaintiff prevail, is a formidable cost that often discourages judicial action. Additionally, the losing party in each petition to the court challenged by the prevailing party generally bears the costs of the litigation. Local courts are required to award fees to intervening counsel in contemplation of the amount being litigated.

Creditors with qualifying documents may request a summary proceeding. Examples of such documents are letters of credit, promissory notes, bank drafts and bonds, so long as they comply with specific legal requirements. A summary proceeding precludes numerous defenses otherwise available to a debtor. This proceeding also entitles the creditor to seize and auction the debtor's assets to satisfy the debt.

Any claim not eligible for a summary proceeding must prove both existence and amount through an ordinary proceeding. In an ordinary proceeding, the debtor has access to all legal defenses. Prior to filing a complaint, the creditor must comply with a mandatory mediation proceeding. Nonresident creditors with no assets in Argentina may have to post a bond to guarantee the payment of fees and costs. Consequently, ordinary proceedings often involve more time and expense than summary proceedings.

BUSINESS ENTITIES

The two principal types of business organizations in Argentina are corporations *(sociedades anónimas)* and limited liability companies *(sociedades de responsabilidad limitada)*. Joint ventures, or unincorporated temporary unions of companies, also play a significant role in business.

CORPORATIONS

The most popular business organization model in Argentina is the stock corporation or *sociedad anónima*, abbreviated S.A. Rules governing the formation and operation of Argentine corporations are similar to those of the United States and other nations. The basic laws governing corporations are contained in Law 19,550, as amended (the Argentine Companies Act). In Buenos Aires, where most stock corporations are incorporated, regulations issued by the Registry of Commerce also govern different aspects of corporate structure.

Formation

Argentine law requires the following items to form a corporation.

Purpose Clause. A corporation may be formed for any lawful purpose, but the corporate purpose clause must be specific (i.e., it cannot merely provide that the corporation shall perform any lawful activity), so that it includes all the activities that the corporation is expected to engage in. Corporations may only hold shares in other corporations or in corporate silent partnerships (*sociedades en comandita por acciones*). They cannot create or hold equity interests in other entities whose capital is not represented in shares. Furthermore, Argentine law sets forth a quantitative cap (applicable, with certain exceptions, to all forms of

companies) for holding equity interests in other companies; said cap is defined according to certain accounting standards.

Corporate Name. Any corporate name not previously registered is available. All corporate names must contain the expression "*sociedad anónima*" or the initials "S.A." If a corporate subsidiary plans to include in its name the corporate name of its foreign parent, a letter from the foreign parent authorizing such use must be addressed to the authorized incorporators.

Incorporators. At least two shareholders are required to establish a corporation and prevailing administrative interpretations require the minority shareholder to hold at least a 5% interest in the Argentine entity. Shareholders may be either domestic or foreign corporations or individuals.

Deed of Incorporation. The deed or articles of incorporation must be executed in Argentina before a notary public by the incorporators. If the shareholders are corporations, the deed must reference the status of the shareholder corporations (e.g., place of incorporation, domicile, etc.). The deed of incorporation must also reference each shareholder's expected participation in the new company.

To become a shareholder in an Argentine corporation or limited liability company, a company domiciled abroad must file certain documents with the Registry of Commerce, pursuant to Sec. 123 of the Argentine Companies Act.

Capital. Domestic corporations must have a share capital of at least ARS100,000, 25% of which must be paid in at the time of incorporation. The remaining 75% must be paid in during a term not to exceed two years from the date of incorporation.

Incorporation Procedure. Articles of incorporation and bylaws must be submitted to the Registry of Commerce, which verifies compliance with all regulations applicable to corporations at their inception.

Corporate Governance

Directors. The board of directors may be composed of one or more members selected by shareholders to run the company. Corporations with assets in excess of ARS10 million must appoint a minimum of three directors. Ordinarily, bylaws specify a maximum and minimum number of directors determined by shareholders at each annual meeting.

A single term for directors may not exceed three fiscal years; there are no term limits. Directors are not required to be shareholders and Argentine citizenship is not mandatory even though a majority of the principal directors must be domiciled in Argentina. All directors must establish a domicile for service of process in Argentina.

Once composed, the board will designate one member as president (chairperson) who will serve as the corporation's legal representative. The board may also create an executive committee, if the bylaws so provide.

Corporate directors must register with the social security and tax authorities, and pay monthly social security contributions. These requirements are applicable also to directors domiciled out of the country, and to directors that do not receive fees for the discharge of their duties.

Directors must meet at least quarterly unless corporate bylaws stipulate more frequent meetings. Official board meetings by conference call are prohibited in Argentina but, under a broad statutory interpretation, such meetings may be held abroad.

Syndics. The election of syndics (statutory comptrollers) is optional for corporations with capital up to ARS10 million. One or more syndics, and an equal number of alternates, must be elected by shareholders when a company has capital stock of ARS10 million or more. If the corporation's stock is listed, or the corporation falls within other particular provisions of Section 299 of the Argentine Companies Act, an uneven number of syndics (larger than one) must be elected. The syndics so appointed form a body usually referred to as "*Comisión Fiscalizadora*."

Syndics must examine the corporation's books and records and convene shareholders' meetings when necessary, or when the board fails to do so. Likewise, syndics shall issue annual reports on the balance sheet, inventories and other financial statements. Syndics are jointly and severally liable for negligence with regard to their duties.

Audit Committee. Publicly traded companies are required by applicable regulations to have an audit committee composed of a majority of independent directors.

Shareholders' Meetings. There are two types of shareholders' meetings, ordinary and extraordinary. Ordinary meetings must convene annually to consider the financial statements of the corporation as well as the election of directors and syndics. Capital increases of up to five times the original amount stated in the bylaws may also be considered during ordinary meetings. Extraordinary meetings must convene to consider, inter alia, amendment to the corporate bylaws, capital increases (other than the aforementioned), capital reductions, the reacquisition of shares, mergers, dissolution, and the issuance of bonds and debentures.

Shareholders' meetings are normally convened by the board and they must be preceded by notice published in the Official Gazette. Ordinary meetings for the

consideration of financial statements and the election of directors and syndics must convene within four months of the end of the fiscal year. Should the board fail to convene a meeting, syndics must do so. No prior notice is required if all shareholders are present or represented at the meeting and all decisions are unanimously approved.

Financial Statements. Corporations are required to file an annual balance sheet, a profit and loss statement, and an annual report. Holding companies must file consolidated statements. All financial statements must be audited by a certified public accountant.

Dividends and Other Distributions of Profits. Dividends can be distributed only from available liquid profits, according to an approved annual balance sheet. Only corporations with capital in excess of ARS10 million, or those listed on the stock exchange, those who operate public utilities, or that fall in other specific exceptions, may distribute anticipated dividends.

SOCIEDAD DE RESPONSABILIDAD LIMITADA (SRL)

The limited liability company may not have more than 50 partners. In addition to qualifying in various countries for "look-through" tax treatment, the SRL is often an attractive alternative as it limits each partner's liability to the partner's investment while entitling the partner to direct the business and affairs of the entity.

The capital of the company is not represented by shares but by capital interests recorded in the bylaws. The company must file its bylaws in the Registry of Commerce and must publish it in the Official Gazette. Only upon completion of these formalities will the SRL be considered officially created.

SRLs whose capital does not exceed ARS10 million are not required to disclose financial statements and are not regulated by the Registry of Commerce.

One or more appointed managers, who may also be stakeholders, govern an SRL.

The Argentine Companies Act provides managers with rights, duties and limitations identical to those possessed by corporate directors. To enjoy these privileges, a majority of a company's managers must reside in Argentina. In an SRL, a majority of stakeholders approve decisions and subsequently relay them to managers, unless the bylaws provide otherwise.

The words "limited liability company," or its abbreviation, SRL, must precede or succeed the name of the limited liability company in all documents, invoices, advertisements and publications. Any omission of such renders managers jointly and severally liable with respect to all relevant transactions.

Capital must be fully subscribed and at least 25% of it must be paid in at the time of creation of the company, and (if not done so at that moment) be fully paid in within the two following years. The transfer of interests, regardless of the number of the company's partners, does not require the consent from the remaining partners unless a company's contract provides otherwise. The transfer of interests must be documented through a public or private instrument, and be recorded with the Registry of Commerce.

Even though SRLs are less formal than stock corporations, they are not as common. However, because U.S. federal tax rules treat them as "look-through" entities, SRLs are becoming an increasingly favored corporate structure.

FOREIGN CORPORATION BRANCHES

As opposed to organizing a local corporation or a limited liability company, a foreign company may register a branch in Argentina. To register, the company must file certain documents with the Registry of Commerce, and establish a domicile in Argentina.

Pursuant to recent regulations, a nonresident may be appointed as legal representative of a branch, as long as he establishes a special domicile within Argentina.

Branches are required to file their annual financial statements with the Registry of Commerce.

TAXATION

CORPORATE INCOME TAX (CIT)

The basic CIT burdens on corporations, limited liability companies and local branches of foreign corporations are similar, but substantive distinctions exist. The following paragraphs analyze how CIT rules apply to each type of business entity.

Applicable Rate

Under current law, a 35% CIT rate applies to a company's (corporation or limited liability company) taxable income. Dividends or other corporate distributions paid to a foreign shareholder of a domestic corporation are not subject to any additional withholding tax unless distributed from exempt income realized by the distributing company. In that case, a 35% withholding tax is assessed on the exempt income portion of the dividends.

Branches are also subject to a 35% CIT on annual net income. Remittances of profits to foreign headquarters are not subject to any additional income or

withholding tax unless distributed from the branch's exempt income. If exempt income is remitted, a 35% withholding tax applies.

Tax Basis

Domestic corporations, limited liability companies and branches are taxed on worldwide income. Foreign income taxes can be credited against Argentine CIT as a relief from double taxation on foreign-sourced income.

Taxable income is assessed by deducting from gross income ordinary business expenses and other allowable deductions. Gross income involves all income from whatever source derived regardless of its character, whether passive (investment) or active (business income), unless expressly excluded or exempt.

Capital Gains and Losses

No reduced capital gain rate exists. Thus, gains from the sale or exchange of real estate and other capital assets are taxed at the ordinary CIT rate (35%). Notwithstanding the above, capital gains from the sale of stock in Argentine corporations, as well as public securities and corporate bonds, are generally exempt from tax in Argentina (unless if realized by Argentine corporate taxpayers).

Payment and Tax Accounting

Income must be accounted for annually (tax year). The tax year is the normal accounting period. With a few exceptions for certain deferred-payment sales, corporate entities must report their income and deductible expenses on an accrual basis.

Consolidation of income of associated entities within the same economic group is not permitted under CIT rules. Each entity must report its income separately, and one associated corporation's losses cannot be offset against the income of another.

Companies must make advanced payments on account of their annual CIT liability. The amount of each advanced payment is calculated on the basis of the CIT liability of the immediately previous tax year. Within five months after the end of their tax year, companies must file an annual CIT return and pay the difference between the annual CIT liability and the advanced payments made (as well as any withholdings that may have been applied on payments collected by the company).

Net Operating Losses

Net operating losses may be carried forward for five years, starting with the year immediately following that in which the loss was incurred. Unused losses after the five-year carryover period are not deductible. No carryback of losses is allowed.

Foreign-Controlled Domestic Companies

Foreign-controlled domestic companies are generally taxed like any other domestic company. However, under certain circumstances special rules apply. Intercompany dealings between a foreign-controlled domestic company and its directly or indirectly related parties are subject to transfer pricing rules.

Tax Treatment of Nonresidents; Tax Rates on Argentine-Sourced Income

Foreign-domiciled entities and nonresident individuals without presence in Argentina are taxed on Argentine source income by way of withholdings at the source to be made by the local payor of the income.

The statutory withholding rate currently stands at 35% but the effective withholding rate may be less. As a general rule, foreign beneficiaries are not taxed on an actual net income basis, but rather on a presumed net income basis which varies depending on the type of income. As a result, actual expenses or other deductions otherwise allowable in determining net taxable income may not be claimed in the case of foreign beneficiaries.

CORPORATE REORGANIZATIONS

Corporate reorganizations effected in Argentina (e.g., mergers, spin-offs, transfers of ongoing concerns within the same economic group) can be granted tax-free treatment.

If structured as a tax-free reorganization, gains or losses realized from the transaction are not recognized as taxable income or deductible losses for Argentine CIT purposes. In addition, certain tax attributes are carried over to the surviving company.

Tax neutrality is achieved as long as the reorganization meets certain requirements:

- Continuity of business enterprise
- Continuity of proprietary interest by substantially the same shareholders (80%) for two years after the reorganization
- Notice of reorganization to the Argentine tax authorities

In addition, for the reorganized company's net operating losses to be carried over, ownership of an 80% interest for two years prior to the reorganization is also required.

Should the reorganizing companies not satisfy any of the above referred requirements, the reorganization would be deemed a taxable transaction for Argentine tax purposes.

THE CHECK-THE-BOX REGIME

In December 1996, the U.S. Internal Revenue Service (IRS) and the Department of the Treasury issued final entity classification regulations under §7701 of the Internal Revenue Code. These regulations permit taxpayers to elect to treat most business entities as a corporation or partnership (if the entity has two or more members) for U.S. federal income tax purposes, or to disregard the entity (if the entity has one member) altogether.

The Argentine limited liability company *(sociedad de responsabilidad limitada)* is eligible for partnership treatment for U.S. federal income tax purposes. In the U.S., partnerships are taxed as pass-through entities. This means that the partnership itself is not subject to income tax. Instead, the income and deductions of the partnership are calculated and distributed to each partner in proportion to its participation.

VALUE-ADDED TAX (VAT)

The value-added tax (VAT) is levied on three different classes of transactions, namely, the sale of tangible personal property within Argentina, the import of tangible personal property and services into Argentina, and the provision of services within Argentina. Taxable services include financial services. The general VAT rate is 21%, although certain sales and services may be subject to a 10.5% rate or exempted altogether. Utilities (e.g., telephone, electricity, water and gas supplies) provided to VAT-registered taxpayers are subject to a 27% rate. Exports of tangible personal property and services are subject to a zero rate system. Argentine exporters are allowed to recover, by way of compensation or refund, VAT paid to their suppliers for the inputs utilized to manufacture exported goods or perform exported services.

Services rendered by nonresidents to Argentine registered VAT taxpayers are always subject to VAT. A reverse charge system is applied in these cases. Argentine purchasers of services provided by nonresidents must pay the corresponding VAT directly to the Argentine tax authorities, and an equivalent input VAT credit is available to the taxpayer the month following that in which the VAT was paid.

MINIMUM PRESUMED INCOME TAX; PERSONAL ASSETS TAX

Argentina levies a minimum presumed income tax (MPIT) on Argentine companies (e.g., an Argentine subsidiary of a foreign corporation) and permanent establishments of foreign corporations located in Argentina (e.g., a registered branch). The MPIT is levied on the taxpayer's total assets (with certain exceptions) at a rate of 1%, to the extent the value of total assets within

Argentina (inventories included) exceeds ARS200,000 (approximately USD42,300). If assets do not exceed this threshold amount, no MPIT is payable.

The CIT paid by the Argentine taxpayer may be credited against its MPIT liability. If the taxpayer's MPIT liability is greater than its CIT liability, it is required to pay the excess MPIT. This tax may be carried over and credited against its CIT liabilities arising in future years for a maximum 10-year period.

In addition, foreign entities and individuals owning stock in an Argentine corporation are subject to personal assets tax at a rate of 0.5% on the proportional net worth value (*valor patrimonial proporcional*) of their interest. The tax is assessed and collected by the Argentine corporation.

FINANCIAL TRANSACTIONS TAX

All bank credits and debits held at Argentine financial institutions, as well as particular cash payments, are subject to this tax at a rate of 0.6%. A credit against the CIT/or the assets tax is granted for a portion of this financial transactions tax. Argentine financial institutions are required to withhold tax when a transfer of funds is effected on both the transferor and the transferee. In the case of international wire transfers, this tax applies only to the Argentine transferor or transferee.

GROSS RECEIPTS TAX

Argentine provinces and the city of Buenos Aires levy a tax on the gross receipts generated by entities that engage in business activities within their respective jurisdictions. The applicable tax rate varies depending on the province, with an average rate of approximately 3%. It is deductible for CIT purposes.

If a company engages in business activities in several provinces, it would likely be subject to gross turnover tax in each of them. In that case, it would have to allocate its gross receipts among the relevant provinces based on a formula that considers the amount of revenues and expenses and the places where obtained or incurred respectively.

STAMP TAX

Most Argentine provinces and the city of Buenos Aires assess a stamp tax on contracts, agreements and other instruments documenting transactions entered into for a consideration, to the extent:

- They are executed within their jurisdiction, or
- The obligations set forth therein are to be fulfilled therein

Applicable stamp tax rates vary depending on the taxing jurisdiction and the type of transaction. Depending on the province and the circumstances involved, it may be possible to legally avoid the tax by documenting the transaction in a

special format (which essentially consists in the issuance of a letter with an offer, which is tacitly accepted by the performance of a conduct specified in the offer, or by a letter which does not transcribe the terms and conditions of the offer).

TAX ON REAL PROPERTY

Argentine provinces impose a tax on real property; applicable rates vary depending on the taxing jurisdiction.

INTELLECTUAL (INDUSTRIAL) PROPERTY

The Argentine Constitution offers broad protection of intellectual property. Article 17 makes authors or inventors the exclusive owners of their works, inventions or discoveries for a legally designated term. To buttress Article 17, Argentina enacted legislation articulating the terms of the intellectual property protection. Furthermore, Argentina became a signatory to numerous international intellectual property treaties and agreements.

INDUSTRIAL MODELS AND DESIGNS

Industrial design rights are protected under the Industrial Models and Designs Act (Law-Decree 6673/63, ratified by Law 16,478), which grants owners exclusive exploitation rights during five years—registration renewals for two consecutive five-year terms are also available. Depending on the circumstances, authors, contractors or employers may avail themselves of these rights.

Models or designs registered in foreign countries may receive protection in Argentina through supplemental registration. The owner typically must solicit this protection within six months of filing in the country of origin.

TRADEMARKS AND TRADE NAMES

The Trademarks Act (Law 22,362) and Decree 558/81 govern trademarks and trade names. The regulatory body governing trademark registration is the Registry of Trademarks, a division of the National Institute of Industrial Property (NIIP). Argentina utilizes the Classification of Goods and Services established in the Nice Agreement.

The name of a product or service, or the name of a characteristic of a product or service, may not be trademarked.

Proper registration with the Trademarks Registry grants the trademark owner exclusive exploitation rights for 10 years. The owner may indefinitely renew registration for 10-year terms if it uses the trademark to commercialize products, render services, or as part of a trade name. This must occur within five years of the trademark's expiration date.

Although registration of licenses for the use of trademark is not compulsory, the Transfer of Technology Act (Law 22,426, which encompasses trademark law) requires the registration of agreements between foreign licensors and Argentine residents, in order to grant the benefits required therein.

PATENTS AND UTILITY MODELS

Argentina became a party to the agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which directs the application of Argentine patent, model and trademark law with respect to member countries. Consequently, the Argentine Congress enacted Law 24,481, the Invention Patent Act, to amend former Patent Act, Law 111. This enactment made Argentine patent law mirror the standards of TRIPS.

The Invention Patent Act (IPA) defines inventions that may be patented, whether products or processes, as any human creation that permits a person to transform matter or energy for its benefit. An inventor may patent an invention that is novel, involves inventive capacity and possesses industrial application. Under the IPA, the results of investigations carried out by pharmaceutical companies may meet such requirements and thus may be patented.

Inventors must deliver a patent application to the National Administration of Patents (NAP) for each invention or group of related inventions. A patent lasts 20 years from the date of application, and there is no option for renewal. The patent holder must pay fees established by the IPA to preserve a valid patent.

The IPA also protects rights over utility models. A utility model's creator must apply for a certificate, which will provide the creator with exclusive exploitation rights for 10 years. Like patents, these certificates are not renewable. The applicant must also pay fees to preserve the certificate's validity.

COPYRIGHT

Author's works, but not ideas, are protected under Argentina's Intellectual Property Act (Law 11,723, as modified by Law 25,036). The Intellectual Property Act (the IP Act) extends to items such as scientific, literary or artistic works (which includes software), musical compositions, pictures, sculptures and architecture and maps and photographs.

Property rights in literary works last throughout the author's lifetime. In Argentina, unlike in many other countries, an author may not be divested of rights in his or her works through licensing. Heirs and assignees receive protection for 70 years beginning the year after the author's death. This is the same protection granted to posthumous works. For works resulting from collaborative efforts, the 70-year term begins the year after the death of the last collaborator. Anonymous works that belong to institutions, corporations or legal entities receive protection for 50 years after the date of publication.

Foreigners seeking copyright protection in Argentina must evidence compliance with copyright laws in the country of publication. Argentine copyright law mandates that the first publication of all copies of the published work bear the copyright symbol, the copyright proprietor's name and the year of initial publication. Argentina will only grant protection equal to that granted by the country of publication. If the relevant country's copyright laws grant superior protection, the IP Act governs.

LABOR LAW

No single code of rules or regulations governs Argentine labor law. The main source of law relating to employment is the Employment Contract Act (Law No. 20,744, as amended). Many other laws refer to employment, working conditions and related matters specific to collective bargaining agreements, professions and individual employment contracts.

Unlike most other domestic laws that can be waived or modified by agreement, Argentine labor laws generally embody public policy principles. As a result, employees may not waive rights afforded under labor regulations and employers or third parties may not adversely affect these rights. This status reflects a policy presumption that employees are disadvantaged in negotiating with employers. Argentine courts generally apply this rebuttable presumption *(in dubio pro operario)* in favor of the employee when resolving labor disputes. This presumption aims to foster parity in employer-employee relationships.

SALARIES

Salaries are paid on a monthly, daily or hourly basis, depending on the job category. The mandatory minimum wage is currently ARS2,670 (approximately USD568) per month for workers who are paid on a monthly basis and work during standard working hours, and ARS13.35 (approximately USD2.84) per hour for workers who are paid on a weekly or fortnightly basis. The standard workweek is 40 to 48 hours, with an average of eight hours per day. If rendered during a day that is a normal working day for the employee, overtime is paid with a 50% surcharge over the habitual wages, and with a 100% surcharge if the overtime rendered during other days or official holidays.

CONTRIBUTIONS AND WITHHOLDINGS

Argentine law requires employers and employees to contribute a percentage of salaries to the social security system (this includes contributions to pension fund, social services for pensioners, national employment fund and family subsidy fund), as well as to medical care fund.

There are social security contributions withheld from an employee's gross salary (and paid over to the social security system by the employer) that represent the 14% of the gross salary currently capped at ARS21,248.45 (approximately USD4,520.95), and contributions paid (and borne) by the employer, without any cap.

Contributions paid by the employer are 21% of the employee's gross salary if the main activity of the employer is the provision of services or the wholesale or retail sale of goods, and the employer's annual sales are in excess of ARS48 million. Otherwise, the employer shall pay contributions for 17% of the employee's gross salary.

Medical care coverage for employees is provided by health care entities called *Obras Sociales* (hereinafter, OS) that are autonomous entities, and are financed with mandatory contributions from both employees and employers. An employer must pay a contribution to the relevant OS of 6% of each employee's gross salary without any cap. Also, each employee must pay his or her OS a contribution of 3% of his or her gross salary currently capped at ARS21,248.45 (approximately USD4,520.95). The employee's contribution must be withheld by the employer and be paid over to the OS.

Certain qualifying employers are entitled to temporary contribution reductions.

VACATIONS AND LEAVES OF ABSENCE

Employees are entitled to paid vacation time ranging from 14 to 35 calendar days, depending on seniority. They are also entitled to unpaid leaves of absence for marriage, birth, death of a close relative and school exams.

In case of illness not related to their work, employees are entitled to a paid leave of up to a maximum of between three months and one year, depending on the employee's seniority and the number of family members under his charge.

A pregnant employee is entitled to maternity leave of up to 45 days before childbirth and 45 days after, and to a social security benefit equivalent to the salaries she would have received during that period. Once the maternity leave finishes, she may choose to extend her leave (unpaid) for up to six more months.

PAYMENT OF ANNUAL LEGAL BONUS

According to the Employment Contract Act, employers must pay a complementary annual bonus *(aguinaldo)* on June 30 and December 31 of each year. The amount to be paid in each of those dates is equivalent to one half of the best monthly salary of the corresponding semester.

EMPLOYMENT CONTRACTS, SEVERANCE PAYMENTS

Under the Employment Contract Act, employment contracts shall be deemed to be for an indefinite term, except in certain circumstances (i.e., in case it is justified to be entered into for a fixed term). Contracts may be terminated without severance penalty by mutual agreement between the parties.

Employees are not entitled to severance payments in case of caused dismissal. Terminations without cause entitle employees to collect a mandatory seniority severance payment calculated on the basis of their best monthly, normal and habitual wages and their seniority.

Employee labor stability is protected by rules that establish a standard procedure for dismissal and compensation, in order to discourage employers from firing employees arbitrarily without a lawful motive other than gross misconduct. However, the Employment Contract Act 20,744 states that employers have the right to terminate employees at will by basically providing:

- Advanced written notice of dismissal
- Severance payment based on seniority
- Prorated accrued and unpaid vacation time and statutory bonus (*aguinaldo*)

INJURY AND ILLNESS INSURANCE

Under Law 24,557 employers must either insure themselves against workers' work-related injuries and illnesses or hire a "work risk insurer" *(Aseguradora de Riesgos del Trabajo* or ART). ARTs will normally compensate injured or sick employees and provide medical, orthopedic and prosthetic benefits, among other services.

Employers pay monthly premiums to ARTs. Such premiums are determined on the basis of a percentage of a fixed sum based on the employers' statistical losses and damages.

Under the ART system, each possible occurrence is listed in a casualty table and assigned a set value. If an ART accepts a claim, it will only pay the claimant the amount indicated in the table. The Argentine Supreme Court has ruled in several decisions in recent years that this system is against constitutional rules, to the extent it limits the compensation for a worker's actual loss. As a result, workers are entitled to seek full compensation from their employers for work-related injuries.

Employers may also hire additional insurance coverage against their workers' work-related injuries and illnesses, for any amount not covered under the ART system and that they eventually have to pay due to the court doctrine described in the preceding paragraph.

This system has been amended by Law 26,773 (effective 26 October 2012), which requires the worker or his heirs to decide between two mutually exclusive options: to seek compensation from an ART or to bring a civil action to recover all damages suffered. Also, Law 26,773 adds to the compensation paid by the ART 20% of the amount of that compensation, as recovery of any other damages suffered, except in the case of accidents sustained by the worker during the direct journey between his home and workplace and vice versa.

MANDATORY LIFE INSURANCE

Decree 1567/74 requires mandatory life insurance for all dependent employees. The insurance costs are the exclusive responsibility of the employer. Thus, no withholding must be made from employees' salaries. The insurance amount is currently ARS12,000 (approximately USD2,553).

SOCIAL SECURITY SYSTEM EXEMPTIONS

Social security exemptions are applicable (on a one-time basis) to foreign professionals, researchers, technicians and scientists hired abroad to render services in Argentina for no more than two years, provided (i) they are not Argentine residents, and (ii) they are covered against age, disability and death contingencies under the laws of their country of origin or permanent residence.

There are also social security treaties (e.g., with Spain, Chile, etc.) relating to social security matters, under which employees who are carrying out activities in a treaty country other than of their nationality or permanent residence are exempt from social security contributions in that country, provided they are making such contributions in the country of origin or permanent residence.

Both exemptions are not automatically granted and may only be applied for upon completion of specific administrative procedures.

FOREIGN EMPLOYEES

Argentine law does not provide for restrictions or quotas related to the hiring of foreigners, who may be employed as long as they hold a valid residence permit.

Foreigners may only perform activities for pay, either as self-employed or employees, if they hold permanent or temporary resident status, in which case they are entitled to the same rights provided by law for Argentine self-employed individuals or workers.

The Permanent Resident status can only be applied for by: (a) parents, spouses and children of Argentine citizens or of foreigners who hold permanent resident status, or (b) foreign individuals who have worked at least three years in Argentina with proper immigration status. Any other foreigners can only

apply for Temporary Resident status in certain specific cases (most notably, with sponsorship by a potential employer).

Also, the process to obtain Permanent or Temporary Resident status is simplified for foreign nationals of MERCOSUR member states or associated countries (i.e., Bolivia, Brazil, Chile, Colombia, Ecuador, Paraguay, Peru, Uruguay and Venezuela); most notably, the applicant is not required to provide documentation of an employment relationship.

AGENCY AND DISTRIBUTORSHIP AGREEMENTS

In Argentina, there is no body of statutory law that regulates agency and distributorship agreements. However, there is ample case law and legal literature that define them, and establish guidelines for prospective contractors. They may be concluded for an unlimited period of time, which is generally assumed by jurisprudence in cases of oral agreements.

These agreements may be terminated unilaterally at will. However, the termination must be preceded by prior notice; otherwise liability for damages may arise. According to case law, the period for termination depends on the duration of the agreement and the parties' expectations, and in general terms it should not be shorter than three to six months.

Unless otherwise set forth in the agreement, fixed-term agreements may only be terminated before expiry due to good and just cause, such as a severe breach of the agreement by the nonterminating party. Courts have decided that allowing termination without good cause would unjustly deprive the agent of reasonable expectations. Therefore, liability for damages may arise in cases of unfounded early termination. These principles are also applicable to agreements concluded for an unlimited period of time, that is, the agreements also can be terminated due to good and just cause without observing the aforementioned prior notice.

The Commonwealth of The Bahamas is an archipelago spanning 100,000 square miles extending southeast from Florida to northern Hispaniola. The Bahamas has an estimated land area of 5,382 square miles made up of 700 islands and 2,400 cays. There are 30 islands which are inhabited with an estimated population of just over 300,000.

GOVERNMENT

The Bahamas is a constitutional, parliamentary democracy. As a fully independent member of the British Commonwealth of Nations, the nominal Head of State is Queen Elizabeth II, represented in The Bahamas by an appointed Governor General. The head of government is the Prime Minister. The 1973 Bahamian Constitution was enacted by a Parliament composed of the Senate and the House of Assembly.

ECONOMY

The economy of The Bahamas is driven by tourism, international banking and other financial services. Retail and wholesale distributive trades, manufacturing, agriculture and fisheries are the other major sectors of the economy. The gross domestic product (GDP) of The Bahamas exceeds BSD3 billion, 60% of which comes from tourism-related activities. More than five million visitors are attracted annually to The Bahamas. Tourism directly or indirectly employs approximately more than 50% of the work force.

Second to tourism, the banking and finance industry represents 20% of the GDP and directly employs about 4,400 persons, 95% of them Bahamians. More than 300 financial institutions with domiciles in over 30 countries are licensed operators in The Bahamas.

The unit of currency is the Bahamian dollar (BSD) which has parity with the U.S. dollar (USD); the U.S. dollar is also accepted.

Under the Exchange Control Act 1952 and the Exchange Control Regulations 1956, exchange controls apply to resident individuals and companies, but nonresidents and the offshore entities normally used by international businesses are not subject to them.

One of the most attractive elements of investing in The Bahamas is the tax-free status accorded to income. There is no direct or indirect taxation on Bahamian personal or corporate income, capital gains, profits or dividends, and no sales, gift, inheritance or estate duties. This tax freedom is available to all resident corporations, partnerships, individuals and trusts. The annual budget of The

Bahamas government is funded primarily by customs duties, stamp taxes, real property taxes plus business and other licensing fees.

The per capita income is USD11,000 per annum.

FOREIGN INVESTMENT

The government welcomes foreign investment in various sectors of the economy and has created a number of incentives to attract foreign investment. The inducement of a tax-free environment and a stable currency are enhanced by a series of investment incentives that provide relief from customs duties on approved raw materials, equipment and building supplies, as well as allowing exemptions from business licenses and real property taxes for up to 20 years.

- The Hotels Encouragement Act exempts hotel developers from customs duties on raw materials and equipment. Exemptions from real property tax and licensing fees are also available.
- The Industries Encouragement Act exempts exporters from import duties on raw materials, equipment and business license fees. This act is of particular benefit for manufacturers.
- The Export Manufacturing Industries Encouragement Act provides an approved manufacturer who intends to export or annually exports at least 95% of the total approved products produced with duty-free import of raw materials, equipment and building supplies used in the manufacture of the product or facilities for the same and duty-free export of those products.
- The Agricultural Manufactories Act provides subsidies to agricultural businesses in the form of interest-free loans for the purchase of supplies plus exemption from duties on a wide range of products, including building suppliers, processing materials and farm trucks. It also provides exemption from export taxes.
- The Hawksbill Creek Agreement created the Free Trade Zone of Freeport on Grand Bahama Island which gives businesses exemption from taxes on profits, capital gains, inheritance, income, earnings, distributions, gifts, imported and exported goods. In addition, import duties and taxes on real estate have been waived through 2054.
- The Tariff Act provides exemptions to approved manufacturers for the import of capital equipment and raw material for garment manufacturing, food processing, the production of handicraft and souvenir items, and cottage industries.

- The Spirit and Beer Manufacture Act provides duty-free import of raw material and equipment for spirits and beer manufacturers.

The government of The Bahamas is committed to building an economic environment in which free enterprise can flourish; where the government assumes its proper role as regulator and facilitator of economic development; where ideals of transparency, fair play and equality of treatment are paramount; and a policy that maintains a stable society in which all people are afforded the opportunity to realize their maximum potential. In this regard, the National Investment Policy is designed to support an investment-friendly climate which promotes Bahamian and overseas investments; fosters appropriate linkages with all sectors of the economy, in particular, the tourism and financial services sectors; encourages the exploitation of our natural resources in an environmentally sound and sustainable manner; provides for the maximum level of employment; guarantees an acceptable level of economic security and generally fosters the economic growth and development of The Bahamas.

Areas Especially Targeted for Foreign Investors

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

Note: This list is not exhaustive and investors interested in areas not included are encouraged to bring their interest to the attention of the Ministry of Financial Services & Investments. Please note that investments of less than BSD250,000 will not be considered.

LOCAL PARTNERS IN JOINT VENTURES

International investors are encouraged to establish joint ventures with Bahamian partners. The choice of such Bahamian partners is in the absolute discretion of the investor.

Areas Reserved for Bahamians

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

PREFERENTIAL TRADE INCENTIVES

Businesses located in The Bahamas may benefit from the following preferential trade arrangements:

- The Lome Convention
- General System of Preference (GSP)
- Caribcan
- Caribbean Basin Initiative
- Economic Partnership Agreement

ACQUISITION OF LAND BY FOREIGNERS

The policy of the government, which is supported by the International Persons Landholding Act, encourages foreigners to purchase second homes and invest in real estate in The Bahamas. If a foreigner buys a single-family dwelling or vacant

land (less than five acres) to be used in the construction of such a dwelling, then the approval of the government prior to the purchase is not required. He only needs to obtain a Certificate of Registration from the Investments Board, subsequent to the purchase. Permanent residents of The Bahamas and foreigners who inherit property in The Bahamas do not have to obtain a permit before acquiring land but must obtain a Certificate of Registration.

However, a permit is needed to acquire property in the following cases:

- If the property is undeveloped and five acres in size or larger;
- If the property is not a private residence for single-family use, or it is intended for commercial purposes or development as such.

RESIDENCY REQUIREMENTS

Homeowners can obtain an annually renewable Home Owner's Residence Card which acts as a visa for entry and residence during its validity.

Investors in real estate in the amount of USD1.5 million or more are eligible to apply for economic permanent residence.

ENVIRONMENTAL REGULATIONS

An environmental impact assessment is required for all large development projects.

BUSINESS ENTITIES

Persons wishing to utilize a business entity may choose from a variety of options which include companies incorporated under the Companies Act 1992, foreign companies registered under the Companies Act 1992, the International Business Companies Act 2000 typically for offshore investments and Limited Duration Companies under Section 170 of the International Business Companies Act 2000.

COMPANIES ACT (1992)

Companies formed under the Companies Act 1992 can be private companies limited by shares or by guaranty, or can be public companies. For all these company types, there must be a minimum of two members.

Company Name

All companies are required to nominate or reserve a suitable name that is acceptable to the Registrar of Companies in The Bahamas. Reasons for refusal by the Registrar to accept the proposed name are:

- A company with an identical or similar name exists on the Register;

- The proposed name contains unacceptable words inferring connection to a government, statutory body, English or foreign Royal Family, or suggestion that the company is a bank or insurance company without meeting the necessary licensing requirements.

The availability of any particular name can normally be confirmed within minutes through the Companies Registry's website.

Registered Office

All properly constituted companies are required to maintain a registered office in The Bahamas where they are able to accept the service of official notices. The registered office is not necessarily the location where the business is actually carried out.

There is a statutory requirement to appoint a "local registered agent," customarily located at the registered office, who is responsible for accepting such process or service of official notices.

Directors

Companies Act 1992 companies must have a minimum of two directors. The company's annual return must include a list of the members, and is kept on the public register.

Minimum Capital Stock

Companies Act 1992 companies have no minimum capital requirements, but the government fees required increase for larger levels of authorized capital.

Annual General Meeting

The first general meeting is to be held within three months of the date of incorporation. A general meeting is required once per year. Meetings may be held within or outside The Bahamas.

Formal Requirements

Companies are incorporated under the Companies Act 1992 by two or more persons signing a memorandum which satisfies the requirements of the relevant Act and by submitting it to the Registrar accompanied by required affidavits and declarations. The Registrar will issue a certificate of incorporation evidencing the incorporation of the company. Shares may be issued without par value and, when paid up, need not have any distinguishing numbers.

INTERNATIONAL BUSINESS COMPANIES ACT 2000

The International Business Companies Act 2000 (the Act) replaced the International Business Companies Act 1989 of the Commonwealth of The

Bahamas and came into effect on 29 December 2000, with a transitional period ending on 29 December 2001.

An International Business Company (IBC) is tailor-made for the needs of international business and has the attractive features of:

- Limited liability
- Minimal legal restrictions
- Ease of administration
- Speed of incorporation
- Exemption from exchange controls
- Not being subject to taxes, estate duties and stamp duties

The main features of an IBC are:

- An IBC is exempt from the Exchange Control Regulations and no application need be made to The Central Bank of The Bahamas in connection with its incorporation or the issue or transfer of its shares or other securities unless it is carrying on business in The Bahamas or leases or owns real estate in The Bahamas.
- Incorporation can take place immediately after the Registrar of Companies approves its name, usually within a few hours. The name of an IBC can end in the word "Limited," "Corporation," "Incorporated," "*Societe Anonyme*" or "*Sociedad Anonima*," or their respective abbreviations.
- The shareholders have limited liability.
- IBCs may now conduct business in The Bahamas subject to certain regulatory approvals, and may own an interest in real property in The Bahamas.
- An IBC may own real estate outside The Bahamas, and is well suited for this purpose.
- An IBC may only issue registered shares. Bearer shares that may have been issued by IBCs incorporated under the International Business Companies Act 1989 are now void for all purposes of law. An IBC may issue par value and no par value shares, unnumbered shares, shares of different classes, options and warrants, redeemable and convertible shares. Shares may be issued in any currency.
- An IBC may purchase, redeem or otherwise acquire and hold its own shares, provided the IBC meets the statutory tests afterwards.
- An IBC requires two subscribers, but after incorporation requires only one registered shareholder, and only one director, which may be a corporate director.

- Neither shareholders nor directors need be resident in The Bahamas, and there is no requirement that shareholders' or directors' meetings be held in The Bahamas.
- It is necessary to keep a Register of Shareholders and a Register of Directors and Officers but the registered shareholders, directors and officers may be nominees. The Register of Shareholders is only required to be kept at the Registered Office of the company. Ordinarily, only shareholders may inspect the register of shareholders. The Register of Directors and Officers, however, must be filed with the Registrar of Companies and is open to inspection.
- An IBC is not required to keep books and records in The Bahamas, other than as mentioned above.
- There is no requirement to hold an annual general meeting or to file an annual return with the Registrar General.
- The doctrine of *ultra vires* has no application to an IBC.
- An IBC may issue shares in payment of a dividend. Dividends may be paid out of any assets provided the company meets the statutory tests afterwards.
- There are no special requirements regarding loans and borrowings by an IBC (save for one doing domestic business, in which case exchange control regulations may apply) and it may guarantee the indebtedness of any other person and mortgage its assets as security.
- There is no requirement that an IBC shall appoint an auditor.
- Directors' meetings and shareholders' meetings may be held by telephone conference call. Resolutions of directors and of shareholders need not be passed at a meeting but may be consented to in writing or by means of electronic communication.
- The Act contains provisions for the protection of the assets of the company for the benefit of the company, its creditors and its shareholders.
- The Act contains provision for the protection of minority shareholders. Shareholders may requisition a meeting of shareholders.
- An IBC must have a registered office and a registered agent in The Bahamas.
- An IBC may continue in existence although its situs is transferred to another jurisdiction. Similarly, a foreign company which qualifies as an IBC may continue in existence as a company

registered in The Bahamas. A company incorporated under the laws of a foreign jurisdiction which would satisfy the requirements for an IBC in The Bahamas may provisionally register as an IBC in order to become an IBC at a future date (see Foreign Companies on page 38).

- An IBC may be incorporated as a Limited Duration Company. A Limited Duration IBC is a limited liability company which is treated as a partnership for United States tax purposes (see Limited Duration Companies on page 35).

COMPANIES LIMITED BY GUARANTY

This type of company has no authorized capital. Rather than subscribing for and being issued shares, members are elected into membership without any requirement to pay in any capital, although normally each new member is expected to pay an entry subscription fee upon election to membership at a rate as determined by the directors. Whether an entry subscription is paid or not, by virtue of election to membership, every member guarantees to pay a set sum (determined by the Articles of Association) upon demand in the event of the company being insolvent upon its liquidation. A member's liability is limited to his guaranty. Usually this is USD100.

Membership ceases on death or resignation (although, unless specific provision is made, a deceased member's estate may continue to have an equitable interest in the company. This can provide the basis of transferability of members' interests). The subscriptions that have been paid (both the initial entry subscriptions as well as any subsequent annual subscriptions) are not returnable upon a member ceasing to be a member. In principle, each member has equal voting rights and equal rights to income or capital distributions, should any be made, although flexibility in these matters can be provided to allow for different classes of membership (e.g., associate membership, nonvoting membership, etc.). It is possible to draft transferability of membership rights, if required.

Guaranty companies can be designed to be capable of distributing profits only to members and for distributions to others to be void. The Articles of Association may provide for the rights to distribution to be held by one class of members, while the voting rights are held by a second class of members. Alternatively, the distribution rights may be separated altogether from membership as such, thereby enabling a member to sell his rights to a third party. Finally, companies limited by guaranty may be used for charitable purposes, as an alternative to a trust structure. In such a case, the company is not permitted to make distributions to its members, but can only make payments for charitable purposes, as its Objects shall direct. However, unless otherwise determined by the Articles of Association, each member participates

equally in the assets of the company irrespective of any variation in subscriptions paid.

Within the framework of the guaranty company there is a great deal of flexibility available in structuring a company to achieve its objectives. The following are examples of some of the many benefits to the company limited by guaranty structure:

- Although the company must have at least one director to control the company, there may also be a Protector, as is often found in trusts, and it may be made obligatory for the directors to have the protector's consent before implementing defined decisions, such as the election of new members, or the disposing of company assets.
- There may be one or more classes of members with differing rights to vote or participate in income or capital distributions.
- There may be prohibitions on certain classes of members, or prohibitions on members resident in certain defined countries, from participating in income distributions, or from holding other rights.
- With regard to the transferability of membership, there is no doubt that membership is an "interest" in a company. Unless the Articles of Association make specific provision otherwise, a member may transfer his interest, while remaining a member. Although a member may cease to be a member by resignation or death, the "interest" may continue. While this can cause problems, it may also create opportunities for tax planning. But, of course, the Articles of Association can specifically state that upon the death or resignation of a member, his "interest" ceases. This would then be analogous to the position of a life interest in a trust.

SEGREGATED ACCOUNTS COMPANY

A Segregated Accounts Company (SAC) is a company registered under the provisions of Section 6 of the Segregated Accounts Companies Act 2004, unless the context otherwise requires. A SAC can be incorporated under the Companies Act or the International Business Companies Act and then registered as a SAC by filing a request with the Registrar of Companies. Written consent of the company's primary regulator is required and, if the company has conducted business prior to registration, the consent of all known creditors must be received. The SAC is required to appoint a Representative to be resident and licensed in The Bahamas. Once the Registrar has approved the application and registration fees have been paid, the company is registered as a SAC and a notice of the registration is published in the Gazette.

LIMITED DURATION COMPANIES

Section 170 of the International Business Companies Act allows for the creation of Limited Duration Companies (LDC), which are identical to IBCs in all requirements and stipulations, except that they have a limited life, which cannot exceed 30 years. The company name must also state its LDC status. The transfer of a share or interest of a member requires the unanimous resolution of all other members if stipulated in the articles of the company. The articles may also provide for certain members to manage the company based on their share or other ownership interest.

JOINT VENTURES

Joint Ventures are also permitted under Bahamian law. There are no registration or incorporation requirements for joint ventures. Fees for establishing a joint venture will vary depending upon the complexity of the arrangement and will usually be restricted to fees for professional services rendered in connection with advising generally on the joint venture and for preparation of documents. There is no requirement that a Bahamian or a foreign national be a participant, manager or director in a joint venture and there are no restrictions on capitalization. However, the government of The Bahamas encourages joint ventures between Bahamians and foreign nationals. Further, there are no special rules which determine an investor's potential liability and under Bahamian law there are no tax consequences for participating in a joint venture. Joint ventures involving non-Bahamians require the prior approval of the government of The Bahamas.

PARTNERSHIP

Bahamian law recognizes and permits general and limited liability partnerships.

General Partnership

There is no requirement that a national of The Bahamas or a related state be a partner in a general partnership arrangement. Fees for establishing a general partnership relationship will vary depending upon the complexity of the arrangement and will usually be restricted to fees for professional services rendered in connection with advising generally on the partnership and for preparation of documents. There are no Bahamian tax consequences to the investor for participating in a general partnership arrangement.

Limited Liability Partnership

Under the Partnership Limited Liability Act (1861) a partnership, with limited liability, may be formed by two or more persons for the transaction of any mercantile, mechanical or manufacturing business within The Bahamas, except banking or insurance. In this partnership type, one or more of the members shall

be called the general partners and the other members shall be called the special partners. The persons desirous of forming such partnerships shall make and severally sign a memorandum of co-partnership. The memorandum and the declaration with a certificate from the manager of a bank must be recorded in the Registry of Records. Once recorded, the partners must publish the terms of the partnership in all newspapers printed in The Bahamas for at least six weeks immediately after the recording and until the publication is made for that period. Fees for establishing a limited liability partnership will vary depending upon the complexity of the arrangement and will usually be restricted to fees for professional services rendered in connection with general advice. Further, there are no restrictions on contributions to the capital and there are no Bahamian tax consequences to the investor for participating in a limited liability partnership.

Exempted Limited Partnership

Limited Partnerships are regulated by the Exempted Limited Partnership Act 1995.

An Exempted Limited Partnership (ELP) may be formed for any lawful purpose to be carried out and undertaken either in or from within The Bahamas or elsewhere provided that the ELP shall not undertake business with the public in The Bahamas other than so far as may be necessary for conducting the business of the ELP outside of The Bahamas.

An ELP must have at least one general partner and at least one limited partner. A company may be the general partner or a limited partner of an ELP. At least one general partner shall:

- If an individual, be resident in The Bahamas
- If a company, be incorporated either under the Companies Act 1992 (or registered under that Act) or the International Business Companies Act 2000

All ELPs must be registered with the Registrar of Exempted Limited Partnerships of The Bahamas and must maintain a registered office in The Bahamas.

Subject to any express or implied term of the partnership agreement, an ELP shall not be terminated or dissolved by:

- A change in any one or more of the limited partners or general partners
- The assignment of the whole or part of the partnership interest of a limited partner
- The death, bankruptcy, dissolution or winding up of a limited partner
- The incapacity of a limited partner

- Any one or more of the limited partners granting a mortgage or charge or other form of security interest over the whole or part of his partnership interest
- The sale, exchange, lease, mortgage, pledge or other transfer of any of the assets of the exempted limited partnership

An ELP or any partner thereof (general or limited) shall not be subject to any business license fee, income tax, capital gains tax, or any other tax on income or distributions accruing to or derived from such partnership or in connection with any transaction to which that partnership or partner, as the case may be, is a party.

An ELP is exempt from the provisions of the Exchange Control Regulations for a period of 50 years from the date of registration of the ELP.

Interests in an ELP are exempt from any and all estate taxes, duties or levies whatsoever for a period of 50 years from the date of registration of the ELP.

All instruments relating to:

- Transfers of property to or by an ELP
- Transactions in respect of the interests of an ELP
- Other transactions relating to the business of an ELP

shall be exempt from the payment of Stamp Duty for a period of 50 years from the date of registration of the ELP.

FOUNDATIONS

Foundations were introduced by the Foundations Act 2004 and accompanying regulations. The Act sets out the characteristics of a foundation, the method of establishing and registering it and the qualifications and duties of the officers and of any supervisory individuals. The Act also dictates the general conduct and method for the liquidation and winding up of a foundation.

There are no perpetuity period rules applicable to Bahamian foundations, which immediately provide for continual unending succession if the founder desires it. A Bahamian foundation is not subject to forced heirship laws of a foreign jurisdiction.

A Bahamian foundation is a distinct legal entity and assets placed within the foundation are owned solely by it. A change in a Bahamian foundation's governing body does not change the legal ownership of the foundation's assets. There is no statutory requirement for an external audit unless the foundation's charter so provides.

A foundation established in another country may re-domicile in The Bahamas and a Bahamian foundation may re-domicile into another country, provided such a move is permitted in that country.

The registration process for a Bahamian foundation is comparable to that of a company registration, making it a legal entity that must be filed with the Registrar General of The Bahamas. Like that of a company, the name of the Bahamian foundation must be reserved at the Registrar General's office prior to submission of the necessary documentation. The foundation's charter must contain a statement that the value of the assets of the foundation may not be less than BSD10,000 or the equivalent in any other currency.

Officers of the foundation must keep proper records and accounts, which can be inspected by any officer, foundation council member, founder, auditor or any other supervisory person at any time. However, confidentiality provisions restrict any person acquiring information from disclosing such information relating to the foundation, without the expressed consent from the founder and the beneficiaries, or as required by law, or a Bahamian court.

FOREIGN COMPANIES

A company formed in another jurisdiction may continue as an IBC in The Bahamas upon the filing of Articles of Continuation with the Registrar, containing the name of the IBC, the date it was incorporated, and the other information which is required of all companies to be filed in the Memorandum of Association and Articles of Association.

TRUSTS

Trusts are recognized in The Bahamas and are governed by the Trustee Act 1998. Bahamian trust law is based on English common law, and the Bahamian Trustee Act 1893. Later legislation includes The Trust (Choice of Governing Law) Act 1989, the Fraudulent Dispositions Act 1991 and the Trustee Act 1998, which repealed the Trustee Act 1893 and the Variation of Trusts Act 1983.

A trust under Bahamian law is a relationship between parties and is not an entity with a separate juristic existence. Bahamian law allows an investor to be the grantor or beneficiary under a trust. An individual investor may also act as trustee of a trust governed by Bahamian law. There is no legal requirement for trusts to be registered or for public disclosures to be made. Exchange control regulations do not apply to nonresident settlors, donors, beneficiaries and trustees participating in an offshore trust. An exemption exists in respect of trusts with nonresident beneficiaries in connection with the payment of taxes including stamp duty on transfers into the trusts. All trusts established after the commencement of the Trustee Act must be stamped with a USD50 revenue stamp. Some of the more important provisions of the Trustee Act 1998 are as follows:

- A settlor can retain a wide range of powers without falling foul of "sham" trust legislation

- Trustees are given wide statutory investment and management powers unless the trust deed negates them
- Trustees' indemnities are recited in the statute
- A wide range of trust purposes are encompassed, including accumulation trusts
- The role of Protector is recognized
- There are extensive disclosure provisions
- Exemption from all taxes and from stamp duty (an initial USD50 stamp is required on all trust deeds)
- Exemption from registration except where an interest in Bahamian property is to be protected
- Exemption from exchange control regulations for nonresident beneficiaries

The Trust (Choice of Governing Law) Act 1998 gives protection to Bahamian trusts and their settlors in civil law countries against forced inheritance claims. The Act makes Bahamian law the proper law of a trust if the deed so declares, and makes the trust immune to foreign judgments.

The Fraudulent Dispositions Act 1991 establishes a two-year limitation period for creditors' attacks on asset protection trusts. The attacker must prove fraud against the settlor.

Most trust work in The Bahamas is handled by Public or Restricted Trust Administration companies, which are often affiliated to or owned by banks. Trust Administrators are licensed by the Governor of the Central Bank under the Banks and Trust Companies Regulation Act 2000. A foreign company can apply for a license as a branch, or with a subsidiary, which is necessarily a Bahamian-incorporated company (not an International Business Company).

PERPETUITY

The Perpetuities (Amendment) Act 2004 increased the period of perpetuity from 80 to 150 years.

TAXATION

The Bahamas is not a party to any double taxation agreements, but Tax & Information Exchange Agreements (TIEA) have been entered into between The Bahamas and more than 20 countries including the United States.

LABOR LAW

Workplace relations and employment are governed by the Employment Act 2000 and the Industrial Relations Act 1970 as amended in 2000.

Written contracts of employment are not mandatory, but are often prepared, especially when a union is involved. Upon completion of each 12 months of employment, two weeks of vacation shall be given. Where an individual has been employed for six months or more but less than one year, he/she is entitled to one week of pay. Where an individual has been employed for one year or more but less than seven years, he/she shall be entitled to two weeks of pay. The law allows not less than 12 weeks of maternity leave (however, the individual must have been employed for 12 months).

According to the Employment Act 2000, there is a legal entitlement to notice on termination; however, this varies according to the length and position of employment. There is also the option for an employer to dismiss an employee summarily without pay or notice when a fundamental breach of the contract has been committed. The grounds for summary dismissal include (but are not limited to) theft, fraudulent offenses, dishonesty, gross insubordination or insolence, gross indecency and gross negligence.

Bolivia is a country with amazing natural beauty and a diverse landscape, sheltering a fourth of the world's greatest biodiversity. Bolivia's riches also include raw material, industrialized material and of course, tourism. Located in the heart of South America, Bolivia is divided into nine political departments. Its democratic government is divided into four branches:

- Legislative
- Executive
- Judicial & Constitutional Court
- Electoral

FOREIGN INVESTMENT

In Bolivia the market is opened for private investments in order to exploit renewable and nonrenewable natural resources, as well as in industry, commerce and public services. Today, Bolivia is rising economically.

FORMAL REGISTRATION REQUIREMENTS

Requirements for registry of foreign investments are the same as those for national investments and do not require previous authorization.

EXCLUDED ACTIVITIES/LIMITATIONS ON FOREIGN OWNERSHIP

Foreign private investors may invest in all fields except:

- Acquisition of property rights of soil and under soil within 50 kilometers of the borders;
- Acquisition of property rights of hydrocarbon deposits and of property rights of some mining concessions nationalized in the past;
- Acquisition of land property over 5,000 hectares in rural areas;
- Imports of goods and services which could affect public health or state security.

BENEFITS/REMITTANCE OF PROFITS

Legal rules have been issued to expedite and protect foreign investment. There is freedom in currency exchange and convertibility. There are no restrictions regarding income and egress of capital or for the remittance abroad of dividends, interest and royalties.

Foreign investors may repatriate their invested capital freely.

BUSINESS ENTITIES

In general, foreign investment in Bolivia occurs either by establishing new companies, corporations (Stock Companies) or Limited Liability Companies, or, establishing branches of foreign companies.

REQUIREMENTS FOR CORPORATIONS

Corporations must have at least three stockholders. The ratio of authorized capital to paid-up capital may be established at 1:8. Shares must be freely transferable. General stockholders' meetings must take place at least once per year, at its legal address. A corporation must have an administrative board with a minimum of three and a maximum of 12 directors. The board of directors meetings may be held anywhere in the world.

REQUIREMENTS FOR LIMITED LIABILITY COMPANIES

Limited Liability Companies must have at least two partners. All the capital must be paid at the beginning. The capital quotas (partners' participations) are not freely transferable and require authorization from the partners meeting. Ordinary partners meetings must take place at least once per year, at its legal address. A limited liability company must have a manager or administrator.

PUBLIC RECORDS

A corporation and/or limited liability company constitution act must be registered in Fundempresa. The registration procedure takes approximately 30 days.

FOREIGN CORPORATION BRANCHES

To establish a branch of a foreign company, the Bolivian Consulate in the corporation's country of origin must legalize the following documents:

- The constitution and bylaws of the corporation;
- Document given by the corresponding administrative authority, certifying the legal existence of the corporation;
- A resolution by the appropriated instance of the corporation authorizing the establishment of a branch in Bolivia, choosing the address for its performance, designating who will represent it and the capital with which the branch will operate;
- A grant of power of attorney to those who will be its representatives, with wide power to accomplish the corporation's objective in Bolivia and for representing it.

The process for all of these documents takes approximately 45 days.

TAXATION

Bolivia has simplified its tax system. Taxes paid by companies are considered to be among the lowest in Latin America.

Bolivia's tax reform has put in force the following taxes:

- Value added tax (IVA)
- Excise tax (IT)
- Income tax (IUE)
- A tax regarding remittance abroad of income from Bolivian sources

VALUE ADDED TAX (IVA)

This 13% tax applies to the transfer of good and services. It is paid monthly. However, this tax applies to purchases of goods and services related to the company's activity.

This tax does not apply to the sale of credit instruments or shares.

EXCISE TAX (IT)

This 3% tax applies to any invoice issued by practice of commerce, industry, profession, rent of goods and works. It is paid monthly.

This tax does not apply to the sale of credit instruments or shares.

INCOME TAX (IUE)

A company's net income is subject to an annual 25% tax. Tax regulations outline deductible expenses for calculating the income. Branches of foreign corporations must keep their accounts separated from those of their head offices, in order to determine the taxable income from Bolivian sources. This tax is considered as payment on account for the next excise tax (IT).

TAXES ON REMITTANCE OF PROFITS ABROAD

Companies that pay supposed profits from Bolivian sources to beneficiaries outside the country must withhold, as a unique and definitive payment, 12.5% of the profit paid or sent abroad.

INTELLECTUAL PROPERTY

Bolivian law regulates intellectual property through the following rules:

- *Ley de Privilegios Industriales* of 12 December 1916
- *Ley Reglamentaria de Marcas* of 15 January 1918
- Paris Convention for the protection of Industrial Property of 20 March 1883, with its corresponding amendments
- Montevideo Convention of 25 February 1904; Caracas of 18 July 1911
- Decision 486 of the *Régimen Común Andino de Propiedad Industrial* of 15 September 2000
- WIPO Convention – Law 1438 of 12 February 1993
- *Acuerdo sobre los Aspectos de Propiedad Intelectual relacionados con el Comercio ADPIC* – Law 1637 of 5 July 1995

These rules apply to:

- Any new invention, if it is applicable for industrial use
- Patterns and industrial designs, novelty patterns and those of usefulness
- Brands or distinctive factory signs in general, including those of commerce, agriculture and services
- Names, signs, ensigns, notices, labels and commercial styles, as well as denominations of origin

REQUIREMENTS

To register a patent of invention or a mark in Bolivia, applicants must indicate the classes in which they claim to have legal protection, according to the NIZA International Classification.

TERMS OF PROTECTION

Patents of invention grant rights to holders for a term of 15 years that cannot be postponed.

Registered trademarks are protected for a term of 10 renewable years.

LABOR LAW

Bolivia currently has numerous labor laws. The law provides workers these rights and benefits:

- A monthly salary, for eight working hours from Monday to Friday and five working hours on Saturdays.
- A Christmas bonus equivalent to one monthly salary, payable each December.
- Annual vacation of 15 days after the first year of work, 20 days after five years and 30 days after 10 years.
- Severance pay equivalent to one monthly salary for each year of work.
- Severance pay equivalent to three monthly salaries for workers dismissed without falling into a legal cause.
- Social Security. Employers must contribute 10% of their workers' salaries to an insurance program for illness and maternity and 3.71% to a pension funds program.

With more than 196 million inhabitants and over 8.5 million square kilometers, Brazil is the largest country and economy in Latin America (its GNP in 2011 was roughly USD2.07 trillion). It is a federative republic, consisting of the union of states, municipalities and the federal district. Moreover, the 1988 Federal Constitution provides for a presidential type of government with three independent branches: the Executive, the Legislature and the Judicial.

Brazil follows a codified system of law. The Federal Constitution heads its legal system and provides for the fundamental rights of the citizen, sets out Brazil's political and administrative organization, defines the roles of the above-mentioned branches and legislates on tax, socio-economic and economic policies, civil and commercial law, employment relations and criminal law.

FOREIGN INVESTMENT

Foreign investment has always played an important role in Brazil's development. Economic stability, its enormous consumer market and the strengthening of political institutions have increasingly attracted foreign capital.

Brazil welcomes foreign investments in all areas, yet Brazilian legislation does not permit a foreign company to directly function in the country. Therefore, it is necessary for foreign companies to open a branch or incorporate a subsidiary in Brazil. In order to open a branch, a foreign company is required to obtain authorization from the federal government, which requests proof of the company's existence in its home country. After obtaining authorization, the foreign company should then file its corporate documents with the competent Commercial Registry.

The Brazilian Central Bank (BACEN) is charged with registering, following up, and monitoring foreign investments. The Ministry of Finance, through the Federal Inland Revenue, focuses on taxation of these foreign investments. The registration of foreign capital with BACEN is mandatory and guarantees equal treatment for foreign and national capital. Trademarks, patents, machinery and other equipment, as well as financial assets, shall qualify as foreign capital for Brazilian law purposes, provided that such foreign capital belongs to individuals or corporate entities domiciled abroad.

BACEN has a modern system for the registration of foreign investments, the Declaratory Electronic Registration of Direct Investments, which provides that direct foreign investment shall be registered electronically on the online

information system of BACEN (SISBACEN). Capital investment, repatriation and profit remittance related to foreign investments duly registered with BACEN may be effected without prior authorization from BACEN. Also, foreign loan transactions and some specific transactions such as the issuance of securities abroad and loans relating to export transactions, can generally be registered through the Electronic Declaration Register of Financial Operations Registration Module – RDE-ROF, also with no need for prior authorization from BACEN.

Foreign investors have the same rights as national investors. The remittance of profits and the repatriation of reinvestments are based on the amount of the foreign investment previously registered at BACEN. Remittances of the funds abroad are prohibited when the original funds were not previously registered with BACEN upon entrance into Brazil.

IMMIGRATION

Brazilian law contemplates several types of visas: transit, tourist, temporary, permanent, courtesy, official and diplomatic. Courtesy, official and diplomatic visas have special rules and are not dealt with in this publication.

TRANSIT VISAS

Transit visas are granted to foreigners passing through Brazil en route to another country of destination. This situation occurs when the connection is long and the passenger does not remain restricted to the transit area of the airport.

Transit visas may be obtained at the nearest Brazilian consulate by presenting one's passport and connecting flight ticket. The visa will only be valid for the period strictly necessary to continue the trip.

TOURIST VISAS

Tourist visas fall into two basic categories, depending on bilateral reciprocity agreements between Brazil and other countries. For countries that demand a visa, a visa stamp must be granted in the passenger's passport before departure. For countries that do not require a visa, passengers need only go through customs at seaport or border point of arrival.

Since reciprocity agreements may change, it is advisable to check with a Brazilian consulate before traveling.

Like transit visas, one may apply for a tourist visa at the nearest Brazilian consulate. In general, tourist visas are granted for a term of 90 days and are renewable for another 90-day period, with a total maximum stay of 180 days per year.

TEMPORARY BUSINESS TRAVEL VISAS

Temporary business travel visas grant their holders authorization to carry on business activities in Brazil provided that such holders are not remunerated by entities domiciled in Brazil.

This type of visa may also be obtained by applying to the nearest Brazilian consulate and is usually granted for a term of 90 days, except for Australian, Canadian, New Zealand and American citizens, for whom visas of up to five years may be granted based on governmental treaties. Therefore, as occurs with tourist visas, business visas can also be waived by Brazil in accordance with international treaties.

TEMPORARY WORK VISAS

Temporary work visas authorize their holders to work directly for a Brazilian company under an employment contract, subject to Brazilian Labor Law.

The Brazilian Immigration Authorities usually only grant temporary visas under employment agreements when (i) the foreigner is required to perform administrative, financial and managerial activities in Brazil; (ii) the salaries paid to foreigners do not exceed one-third of the total payroll; and (iii) the number of foreign employees does not exceed one-third of the company's total number of employees, although such criteria are challengeable in the light of the Brazilian Federal Constitution. The respective temporary work visa shall be valid for up to two years, renewable once for the same period of validity.

Technical assistance services may also be rendered to a Brazilian company by a foreigner holding an appropriate temporary work visa provided that the Brazilian company contracts a foreign legal entity for the rendering of services under the terms of a Technology, Transfer or Technical Assistance Agreement. While in Brazil, the foreigner remains an employee of the foreign company and receives his/her salary exclusively abroad. The respective temporary work visa shall be valid for up to one year, renewable once for the same period of validity.

The application for a temporary work visa should first be submitted to the Immigration Division of the Ministry of Labor. Upon approval, the Ministry of Labor sends the documents to the Ministry of Foreign Affairs, which in turn indicates the nearest Brazilian consulate abroad (where the applicant has been living for over one year or was born). The dependents and/or relatives of the main applicant are entitled to the same type of visa, but no permission to work in Brazil is granted.

PERMANENT VISAS

Permanent visas are usually granted to foreigners being transferred to Brazil to occupy positions of officers/managers or directors of companies installed in Brazil. To qualify for such visa, the applicant must be employed outside Brazil by the parent company of the Brazilian affiliate. Moreover, to be entitled to such visa, the government requires a minimum investment of BRR600,000 in the employing company per permanent visa application. However, this investment can be reduced to BRR150,000 if the Brazilian affiliate assumes the commitment to generate at least 10 direct jobs over a maximum period of two years.

Permanent visas may also be granted to foreign investors who contribute to the Brazilian economy. The requirements for such application are: (i) the foreigner must be a quota holder/shareholder and administrator of a Brazilian company; (ii) an investment must be made equivalent to at least BRR150,000; and (iii) a descriptive briefing of the activities to be developed by the Brazilian company must be submitted to the competent authority as described below.

The application for permanent visas should be initially submitted to the Immigration Division of the Ministry of Labor; upon approval being obtained, the Ministry of Labor forwards the application to the Ministry of Foreign Affairs, which indicates the nearest Brazilian consulate abroad (where the applicant has been living for over one year or was born).

MERCOSUL VISAS

Mercosul visas permit legal residence in Brazil for two years and are issued according to Normative Instruction DNRC N° 111/10. The Instruction applies to citizens of Mercosul countries who desire residence in Brazil and submit the necessary documentation to the appropriate Brazilian consular authority, or who currently reside in Brazil and submit the appropriate documentation requesting a change in residency status to the Brazilian immigration services.

The latter category of citizens can apply for residency in lieu of any process they used to initially immigrate into Brazil. Sanctions or other severe fines will be exempted when said citizen applies for a Mercosul visa. However, Mercosul citizens who immigrated into Brazil illegally are ineligible to apply for a Mercosul visa under Normative Instruction N° 111/10 while their illegal residency is in effect. In order to be eligible these Mercosul citizens must return to their country of origin and submit their requests for a Mercosul visa to the appropriate Brazilian consular authority.

These two-year Mercosul visas can be converted into permanent residency in Brazil so long as citizens submit a request for permanent residency and other necessary documentation to the appropriate authorities 90 days before expiration of the visa. If a permanent visa is not solicited and if, upon expiration

of the two year Mercosul visa the citizen does not report to the appropriate immigration authorities, then said citizen will become subject to Brazilian immigration law. So long as Mercosul visas are active, their possessors shall be afforded all legal rights and privileges enjoyed by Brazilian nationals.

ENVIRONMENTAL LAW

Federal Law N° 6.938 of 1981 (the National Environmental Policy Law) was the first step in organizing an environmental protection system in Brazil. Such law laid the basis for regulation of the three spheres of environmental liability: civil, administrative and criminal.

Subsequently, Law N° 7.347 of 1985 introduced a new and effective judicial remedy for recovery of environmental damages: public civil action. This law provides a new kind of lawsuit similar to a class action, in which the federal union, states, municipalities, public prosecutors, NGOs or public or private entities are entitled to file a complaint to correct any event that could constitute a threat to the environment. In Brazil, reparation for environmental damage can be claimed by means of an individual lawsuit filed by the party suffering the damage or through public civil actions.

In addition, the 1988 Constitution devoted an entire chapter (Chapter VI: Article 225) to the environment. The caption of Article 225 establishes that "all people are entitled to an ecologically balanced environment, which is an asset of common use and essential to a healthy quality of life, it being the duty of both the Government and the community to defend and preserve it for present and future generations."

Finally, the Environmental Crimes Law N° 9.605 of 1998 and its regulatory Decree N° 6.514 of 2008 complete the basic regulatory framework for more rigorous action concerning environmental protection in Brazil. Such statute establishes a series of administrative infractions and crimes committed against the environment as well as their corresponding sanctions.

Environmental crimes are divided into:

- Crimes against fauna or flora
- Crimes against urban order and cultural sites
- Pollution crimes
- Crimes against environmental administration (operating without a license, for instance)

Environmental administrative offenses are provided for under Chapter VI of the Environmental Crimes Law, which, in general terms, states that any action or omission violating environmental protection laws will be considered an

administrative offense (Article 70). Administrative sanctions, such as fines ranging from BRR50 to BRR50 million, may be imposed by the environmental protection agencies whenever environmental damage is perceived or when the company is operating without the relevant licenses, among other violations.

Brazilian authorities also addressed several specific areas of concern and certain sectors and activities (the oil and gas industry, genetically modified organisms, toxic fertilizers, biodiversity, etc.) are today subject to specific regulations in addition to general regulations.

LIABILITY FOR DAMAGES

Brazil has a global environmental liability system, composed of civil, criminal and administrative liability. It is possible for an environmental offender to incur all three types of liability concurrently.

Under the National Environmental Policy Law, Brazil adopted a strict liability system. Paragraph 1, Article 14, of the National Environmental Policy Law provides for strict liability with respect to damages caused to the environment: "... the polluter is obliged, irrespective of the existence of negligence, to indemnify or repair the damages caused to the environment and to third parties, caused by its activities ... "

In other words, liability for environmental damage can be imposed even in the absence of fault on the part of the offender. Moreover, each party related to the incident that generated the damage is responsible for it and is liable for the entirety of the injury done to the environment. However, the paying party has the right of recourse against the other liable parties.

The Brazilian Constitution (Article 225, paragraph 3) establishes that activities deemed harmful to the environment will subject the offenders, whether individual people or corporate entities, to the penalties (administrative fines) and criminal sanctions (Law 9.605/98), without affecting the obligation to repair the damages caused (tort liability).

In essence, two elements are required to establish environmental liability under Brazilian law:

- The existence of damages
- A connection between the actions/activities and the damages incurred

Moreover, the National Environmental Policy Law also defines a polluter as the person and/or entity directly or indirectly involved in the environmental damage. This is a very broad concept and authorizes, practically, any party involved in the activity/event causing environmental accident to be held liable for

the entire amount of the damages (notwithstanding their right to proportionally recover their losses from the other responsible party).

The above-mentioned interpretation is widely adopted by the Public Prosecution Service in the judicial sphere, in order to seek civil indemnification and/or recuperation of the damaged environment through the filing of a public civil action.

Brazilian law also provides for a general obligation to restore, repair and recover the environment. Basically, the polluter may be held liable to compensate for the damages caused (monetary damages), if such damages are of a magnitude that recovery/restoration (clean-up measures, for instance) are not possible. Failure to comply with an order to repair environmental damage or to cease polluting activities is punishable by a daily fine. Any monetary damages that may be payable are directed to a federal or state fund dedicated to the recovery of other damaged areas.

There is no statute of limitations for civil actions involving environmental matters, which means that they can be brought at any time. Furthermore, there is no cap on the amount of indemnification.

GOVERNMENT RESPONSIBILITIES

All governmental levels have concurrent authority to define environmental standards, rules and legislation, and grant environmental permits. Certain areas depend exclusively on federal permission, such as:

- Projects that cross national borders
- Projects within Brazilian territorial waters
- Projects located in two or more Brazilian states

GOVERNMENTAL BODIES

The Ministry of the Environment is responsible for planning, coordinating, supervising and controlling national policy and governmental standards established for environmental control. The Brazilian Institute for the Environment and Natural Resources (IBAMA) is responsible for overseeing, executing and enforcing environmental policies. IBAMA has agencies throughout the 26 Brazilian states.

The National Environmental Council (CONAMA) drafts the basic guidelines for environmental protection (standards for air and water quality and noise levels) and regulations for the preparation of environmental impact assessments and reports. CONAMA is made up of representatives from the federal, state and local agencies, as well as from the private sector and nongovernmental organizations. All agencies work within the Brazilian Environmental System (SISNAMA).

ACTIVITIES SUBJECT TO LICENSING

In general, any activity, project (including modifications or expansions) or venture, whether it uses natural resources or not, and which can be considered as current or potential polluters, or that may cause, in any way, impact/damage to the environment, must obtain a license. Environmental licensing occurs in three separate and consecutive stages, that is to say, each phase of the project requires a specific license issued by the competent environmental authority, in the following manner:

- Preliminary License (LP) - Granted during the planning phase (basic guidelines to be followed during the next licensing stages)
- Installation License (LI) - Authorizes the implementation of the project
- Operating License (LO) - Authorizes the operation of the project

The environmental agency will determine if an environmental study is required to obtain a license. The Environmental Impact Study (EIA) and the Environmental Impact Report (RIMA) are the most important studies to be filed, though they are not the only ones that may be required to secure the licenses. These studies must be done prior to the application for any license.

Generally, all the licenses establish certain conditions that must be complied with and indicate an expiration date that, if necessary, may be renewed.

PUNISHMENT FOR ENVIRONMENTAL DAMAGES

The National Environmental Policy Law establishes the following sanctions to whoever contributes to the illegal activities provided by such law, whether the offender is an individual or a corporate entity:

- Fines (the most common may reach up to BRR50 million)
- Deprivation of rights
- Imprisonment
- Others

WATER RESOURCES

Under Article 12 of Law N° 9.433/97, Brazilian Federal Legislation establishes that the right to use water resources, including the derivation or capture of an amount of water existing in a body of water or the extraction of water from a subterranean aquifer (whether for final consumption or as a raw material in the manufacturing process), as well as the addition to a body of water of sewage and other liquid or gaseous residues, treated or untreated, for the purpose of the dilution, transportation or final disposal of such residue, and finally the utilization of hydroelectric power, require authorization from the relevant authority (State Water Resources Secretary or the National Water Agency ANA).

GENETIC RESOURCES

Provisional Measure N° 2.186-16/01 (Provisional Measure) regulates access to Brazilian genetic heritage (*patrimônio genético*) for the purposes of scientific research, technological development or bio-prospecting activities.

THE PROVISIONAL MEASURE

- Establishes that access to genetic resources and/or to traditional knowledge in Brazil should only be carried out with the prior consent of the federal government (Article 2), and
- Creates the Genetic Heritage Management Council (CGEN) as the authority entrusted to regulate and authorize such access.

FOREST LEGISLATION

After a highly controversial legislative procedure, Federal Law N° 12.615 was enacted on 30 April 2012, and brought important innovations on the following provisions: (i) the economical use of the Legal Reserve; (ii) the new concept of Areas of Permanent Protection; (iii) the Rural-Environmental Registry; and (iv) the Programs for Environmental Legalization.

According to the law, every rural property must have a preservation area of native forest, which is called the Legal Reserve. The extent of such area depends on the location of the property, but this varies from 20% to 80% of the total area of the property. After the enactment of Law N° 12.615, it became possible to economically explore the LRs, subject to the authorization of the competent environmental agency.

As for the Areas of Permanent Protection, these are defined as rural or urban regions that are specially protected due to their natural resources, such as water resources, landscape, geological stability and biodiversity.

It is important to stress that if APP or LR areas are damaged, the owners of the properties where they are located are strictly liable to repair them, even if they have not caused the damage.

Moreover, the Rural-Environmental Registry is a federally owned, satellite image, database designed to facilitate visual confirmation of degraded areas. Today, the LRs are added to the satellite images and filed with the State Environmental Agency, thus improving governmental inspections of the preservation areas. Such registry is mandatory for all rural properties.

Finally, the Programs for Environmental Legalization will be implemented by the federal government within two years with the purpose of regulating irregular possessions and properties, especially with regard to APPs and LRs. A federal decree provides for an amnesty on previous fines and other penalties, from before 2008, for any owner who adheres to the programs.

ANTITRUST

The Brazilian Antitrust Law (Law N° 12.529) is based upon the 1988 Federal Constitution and is guided by the principles of free enterprise, free competition and consumer protection.

Law N° 12.529 entered into effect on 29 May 2012 and introduced many changes in the Brazilian antitrust system. The Administrative Council for Economic Defense—CADE—is now the sole authority responsible for reviewing mergers and acquisitions and investigating anticompetitive practices.

CADE is composed of three bodies, which operate within the same structure:

- Administrative Tribunal, which delivers judgments on all cases under the Antitrust Law;
- General Superintendence (GS), which took over the functions previously developed by the Secretariat for Economic Law (SDE) and the Secretariat for Economic Monitoring (SEAE) on both merger control and anticompetitive behavior investigations; and
- Department of Economic Studies (DEE), which supports both the Tribunal and the GS on complex economic matters.

Other than structural matters, the new Brazilian Antitrust Law brings the pre-merger notification system into the Brazilian antitrust arena and sets forth different thresholds for the notification of concentration acts.

MERGER CONTROL

The acts and agreements which may lead to the creation of any form of market concentration, including mergers, the direct or indirect acquisition of controlling interests or assets, the incorporation of companies, and the execution of a cooperation agreement, consortium or joint venture, must be submitted to CADE for review and approval prior to the closing in case they cumulatively meet the following thresholds:

- The economic group of at least one of the parties has, during the previous financial year, recorded gross revenue deriving from invoices issued exclusively in the Brazilian territory, equal to or exceeding BRR750 million; and
- The economic group of at least one of the parties involved in the transaction has, during the previous financial year, recorded gross revenue deriving from invoices issued exclusively in Brazilian territory, equal to or exceeding BRR75 million.

With regard to the procedure for filing with CADE:

- The parties must file the transaction after the execution of the first binding agreement (determining what can be considered a binding document is quite imprecise and requires a case-by-case analysis);
- The notifying parties must pay a filing fee in the amount of BRR45,000;
- Most of the transactions filed are cleared within 30 days of the filing date. This is not applicable to complex cases, which will take longer to be cleared. In any event, according to the Brazilian Antitrust Law, all the transactions must be reviewed and cleared by CADE within 330 days;
- Approximately 94.5% of transactions filed with CADE are cleared without any restrictions (years 2011 and 2012); and
- CADE's decisions are subject to judicial review.

Failure to submit a transaction or noncompliance with the filing deadlines may be penalized by a fine ranging from approximately BRR60,000 to BRR60 million.

It is important to note that the Brazilian Antitrust Law is applicable to acts performed and agreements entered into outside of Brazil in case their effects should somehow have an impact on the Brazilian market (for example, when the parties to the transaction have subsidiaries or affiliated companies in Brazil).

ANTITRUST VIOLATIONS

CADE is also the authority responsible for the review and punishment of anticompetitive behavior.

Among others, the following practices may be considered as violations to the economic order and thus be punished by CADE:

- Fixing prices and conditions for sale in collusion with competitors;
- Adopting uniform business practices in collusion with competitors;
- Limiting or restraining new companies' access to the market; and
- Selling products below costs (predatory pricing).

Anticompetitive behavior, besides triggering the imposition of administrative fines on both the company and its management, triggers civil and criminal liabilities that may be avoided by entering into leniency agreements with the competition authorities.

CONSUMER RIGHTS

Law N° 8.078/1990 enacted the Consumer Protection Code to enforce the rights of the consumer assured in Article 5 of the constitution.

The Consumer Protection Code defines the concept of consumer/client as being the end user of products and services. The supplier of goods or services is defined, among other aspects, as a person/entity engaged in a profitable and professional activity the target of which is the consumer. Within the scope of the consumer relationship, the Consumer Protection Code assures various principles and prerogatives to the consumer, and also imposes several obligations on the supplier of products or services.

Among the rights ensured to consumers are: health and safety protection for consumers with respect to products and services purchased; and access to specific information referring to merchandise, goods and services in general, with the prohibition of misleading advertising and control of contracts containing "abusive" clauses, including those that may lead the consumer to assume obligations that are excessively burdensome.

Moreover, the above mentioned law also contains specific provisions regarding the reparation of damages deriving from illegal acts, breach of contract and violation of public rules or rules referring to consumer rights. Furthermore, consumer rights may also be protected by consumer agencies or associations, and also by the Public Prosecution Service.

This law has also shifted the burden of proof away from the unsatisfied consumer to the supplier of goods and services. Accordingly, the seller of products or provider of services must produce evidence confirming that their merchandise or services complies with the norms and standards required by law, that any possible damages incurred by the consumer were not caused by their products or services, and also that there is no direct connection between the damages incurred and the product or service purchased.

Therefore, sellers and service providers are bound to strict liability for the product sold and services rendered. Accordingly, once the damage is ascertained and the nexus between the damage and the product or service is confirmed, the obligation to indemnify arises, irrespective of whether the seller or provider has acted with or without malicious intent, notwithstanding the personal liability of professionals, which should be subject to the verification of guilt. Consumer protection legislation also provides for the joint and several liabilities of all parties involved in the consumption chain.

On the other hand, the Consumer Protection Code provides for situations that do not imply liability: the service provider or seller of a product will not be held liable if the consumer or a third party is found exclusively liable for the damages.

The seller will be held jointly and severally liable whenever it is not possible to identify the manufacturer or producer. Other aspects implemented by this law are:

- The adoption of a legal concept generally known as "piercing of the corporate veil" (originating from the American and European legal systems where shareholders may be held liable for debts of their companies and have their personal assets attached);
- Advertising rules that are particularly strict and must be observed in accordance with the principles established in the Consumer Protection Code, forbidding the dissemination of abusive or misleading advertising, offers or publicity;
- Express prohibition of abusive contract clauses and also abusive practices perpetrated by product suppliers or service providers.

These principles serve to oblige advertising companies to render their services in a manner consistent with the law to protect the interests of consumers and assure fair competition.

The Brazilian Consumer Protection Code is compatible with similar regulations on the subject matter in other countries. Brazilian courts have been careful to enforce this law in order for it to strictly adhere to its main objective of protecting consumer interests and fostering fair competition between the players in the supply market.

In order for Brazilian industry to expand and generally attract new investments to the consumer market, the protection offered by the Consumer Code promotes the integration between consumers and suppliers of products or services in a safer manner and simultaneously places them in tune with possible joint projects in Brazil and abroad so as to encourage the sustainable development of mass consumption. Understanding consumer rights in different jurisdictions will certainly contribute to the expansion and growth of business dynamics within the Brazilian territory in a more expeditious, profitable and legally protected manner.

ARBITRATION

In 1996, the Brazilian Arbitration Act (Law N° 9.307/1996) was enacted, establishing a modern legal framework based on the arbitration laws of developed countries as well as on the UNCITRAL Model Law on International Commercial Arbitration. This Act grants foreign investors additional security when entering into contracts with Brazilian domiciled parties containing clauses that submit any arising conflicts to arbitration.

Brazil has also ratified the 1958 New York Treaty on the recognition and enforcement of foreign arbitration awards. With the ratification of this treaty, Brazil clearly joins the group of countries that have included arbitration in their legal systems, and have acknowledged arbitration as an effective means of dispute resolution.

Brazil has ratified several other arbitration treaties, such as the Inter-American Convention on International Commercial Arbitration and the Mercosul Treaty on International Commercial Arbitration Agreements.

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

BUSINESS ENTITIES

The new Civil Code (Law N° 10.406/02), effective as of January 2003, changed the rules governing all companies established in Brazil, except for corporations (*sociedades por ações*). In accordance with the Civil Code, companies incorporated in Brazil will be classified either as a *sociedade empresária* (business company) or as a *sociedade simples* (nonbusiness company). A business company conducts organized economic activity aimed at the production and circulation of goods or services. All corporate documents, including those establishing the company, must be filed with the Commercial Registry (*Junta Comercial*). An entity conducting any other activity (including intellectual, scientific, literary or artistic activities) is considered a nonbusiness company. All corporate documents of a nonbusiness company, including those establishing the company, must be filed with the Civil Registry for Corporate Entities (*Registro Civil das Pessoas Jurídicas*). It must be noted, however, that since the above mentioned concepts are vague, many misunderstandings may arise when classifying a company.

Prior to January 2003, service companies were classified as *sociedades civis* and their corporate documents were filed with the Civil Registry for Corporate Entities. Since this type of classification no longer exists, such companies will have to convert into business companies, and therefore must file their corporate documents with the Commercial Registry. Business companies are most commonly incorporated as limited liability companies (*sociedades limitadas*) or corporations (*sociedades por ações*), the latter always considered to be "business

companies" regardless of their corporate objectives. Also, a new type of business company with a single individual as shareholder, known as the individual limited liability company (EIRELI), has been available in Brazil since January 2012.

LIMITED LIABILITY COMPANIES *(SOCIEDADES LIMITADAS OR LTDAS)*

Limited liability companies are now regulated by the Civil Code. Formerly, they were regulated by Decree N° 3.708/19. The company's Articles of Association (*Contrato Social*) may contemplate the subsidiary application of either the provisions of the Civil Code regarding nonbusiness entities or of the Law of Corporations (Law N° 6.404/76 and its amendments).

The principal aspects of a limited liability company are as follows:

- It is incorporated by at least two quotaholders executing its Articles of Association, filed with the Commercial Registry or with the Civil Registry for Corporate Entities in the state in which its head offices are located. A shareholder of a limited liability company is called a quotaholder since the capital of the company is divided into quotas as opposed to shares.
- A husband and wife married under the universal community regime (past, present and future property) (*regime da comunhão universal*) or compulsory separate property regime (*regime da separação obrigatória*) cannot be quotaholders of the same company.
- The Articles of Association establish the company's corporate capital, but no minimum amount is required (except for certain types of companies such as banks and insurance companies).
- The corporate capital is divided into quotas.
- Each quota usually confers upon its holder the right to one vote at quotaholders' meetings; however, the Civil Code does not address the possibility of having nonvoting quotas, known as preferred quotas.
- Quotaholders are in principle not liable for the debts and other obligations of the company; however, they are jointly and severally liable for the total payment of the subscribed capital.
- Quotaholders may pay their respective equity interests with assets (but not services), which are required to be appraised.
- The company's capital may be increased by a quotaholder resolution. A right of first refusal is granted to existing quotaholders so that all of them may subscribe to the quotas to be created as a result of the increase.

- Quotas may be assigned to third parties, depending on the provisions of the Articles of Association. Likewise, it is possible to bar heirs and successors from becoming quotaholders, depending on the provisions of the Articles of Association.
- Only individuals, quotaholders or not, residing in Brazil may be appointed as directors (*administradores*) of limited liability companies. Foreigners wishing to occupy management positions must first obtain a permanent visa, in accordance with minimum legal requirements. Please refer to the Immigration section of this publication for additional information on permanent visas.
- The company may have one or more directors (*administradores*).
- Quotaholders determine the directors' remuneration.
- An audit committee (*conselho fiscal*) may be created depending on the provisions of the Articles of Association, which shall be composed of at least three members, be they quotaholders or not. The audit committee is one of the corporations' boards predicted by Law N° 6.404/76, the main function of which is to audit the corporation's management, and it may or may not, depending on the provisions of the bylaws, accumulate attributions of the audit committee predicted in the Sarbanes-Oxley Act, 2002.
- Law N° 11.638/07 mandates that large-sized companies—those companies, or groups of companies under the same control, with total assets in their preceding final year in excess of BRRl240 million or gross revenues of over BRRl300 million, regardless of corporate nature (thus encompassing limited liability companies of this size)—are subject to the conditions of Law N° 6.407/76 with regard to bookkeeping, the drafting of financial statements and the demand for bookkeeping assessments performed by an independent auditor registered with the Brazilian Securities and Exchange Commission, or the CVM. This includes publishing such financial statements in the official gazette and a widely distributed newspaper.
- Limited liability companies with more than 10 quotaholders must mandatorily approve matters under their responsibility at a quotaholders' meeting, which must observe specific Civil Code requirements regarding call notices, and the opening and passing of resolutions. Companies with fewer than 10 quotaholders may hold quotaholders' meetings, subject to less bureaucratic procedures, in accordance with the provisions of their Articles of Association.

- There are specific quorums for approving certain matters. For example, amendments to the Articles of Association and/or amalgamations, mergers or dissolution of the company require an affirmative vote of quotaholders representing at least 75% of the company's capital. The quorum required for appointing directors (*administradores*) may be unanimity, two-thirds of the capital or 50% plus one quota, depending on whether or not the capital has been fully paid up, and if the appointment of the director (*administrador*) has been included in the Articles of Association or in a separate instrument.
- The approval, by quotaholders, of the financial statements and directors' accounts is required once a year, within four months following the end of the financial year.
- Quotaholders may withdraw from the company whenever there is an amendment to the Articles of Association, an amalgamation or merger.
- A limited liability company may not issue securities, such as debentures and commercial papers, and does not have access to capital markets.

CORPORATIONS *(SOCIEDADES POR AÇÕES OR S.A.)*

Brazilian corporations are governed by Law N° 6.404/76, which has been amended several times over the last few decades. The new Civil Code did not affect the rules governing this type of company.

Brazilian corporations may be publicly held or closed, depending on whether or not they are registered with the Brazilian Securities Commission (CVM) and their shares are allowed to be traded on stock exchanges or, as the case may be, the over-the-counter market.

Publicly held corporations are subject to stricter rules than closed corporations, not only because of the provisions of Law N° 6.404/76 (as subsequently amended), but also because of audits and a number of rules issued by the CVM, usually dubbed "Directives" (*Instruções*) and "Regulations" (*Deliberações*).

Closed Corporations

- These are generally established by a General Meeting of Incorporation, in which all shares that make up part of the company's capital are subscribed, the bylaws are approved and the members of the board of directors (*Conselho de Administração*), if any, or the members of the Executive Board (*Diretoria*) are appointed.
- There must be at least two shareholders except when the corporation is a wholly owned subsidiary (*subsidiária integral*).

- The minutes of the General Meeting of Incorporation shall be filed with the Commercial Registry of the state in which the head offices of the corporation are located.
- The bylaws shall establish the corporation's capital, but no minimum amount is required (except corporations operating in certain sectors, such as banks and insurance companies). However, if the corporation has a board of directors, it is allowed to increase the corporation's capital up to a pre-established "authorized capital" limit as provided in the bylaws.
- The corporation's capital is divided into shares, with or without par value.
- Shares may be ordinary or preferred, but preferred shares may not exceed 50% of the corporation's capital.
- Ordinary and preferred shares may be divided into different classes, depending on the rights thereby conferred.
- Generally, each share confers one vote upon the shareholder. However, the bylaws may determine that the preferred shares have no voting rights or that this right be restricted to certain matters.
- Preferred shares confer the preemptive right to receive dividends and/or reimbursement of capital if the corporation is dissolved and may, in accordance with the bylaws, confer fixed or minimum dividends, and/or a dividend of 10% above the dividend paid to the ordinary shares.
- Shareholders are not liable for debts or other obligations of the corporation. However, they are liable for paying up the shares for which they subscribed.
- Shareholders may pay their respective equity interests with assets (but not services), which are required to be appraised. Such appraisal must be approved at a shareholders' meeting.
- A corporation's capital may be increased by a shareholder's resolution. A right of first refusal is granted to existing shareholders so that all of them may subscribe the shares to be issued as a result of the increase.
- Shares may be assigned to third parties, depending on the provisions of the corporation's bylaws. The corporation may only acquire their shares for the purposes of holding them as treasury shares, cancel or resell them, in special circumstances provided by law, such as redemption.
- Corporations must have an executive board, comprised of at least two officers, who must be individuals, be they shareholders or not. The officers must reside in Brazil. Foreigners who wish to

occupy such management positions are required to obtain a permanent visa, in accordance with minimum legal requirements. If the corporation has a board of directors, only one-third of its members can be appointed as officers.

- A corporation may have a board of directors, depending on the provisions of its bylaws, residing or not in Brazil. If the appointed members do not reside in Brazil, they must grant a power of attorney to a Brazilian resident who may then receive service of process and represent such member in Brazil. Brazilian law contemplates mechanisms for ensuring that minority shareholders and holders of preferred shares may appoint some of the members of the board of directors.
- Shareholders will determine directors' remuneration.
- Corporations must have an audit committee (*conselho fiscal*) on a permanent or nonpermanent basis. However, its operation is optional. The audit committee must be comprised of no less than three and no more than five members, be they shareholders or not. Shareholders representing 10% of the voting shares or 5% of nonvoting shares may request that the audit committee be convened. As is the case with the board of directors, Brazilian law contemplates mechanisms for ensuring that minority shareholders and holders of preferred shares may appoint some of the members of the audit committee. The audit committee is one of the corporations' boards predicted by Law N° 6.404/76, whose main function is to audit the management of the corporation, and it may or may not, depending on the provisions of the bylaws, accumulate attributions of the audit committee predicted in the Sarbanes-Oxley Act, 2002.
- Corporations are required to hold one annual shareholders' meeting (*Assembléia Geral Ordinária*) within four months following the closing of the fiscal year, which shall pass resolutions regarding the corporation's financial statements and officers' accounts, utilization of net profits and distribution of dividends, election of directors and the audit committee, whenever applicable.
- Any other matters requiring shareholder approval must be resolved at an extraordinary shareholders' meeting (*Assembléia Geral Extraordinária*).
- Shareholders may be represented at meetings by means of duly appointed proxies, who must be shareholders, attorneys or directors of the corporation. In this case, the power of attorney must have a limited term of one year.

- Law N° 6.404/76 (as subsequently amended) establishes the terms and procedures for the calling and opening of a general meeting and the approval of resolutions. The corporation's bylaws must comply with the rules provided therein.
- In general, matters submitted for resolution at a duly opened general meeting may be approved by shareholders representing 50% of the voting capital plus one voting share. Applicable legislation provides for a higher quorum for some specific matters. The corporation's bylaws may determine a quorum higher than that established by law.
- Shareholders dissenting from some of the matters provided by law may withdraw from the corporation, upon reimbursement of the value of their shares—such value to be determined based on the attributable net worth or economic value, depending on the provisions contained in the corporation's bylaws.
- The corporation's financial statements must be published and filed with the Commercial Registry except for closed corporations with fewer than 20 shareholders and net worth less than BRRl1 million, in which case these corporations must only file their statements with the Commercial Registry.
- Brazilian corporations may privately issue securities as provided for in Brazilian law, including debentures and warrants.

Publicly Held Corporations

Provisions applicable to closed corporations are also applicable to publicly held corporations. Nonetheless, it is worth noting the following:

- Publicly held corporations may be incorporated by means of an initial public offering. In order for this to occur, a company must first obtain a publicly held corporation registration statement and the issuance of shares registration statement from the CVM. Closed corporations may become publicly held corporations by obtaining such registration statements. CVM Directive N° 480/09 and its respective amendments govern this matter.
- Publicly held corporations must pay an annual inspection fee to the CVM (Law N° 7.940/89).
- In order for the corporation to cancel its publicly held corporation registration statement with the CVM, it must effect a public offering to buy all outstanding shares in the market, except for the shares held by the majority shareholder. In addition to the norms contained in Law N° 6.404/76 and its amendments, CVM Directive N° 361/02 and its amendments also govern this matter.

- Common shares issued by publicly held corporations may not be divided into classes.
- Article 17 of Law N° 6.404/76 establishes that preferred shares issued by publicly held corporations, or shares having limited voting rights, may only be traded in the capital market if they confer at least one of the following rights:
  - Dividend of at least 25% of the net income of the period, with shareholders having preference to receive such dividends in a total amount equal to at least 3% of the attributable value of the share;
  - Dividend of at least 10% more than the dividends attributed to common shares;
  - Tag along, as guaranteed to common shares.
- Publicly held corporations may effect public or private offerings of any security negotiated in capital markets. However, there are a number of norms issued by the CVM regarding this matter.
- The corporation's purchase of its own shares is subject to CVM Directives N°10/80 and its amendments, in addition to the provision of Law N° 6.404/76 and its amendments, as previously stated.
- As per Article 254-A of Law N° 6.404/76, the sale of the majority interest in the publicly held corporation may only be made if a public offering is carried out to acquire all of the outstanding voting shares. The price per share must be more than or equal to 80% of the price of the shares comprising the controlling block. This matter is also dictated by CVM Directive N° 361/02 and its amendments.
- Financial statements and all accounting issues relating thereto are subject to CVM control, by means of a number of Directives and Regulations. Therefore, the CVM has the power to determine a correction of financial statements whenever applicable; furthermore, it may require that the publicly held corporation publish its financial statement again after such correction is made.
- As per Directive CVM N° 480/09, publicly held corporations must send their financial information to the CVM every quarter, by means of a form called the Quarterly Information (ITR), which is made available to all the shareholders of the company and to the market. Publicly held corporations must also send the Financial Statement Form (DFP) to the CVM. In addition, publicly held corporations must send the Reference Form (*Formulário de Referência*, FR) to the CVM. These documents (ITR, DFP and FR) must be prepared in accordance with CVM rules.

The Financial Statements Form (DFP) must be: (i) filed with financial data statements prepared in accordance with accounting rules applicable to the issuer; and (ii) delivered: (a) by a domestic issuer, within three months of the end of the year or on the date of submission of financial statements, whichever occurs first; or (b) by a foreign issuer, within four months of the end of the year or on the date of submission of financial statements, whichever occurs first.

The Reference Form shall reflect the provisions of Annex 24 of CVM Directive N° 480/09, having been updated annually, should be delivered within five months of the end of the year, without prejudice to its resubmission on the date of application for registration of a public offering of securities.

- Publicly held corporations are required to engage an independent auditor, duly registered with the CVM, subject to CVM Directive N° 308/99, as amended by CVM Directive 509/11.
- The CVM may postpone the opening of any shareholders' meeting whenever it perceives that the shareholders were not duly informed of the agenda to be discussed at such meeting.
- Disclosing information and trading shares of publicly held corporations are subject to CVM Directive N° 400/03 and amendments of CVM Directive N° 482/10, which requires that all such corporations have their information disclosure policy approved in advance by the CVM.
- Increasing the corporate capital of a publicly held corporation and the public offering of shares, as well as any distribution of securities in the primary and secondary markets, are subject to CVM Directive N° 400/03 and its amendments (CVM Directive Nrs. 429/06, 442/06, 472/08, 482/10, 488/10, 507/11 and 528/12), which contain a number of requirements that must be complied with when carrying out this type of transaction.
- The amalgamation, merger or split of publicly held corporations must comply with all of the provisions of Directive Nrs. 319/99 and respective amendments (Directive Nrs. 320/99 and 349/01) that establish the minimum requirements vis-à-vis information to be disclosed to the shareholders on these operations, disclosure deadlines, appraisals, pricing shares in order to calculate the share swap value, etc. The conditions of the amalgamation, merger or split must be communicated by the company to the CVM within 15 days prior to the date of the general meeting that will deliberate on the issue.

- The penalties that publicly held corporations, their officers, members of the audit committee and shareholders are subject to are provided in Law N° 6.385/76 and its amendments and may include warnings, fines, and suspension or cancellation of rights, according to the seriousness of the violation. The CVM regulates the procedures that parties will undergo when applying such penalties. The CVM is entitled to communicate to the Public Prosecutor (*Ministério Público*) any evidence of a crime recognized as having occurred in the capital market.

As regards corporate governance, the CVM issued a booklet in June 2002 called "CVM Recommendations on Corporate Governance," in which the CVM establishes practices that it believes should be observed by publicly held corporations, their officers and controlling shareholders. Some of the rules applicable to the corporations and their shareholders are contemplated in CVM Directive 358/02 and the amendments to CVM Directive Nrs. 449/07 and 369/02.

In some cases, these practices do not conform to the provisions of Law N° 6.404/76, while in others, it enhances the requirements of said law. For example, the CVM recommends that if the majority equity interest is sold, a public offering for the purchase of the outstanding shares be carried out for the same price to be paid for the shares that comprise the controlling block, and that the offering be made to all shareholders. However, Law N° 6.404/76 determines that the price should be at least 80% and applicable solely to common shares.

Clearly, since these practices do not fall under the CVM's sphere of control, they are merely recommendations, and cannot, under any circumstance, be enforced by the CVM.

Individual Limited Liability Company (EIRELI)

Law N° 12.441/2011, effective January 2012, introduced a new corporate figure into the Brazilian Civil Code, namely the Individual Limited Liability Company or *Empresa Individual de Responsabilidade Limitada* (EIRELI), as it is called in Portuguese. Such companies have limited liability (just like a limited liability company) and a single shareholder, who must be an individual, whether Brazilian or foreign.

The following requirements should be satisfied to incorporate an EIRELI:

- The corporate capital of the EIRELI must be fully paid up on the date of the filing of the corporate acts for registration with the Commercial Registry, and set at an amount equivalent to at least 100 times the highest minimum salary in force in Brazil.

- The company name must adopt the abbreviation "EIRELI."
- The sole individual shareholder can only figure as the owner of just one EIRELI.

Law N° 12.441/2011 also contemplates the possibility of converting an existing limited liability company into an EIRELI with the concentration of quotas of such limited liability company into a single owner.

TAXATION

FEDERAL TAXES

The following taxes may only be levied by the federal government: import tax; export tax; income tax; tax on industrialized goods (i.e., excise tax); tax on financial transactions; tax on ownership of rural land; and tax on large fortunes, social contributions, and contributions of intervention in the economic domain.

INDIVIDUAL INCOME TAX (IRPF)

Individuals resident in Brazil are subject to IRPF on their worldwide income. IRPF should be calculated and paid on a monthly basis, and the monthly payments are considered as advances of the IRPF due at the end of each fiscal year. The amount due at the end of each fiscal year, calculated over annual taxable income and after the deduction of monthly IRPF payments (i.e., tax credits), should be paid on the last business day of April of the subsequent year. By such date, an individual is also required to file the annual income tax return.

The IRPF due monthly is calculated based on the following sliding scale (data for fiscal year 2013).

Monthly Income	**Rate**
Up to BRR1,710.78	Exempt
From BRR1,710.79 to BRR2,563.91	7.5%
From BRR2,563.92 to BRR3,418.59	15.0%
From BRR3,418.60 to BRR4,271.59	22.5%
More than BRR4,271.59	27.5%

Any income tax paid abroad may be offset as a foreign tax credit against the IRPF that is due on a monthly or annual basis, limited to the amount of IRPF due in Brazil over the same income or earnings obtained abroad. No carry-forward to subsequent years is permitted for such foreign tax credit.

Capital gains incurred by individuals resident in Brazil are taxed separately from other income, subject to income tax at the rate of 15%.

An expatriate working in Brazil is considered a local resident:

- On the date of arrival in Brazil, if the expatriate holds a permanent visa;
- On the date of arrival in Brazil, if the expatriate holds a temporary visa and entered into a labor agreement with a Brazilian company (i.e., the expatriate is an employee of a Brazilian company and his employment agreement is governed by Brazilian labor laws);
- After 183 days present in Brazil within a period of 12 months, continuously or not, when an expatriate holds a temporary visa without having entered into an employment agreement with a Brazilian company.

FEDERAL CORPORATE TAXES

Corporate Income Tax (IRPJ) and Social Contribution on Net Profits (CSLL)

IRPJ is a federal tax charged at the rate of 15% over taxable income. There is also a surtax of 10% on annual taxable income exceeding BRR240,000 (BRR20,000 per month). CSLL is also a federal tax levied at the rate of 9% on taxable income.

Taxable income is gross income minus permitted deductions. Gross income encompasses active (operational) and passive (nonoperational, such as interest, capital gains, etc.) income. It encompasses onshore and offshore income as well (i.e., taxation on a worldwide basis). Taxable income is still adjusted by additions and exclusions determined by legislation (e.g., tax loss carry-forwards). Usually, the basis of IRPJ and CSLL is very similar, but there are some specific differences.

Companies may elect to calculate their taxable income under either the actual profit method (known as *lucro real*) or the presumed profit method (known as *lucro presumido*) every fiscal year. Under the actual profits method, companies determine taxable income by effectively subtracting all permitted deductions from gross income. Under the presumed profits method, companies calculate taxable income by applying a percentage set forth by law on operational income and adding its product to nonoperational income. The law establishes such percentage, which varies depending on the activity conducted by the company. For instance, a percentage of 32% should be multiplied by gross income generated by the rendering of services in general. Companies that carry out activities that fall within categories to which different percentages apply should use the respective percentage over the portion of gross income related to each activity.

Certain companies are not permitted to adopt the presumed profit method, these include companies with gross income exceeding BRR48 million, that have foreign subsidiaries, banks, etc.

The presumed profit method tends to be more advantageous if the actual profit margin of the activities of the Brazilian company is higher than the percentage set by law.

Ordinary and necessary expenses are deductible in the calculation of IRPJ and CSLL based on the actual profit method. The law also permits companies to deduct interest on equity paid to identified shareholders as a financial expense, to the extent that such interest on equity:

- Does not exceed the amount resulting from the multiplication of the annual TJLP (Long Term Interest Rate), which is an interest rate calculated quarterly by the Central Bank of Brazil on the net worth of the company (discounting the revaluation reserve) pro rata die, and
- Is equal to or lower than 50% of the greater of
  - The current fiscal year profits (before interest on equity deduction)
  - Accumulated profits and profit reserves

Amounts paid or credited to shareholders as interest on capital are subject to withholding tax.

In the actual profit method, locally incurred tax losses may be indefinitely carried forward, but they are only able to offset taxable income up to 30% in a given fiscal year. Therefore, even having accumulated tax losses exceeding their taxable income, Brazilian companies are required to pay IRPJ and CSLL, since only 30% of such income may be offset against such accumulated tax losses. Tax losses incurred by foreign branches or subsidiaries cannot be offset against income generated locally.

Dividends based on profits ascertained as from 1 January 1996, paid out or credited by companies, are no longer subject to income tax, whether paid out to individuals or to companies resident in Brazil or abroad.

International transactions between related companies (including companies located in tax havens) are subject to transfer pricing rules in Brazil, for both imports and exports. Interest practiced in cross-border loans between related companies is also subject to transfer pricing rules. Interest on such loans should not exceed the LIBOR rate for six-month U.S. dollar deposits plus a spread of 3%; otherwise the excess is not deductible by the Brazilian borrower. On the other hand, the same amount shall be accounted as a taxable income by the Brazilian lender.

For purposes of IRPJ and CSLL ascertainment, the thin capitalization rules establish two different limits, based on the debt to equity ratio, for the deduction of interest paid to related parties or to residents in tax havens or in regions with privileged tax regimes.

In summary, the interest paid to related parties is deductible up to the limit of the debt-to-equity ratio of 2:1. The limit to interest paid to residents in tax havens or regions with a privileged tax regime is 0.5:1.

There are fiscal incentives for the performance of certain activities (e.g., technology) or regions (e.g., north and northeast of Brazil).

Taxes on Gross Income - PIS and COFINS

PIS and COFINS are federal social contributions levied on a company's gross income. Some revenues, such as dividends and financial revenues, are not currently subject to PIS and COFINS. Such taxes are imposed under two systems: cumulative (*cumulativo*) and noncumulative (*não-cumulativo*). The law lists which companies are subject to each regime. In general, companies that determine their taxable income under the actual profit method are subject to the noncumulative PIS and COFINS while those that elect the presumed profit method are under the cumulative system. There are special cases in which companies may be subject to both regimes.

Under the cumulative system, PIS and COFINS are levied at the rates of 0.65% and 3% respectively.

Under the noncumulative system, the PIS and COFINS burden corresponds to:

- The product of 9.25% and its gross income
- Less the PIS and COFINS credits granted to it

In order to calculate the PIS and COFINS credits, the 9.25% should be applied to certain costs and expenses that companies have with local corporate entities. The law expressly provides that PIS and COFINS credits are only granted to costs and expenses derived, for example, from:

- Acquisition of goods for resale
- Purchase of goods and services used in the manufacturing of products destined for sale or in rendering services (inputs), including fuel
- Lease of buildings and equipment from corporate entities, which should be used in the taxpayer's activities
- Depreciation of fixed assets
- Consumption of energy in the facilities of the taxpayer

There are certain limitations for the use of credits. For instance, in general, no credit is allowed regarding financial expenses. If companies are not able to absorb all PIS and COFINS credits in a certain month, they are entitled to carry them forward to offset future PIS and COFINS debts or even, in certain cases, to offset against other federal taxes debts.

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

Withholding Tax (WHT)

Withholding taxes are imposed on payments made from residents in Brazil to other residents and from residents to nonresidents. Payment of certain service fees from a resident in Brazil to another resident triggers certain withholding taxes at the combined rate of 6.15% (IRRF, COFINS, PIS and CSLL), which are considered as advances of IRPJ, CSLL, PIS and COFINS due in the period. It is necessary to ascertain the nature of the service rendered to confirm whether such withholding taxes are applicable.

This table indicates withholding taxes applicable on payments to nonresidents.

Type of Income	Rate Applicable to Ordinary Jurisdiction	Rate Applicable to Tax Haven
Dividends	0%	0%
Interest on equity	15%	25%
Interest	15%	25%
Technical Services Fees	15%	25%
Service Fees	15%	25%
Royalties	15%	25%
Capital Gains	15%	25%
Financial Leasing Expenses	15%	15%
Operational Leasing Expenses	15%	15%

With regard to financial leasing expenses, it is important to mention that if the lease agreement clearly specifies, per remittance to be executed, the portion of the expense that is related to the amortization of the leased asset and the respective financial costs, such portion related to the amortization of the asset may be excluded from the basis of the IRRF.

With respect to capital gains, the law recently imposed a withholding tax on the sale of assets located in Brazil by a nonresident to another nonresident. Normative Instruction N° 1.037/10, as amended by Normative Instruction N° 1.045/10 issued by the Brazilian IRS, contains the current tax haven blacklist as

well as privileged tax regimes, under Article 24-A of Law N° 9.430/96, by the Brazilian IRS.

Brazil has entered into tax treaties to avoid double taxation with several countries. The tax treaties ratified by Brazil follow the main features of the OECD model, even though Brazil is not an OECD member. Tax treaties with Brazil may be used for reducing the tax burden of international structures and optimizing foreign tax credits upon the use of clauses related to tax sparing and matching credits. Brazil has not yet ratified a tax treaty with the United States of America or the United Kingdom (two of its principal trading partners), but there are cases of reciprocal tax treatment between Brazil and the USA, the UK and Germany that could occasionally serve as means to avoid double taxation in specific situations.

Withholding tax is triggered on income deriving from funds managed by financial institutions at rates that vary depending on the characteristics of the funds.

Contribution of Intervention in the Economic Domain (CIDE)

CIDE Royalties

CIDE is a local contribution on royalties and technical service fees remitted to nonresidents. It is levied at a rate of 10%. It is due by Brazilian companies that pay royalties and technical service fees to nonresidents. Royalties deriving from the licensing of software are currently exempted from CIDE Royalties.

CIDE Oil and Gas

This is levied on import and local transactions involving oil and its derivatives, gas and other products at specific rates.

Excise Tax – Federal VAT (IPI)

IPI is a value-added tax imposed on each phase of the manufacturing process. Its rates vary depending on the importance of the manufactured item. The fiscal classification of an item allows one to identify the applicable IPI rate. The IPI basis is the price of the manufactured item.

For IPI purposes, an industrial activity means any operation which modifies the nature, operation, finishing, presentation or purpose of a product, or which improves a product for consumption, such as its conversion, processing, packaging, repackaging or restoration.

IPI is also imposed on the importation of goods. The rate varies according to the product's fiscal classification.

Tax on Financial Transactions (IOF)

IOF is levied on foreign currency exchange, financing agreements, insurance and on transactions involving securities at different rates.

- IOF on foreign currency exchange may be imposed at the rate of 25%, but in general, remittances to or from abroad are currently subject to the rate of 0.38%. Cross-border loans with a minimum average term lower than or equal to 320 days (or loans with a higher average term, but with a put or call option exercisable over such 320-day period), are currently subject to a 6.38% rate. Cross-border loans with a longer term are subject to IOF at the rate of 0%.

- IOF on securities may be imposed on any transaction involving bonds and securities. Currently, most transactions are subject to IOF at the rate of 0%, except certain specific cases (i.e., fixed yield transactions with a maturity period lower than 30 days or when withdrawal occurs before maturity—IOF at rates ranging from 0% to 1%). However, the IOF rate may be increased at any time to a maximum rate of 1.5% per day, by means of a decision of the Minister of Finance.

- IOF on insurance is charged at different rates, depending, in general, on the nature of the insurance and of the insured.

- IOF on credit is imposed at different rates. On credit agreements where a lump sum is transferred to the borrower for a predefined period, IOF is charged at a daily rate of 0.00411% limited to a rate of 1.88%. Loan agreements with nondefined periods are subject to the same rate, although said limitation is not applicable.

Import Tax (II)

Import tax is a federal tax levied on the import of goods, and is imposed upon customs clearance of the imported goods. Import tax is calculated on the customs value of the imported good. The rate may vary according to the fiscal classification of the product.

Social Security Contribution on Payroll

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

For beneficiaries, the calculation basis is the gross salary, limited to BRR3,467.40, and the applicable rate varies from 8% to 11%, depending on the amount received.

For companies, the social contribution is imposed on the total payroll, and the rate may reach approximately 28%, depending on the company's activities.

Tax on Ownership of Rural Land (ITR)

The tax on ownership of rural land is payable by individuals and companies. Its basis is the value of the land but takes into account other factors.

Tax on Large Fortunes

The federal government has not yet introduced a tax on large fortunes.

State on Federal District Taxes

State VAT (ICMS)

ICMS is the main state tax and is imposed on transactions that imply the legal transfer of goods, and on interstate and intermunicipal transport services as well as on communications services. ICMS is also levied on imports.

ICMS is a value-added tax which allows the taxpayer to book tax credits from the ICMS paid on the purchase of raw materials, intermediate products, packaging materials, and goods to be resold.

ICMS rates vary depending on the state, and the nature of the goods or services. In general, in the state of São Paulo, the rate is 18%. Interstate transactions are subject to reduced ICMS rates (4%, 7% or 12%, depending on the state of destination and on the nature of the transaction).

Inheritance and Gifts/Donations Tax (ITCMD)

ITCMD is a state tax imposed on inheritance, gift/donation or succession, applicable on transfer of real estate and other assets which do not involve payment or other consideration. The ITCMD rate varies from state to state. In São Paulo, as a general rule, the rate is 4%, but certain exemptions are granted for transfers up to a certain amount.

Tax on Ownership of Motor Vehicles (IPVA)

This state tax is levied on the ownership of motor vehicles, based on the market value of the item. Its rate varies according to each state and the type of vehicle.

Municipal Taxes

Services Tax (ISS)

ISS is levied on the rendering of certain services listed in a national law. Each municipality issues its own legislation for ISS, but it cannot add any additional service not listed by the national law. ISS is also levied on imports of services.

The taxable event of ISS is the performance of a listed service by an individual or a company. The basis for ISS is the price of the service.

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

Tax on Ownership of Urban Land (IPTU)

IPTU is a municipal tax applicable on the ownership, control or possession of urban land or buildings.

Real Property Transfer Tax (ITBI)

ITBI is a municipal tax imposed on the sale, purchase or assignment of real estate or related rights, provided that such transaction is not a gift.

The rate may vary according to the city. In the city of São Paulo, the rate of such tax is 2%, calculated on the market value as established by the City Council. This tax must be paid when executing the deed of transfer.

INTELLECTUAL (INDUSTRIAL) PROPERTY

Brazil is a signatory of almost all the main international intellectual property treaties (such as the Paris, Bern and Rome Conventions, and TRIPS, among others). Intellectual property rights are regulated by federal laws in Brazil (the main ones being Federal Law N° 9.279, enacted in 1996—Industrial Property Law, which also regulates unfair competition; Federal Law N° 9.610 , enacted in 1998—Copyright Law; and Federal Law N° 9.609, enacted in 1998—Software Law).

The Brazilian Patent and Trademark Office (*Instituto Nacional da Propriedade Industrial*—INPI) is the governmental agency in charge of protecting industrial property rights, as well as registering licensing and technology transfer agreements. The registration of patents, industrial designs and trademarks is performed by the INPI.

PATENTS

Patents are granted for inventions and utility models (partial or full improvements on physical objects that are of practical use and have industrial application). A Brazilian patent grants its holder the power to prevent third parties from producing, using, selling or importing patented products.

Application Requirements

- Novelty
- Industrial use or application
- Inventive step or inventiveness

Terms of Effectiveness

"First to File" Rule – Ownership of a certain patent is assured to the person who first registered it with the INPI. Patents may be granted for periods of:

- 20 years for inventions
- 15 years for utility models

Once the patent expires, the invention enters the public domain.

Compulsory Licensing

According to Brazilian law, a nonexclusive, compulsory license may be issued on these occasions:

- National emergency or public interest
- Abuse of patent rights
- Abuse of economic power
- Failure to exploit the patent in the Brazilian market within three years of its granting or failure to adequately serve the Brazilian market

Timing

The issuance of a patent in Brazil takes approximately seven to eight years.

INDUSTRIAL DESIGNS

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

An industrial design must not belong to the state of the art and must be original (so defined as "those that have a distinctive visual configuration from previous objects"). The law specifically foresees that the combination of known elements may be original if it results in an original combination. The law excludes from protection any works deemed purely artistic, with no industrial application.

Industrial designs are not subjected to substantial examination with the INPI. They are granted for a 10-year period, extendable for three additional five-year periods.

TRADEMARKS

Under Brazilian law, trademarks must be "visually perceptive." Brazil allows protection of word, design, word and design and tridimensional signs as (i) product; (ii) service; (iii) certification; and/or (iv) collective trademarks. Geographical indications are also protectable in Brazil.

The holder of a foreign trademark may claim priority of protection of this trademark in Brazil within six months following its filing in a country member of the Paris Convention.

Application Requirements

There are clear legal limitations with regard to the object of the trademark protection. For example, colors alone are not subject to protection, unless they are combined in a peculiar and distinctive manner, while letters, dates, expressions or signs used in advertising or the titles of literary works, among many others, are generally excluded from protection as a trademark, which does not mean that they may not be afforded other types of protection.

The registration of a sign is not dependent upon the actual use of the trademark at the moment of filing or to obtain the certificate of registration, but there is a forfeiture system in which the holder of the trademark can forfeit its rights if he/she does not use the trademark in Brazil within five years of its registration or interrupts its use for more than five years.

Terms of Effectiveness

The Brazilian trademark system is based on the "first to file" jurisdiction for trademark protection, so as a rule trademark rights are only obtained by means of valid trademark registration. Under this system the priority of use is given to the applicant that was the first to file a request for trademark protection with the INPI.

Brazil adopts the International NICE classification for service and product trademarks to assess classes of registration. Each application may only correspond to one class of products/services and the protection of the trademark limited to its class of registration.

Both rules indicated above (first to file and class protection) are waived for the protection of well-known (protected independently of registration in Brazil) and famous trademarks (once registered in Brazil its protection is extended to all classes of products/services). The protection of well-known and famous trademarks is subject to a case-by-case analysis.

Timing

The issuance of a trademark in Brazil takes approximately three to four years.

COPYRIGHTS

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

the future." Copyright protection is independent of registration and lasts for 70 years after the death of the author.

It must be noted that moral rights have a considerable impact on copyright negotiations and contracts in Brazil, since legally these rights cannot be waived or assigned.

Brazil currently does not have any legal statutes providing safe harbor for Internet providers with regard to copyrights infringements, but there are considerable discussions and proposals in Congress to address this matter.

Software

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

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

Domain Names

In Brazil, domain names are registered with the Brazilian Internet Steering Committee (CGI.br, created by Interministerial Ordinance N° 147 and Registro.br is the official entity responsible for domain name registrations). Domain names are granted on a first-to-file basis; nonetheless, there are regulations against registering domain names with proprietary words or trademarks.

For a Brazilian company, the registration of domain names in Brazil basically requires a copy of the Ministry of Finance's Corporate Taxpayer Registry (CNPJ) and certain technical information. However, for foreign companies that wish to register a domain name, certain specific rules and restrictions may apply. Such companies must be represented at the Registry by a local agent or attorney, with the power to register, cancel and transfer title to the domain name as well as change the designation of the individual who represents the company in the registration authority.

Technology Transfer

As a general rule, agreements relating to industrial property rights (such as technology transfer and technical assistance agreements) must be approved by and registered with the INPI for the following purposes: (i) remittance of royalties abroad; (ii) deductibility of payments for Brazilian tax purposes; and (iii) enforcement of the obligations before third parties.

It must be noted that technology in Brazil (that is not protected by a patent) is "transferred" rather than "licensed," which means that technology of this nature may be sold but not licensed. For this reason, the recipient of the technology must always be free to use the technology after the expiry of the agreement.

It should be noted that, even though a formal rule limiting the term for a technology transfer agreement does not exist, the INPI has traditionally approved technology transfer agreements for a five-year period. Such term may be extended for an additional five-year period if the company attests that the technology has not been fully absorbed.

FRANCHISES

Franchises in Brazil are subject to a Franchise Law (Federal Law N° 8.9559/94). The scope of regulation of this law, however, is very narrow, generally being limited to the disclosure obligations. In fact the disclosure period is heavily regulated; the law foresees in detail all information that must be disclosed by the franchisor before the execution of any binding document.

Although registration of a franchise contract is required before the INPI, it is not a prerequisite for its validity and enforceability, and registration is required for three purposes: i) to enforce the contract against any third party (a distributor, for example); ii) to remit royalties and any other amounts abroad; (iii) to allow fiscal deductions.

LABOR LAW

The Brazilian Consolidated Labor Code (CLT) establishes judicial procedures for labor claims, rules regarding the relationship between employees and employers, and regulations for the organization of unions and collective bargaining procedures.

Brazilian employee-employer relations are also governed by employment contracts, labor and social security statutes other than the CLT, collective bargaining agreements and companies' internal rules of conduct (*regulamento interno*).

Collective bargaining agreements are entered into between employees' and employers' unions, or directly with employers (*acordos coletivos*). These agreements may set forth rights that could ultimately benefit employees more or less than the existing statutory rights.

PRIMARY LABOR RIGHTS

Employment relationships in Brazil are regulated by federal laws, which are applied to all employees. In accordance with Article 3 of the Consolidation of Brazilian Labor Laws (CLT), an employee is defined as an individual who renders services (*pessoalidade*), on a regular basis (*habitualidade*), and is subordinated (i.e., is subject to the direct oversight) to his/her employer (*subordinação*) against receipt of compensation (*onerosidade*).

It follows from the foregoing that if any individual renders services in Brazil through a relationship with the above-mentioned requirements (even if such individual is hired as an independent contractor), the individual will be considered an employee and, therefore, be entitled to labor rights that cannot be waived, such as:

- An annual mandatory salary increase, which is based on a percentage rate set forth in the collective bargaining agreement negotiated by and between the respective employers' and employees' unions. This percentage rate will govern regardless of whether the employees and employers concerned are affiliated with such unions. Alternatively, the increase may be based on a collective labor claim filed by the employee's union against the employer's union.
- An annual Christmas bonus equal to the employee's monthly compensation.
- An annual 30-day paid vacation coupled with a bonus equal to one-third of the employee's monthly compensation.
- An accrued severance fund (FGTS) paid into by the employer, who shall deposit an amount equal to 8% of the employee's monthly compensation in a special bank account in the employee's name at the Federal Savings Bank (*Caixa Econômica Federal*).
- A transportation voucher for the total cost of the employee's transportation that exceeds 6% of the employee's monthly compensation.
- 15 days of sick leave paid for by the employer. Thereafter, the social security administration shall pay the employee's salary during an extended sick-leave period that it determines to be reasonable.
- 120 days of maternity leave paid by the employer.
- Five days of paternity leave paid by the employer.
- For dangerous working conditions, a 30% premium.

- For unhealthy working conditions, 10%, 20% or 40% of the national minimum wage premium, depending on the conditions.
- For temporary relocation, a transfer premium of at least 25%.
- For dismissal without cause, indemnification corresponding to 40% of the deposits made into the FGTS during the employment relationship and a social security contribution corresponding to 10% of such deposits.
- For overtime, a minimum premium of at least 50% of the regular hourly rate.
- For night shifts, increased pay calculated in the following manner: every 52 minutes and 30 seconds worked after 10:00 pm but before 5:00 am is considered equal to a full 60 minutes of work and also a 20% premium over the regular hourly rates.
- Certain employee categories, such as bank employees (*bancários*) and telephone operators (*telefonistas*), are entitled to reduced working hours (six-hour shifts).
- For some professions there is a specific minimum salary guarantee.
- A weekly paid rest period, preferably on Sundays.

It is important to note that benefits which are not provided for by the law or stipulated in a collective bargaining agreement, but rather are extended by the employer on a discretionary basis (i.e., discretionary bonus), become a vested right to the employee when paid repeatedly and shall not be reduced or suppressed unless done through a separate collective bargaining agreement.

Certain labor obligations, such as social security contributions, FGTS, severance payments, and taxes withheld are calculated based on the employee's total compensation (including Christmas bonus, average overtime pay, bonuses, etc), rather than his/her base salary.

Where the social security contributions are concerned, the employer must pay up to 28.8% of the total payroll to the National Social Security Institute (INSS). Such contributions may be increased in cases involving companies with a history of work-related accidents or sick leaves or in case of work under dangerous or hazardous conditions.

All employees and employers in Brazil are considered to be represented by unions. Any rules agreed to under collective bargaining agreements, including the value of the labor union contribution, will bind all employers and employees, whether such employers and employees are associated to their respective unions or not.

As mentioned above, Brazilian labor legislation is federal, and therefore applied equally to all Brazilian states. However, the various labor unions throughout Brazil do not have equal political and economical strength. As such, some labor unions are more flexible in negotiations, while other unions are much more rigid. It is important to note that, although some conditions (like work shifts and additional pay for overtime) may be negotiated and governed by collective bargaining agreements, the suppression of benefits which are established by law (i.e., Christmas bonus, FGTS or additional pay for unhealthy/hazardous working conditions) may not be waived, even through collective bargaining agreements.

WORKING HOURS

Employees are normally limited to working eight hours per day and 44 hours per week, unless a specific collective bargaining agreement (*acordo de compensação de jornada*) is negotiated with the labor union or overtime is paid. In certain fields of activity, the maximum number of hours an employee is permitted to work is reduced. In any case, employees should limit their overtime to a maximum of two hours per day.

Managers and employees who perform external functions, which could make determining and controlling the number of hours worked impossible, are considered exempt from control of working hours, and hence are not entitled to overtime.

Despite the recent changes to the CLT regarding services performed outside of the company's facilities as promoted by Law N° 12.551, enacted on 16 December 2011, Brazilian labor courts are still discussing the impact of such changes in current practices, including whether companies are required to effect any payment to employees who receive a company mobile or pager. The current case law indicates that only if the employee is required to perform any services after his/her working hours, may the employee be entitled to overtime pay. However, due to Law N° 12.511/2011 there are discussions on whether, in addition to such overtime pay in the case of effective work, the employee receiving a mobile phone or pager should be entitled to an "on-call premium" or similar payment, although such claims have been denied in the past. Therefore, we recommend companies to restrict the use of mobile devices and remote access to e-mails to key employees and, preferably, to those exempt from control of working hours, until the labor courts provide final guidance regarding the impact of such new regulations.

PROFIT SHARING PROGRAMS *(PARTICIPAÇÃO NOS LUCROS OU RESULTADOS – PLR)*

If a PLR program respects the legal requirements, the amount paid to an employee as part of such a program is not considered part of the employee's

compensation for the calculation of social security or other employment entitlements. PLR programs, however, are limited in that they may pay out in only six month intervals, or longer. It is important to note that PLR programs must be negotiated with the employees' union or an in-house committee elected by the employees which should include a labor union representative.

PLR payments may be made based on profits or on goals. When paid based on goals, they must be ascertained by objective criteria expressly specified in the program.

Moreover, PLR payments based on profits may either be paid in fixed amounts, in percentages of employees' salaries, or by sharing part of the profit earned by the company (whether earned only in Brazil or worldwide). The form of payment must be negotiated by and between the parties.

TERMINATING THE EMPLOYMENT RELATIONSHIP

Brazilian employment law recognizes four different types of employment agreement termination.

Dismissal with Cause: Dismissal with cause is only possible in those situations provided by law, which include theft, disobedience of a direct order, noncompliance with the company's internal rules and policies, among others. In such cases, the employee is only entitled to accrued vacation, salary balance or FGTS contribution n the salary balance.

Employee's Resignation (*pedido de demissão*): Upon resigning, an employee must give the employer 30-day prior notice; otherwise the employer may discount an amount corresponding to one month's salary from the employee's severance payment. Please note that after Law N° 12.506, enacted on 13 October 2011, the minimum 30-day prior notice must be increased by three additional days per year of service rendered by the employee to its current employer (after the first year of service), limited to a maximum of 60 additional days. However, due to the fact that such law has just been enacted, it is not clearly determined if such additional days of the prior notice should be applied to the employees in case of resignation or just to the employers in case of dismissal without cause. Additionally, the employee is entitled to accrued and pro-rata vacation, pro-rata Christmas bonus, salary balance and FGTS on the salary and Christmas bonus.

Dismissal without Cause: Dismissal without cause is permitted but is subject to the employer providing the employee with a minimum 30-day prior notice (which may be increased by the applicable collective bargaining agreements). The employer is required to pay the severance due in case of resignation and a dismissal indemnification corresponding to 50% of the balance of the employee's FGTS account.

Indirect Dismissal (dismissal caused by the employer): Indirect dismissal or constructive dismissal has the same consequences as dismissal without cause and occurs whenever the employer is liable for a breach of contractual obligations, including delay on salary payment, salary reduction or physical or psychological aggressions.

Lay-offs*/*Collective Dismissals: Although collective dismissals or lay-offs are not specifically regulated by Brazilian employment law, please note that recent precedents from the Brazilian Superior Labor Court (TST) indicate that companies conducting collective dismissals should previously negotiate alternatives with the respective unions as a means of reducing costs.

Severance Payment Deadlines: Regardless of the form of dismissal, the employee is entitled to receive his/her severance payments by the 10th day following the dismissal (in the event of dismissals with an indemnified 30-day prior notice) or by the first working day after the worked prior notice.

Job Tenures: Please also note that under Brazilian employment law, employees in certain conditions have job tenures, and may not be dismissed without cause, such including:

- Union leaders, from the employee's registration as a candidate to one year after the end of his/her term;
- Expectant mothers,: from the confirmation of pregnancy to five months after the birth;
- Employees who have suffered a workplace accident or are receiving social security allowances due to labor related illness, for 12 months after their return to work;
- Members of the Internal Accident Prevention commission (CIPA), from the employee's registration as a candidate to one year after the end of his/her term.

EFFECTS OF EMPLOYER BELONGING TO A CORPORATE GROUP

In accordance with Brazilian labor law, a corporate group is comprised of several companies. For the purposes of employer-employee relations, the corporate group is considered the employer of all member company employees. Labor law establishes that companies formed as part of the same corporate group shall be deemed jointly and severally liable for the obligations assumed by each group with regard to their employees.

EFFECTS OF MERGERS AND ACQUISITIONS *(SUCESSÃO DE EMPRESAS)*

Notwithstanding mergers or acquisitions, which consequently generate changes to the original corporate structure, labor rights and obligations shall not be affected.

Therefore, the successor company shall comply with the terms deriving from the original employment agreements, and shall be deemed liable for pending labor contingencies, whether judicial or extra-judicial.

CONFIDENTIALITY CLAUSES

Brazilian labor law recognizes an implied obligation not to disclose confidential information or trade secrets to which an employee is privy during the course of the employment relationship. The breach of this obligation is considered a motive for dismissal with just cause, even if not explicit in the employment agreement. This obligation remains in force after the termination of the employment relationship.

NONCOMPETE

Brazilian labor law determines that unless otherwise agreed to by the parties to an employment relationship, the employee shall not compete with the employer during the period of employment. Additionally, Brazilian intellectual property laws establish that confidential information provided by the company to any service provider (employee, consultant, shareholder, etc.) cannot be disclosed to third parties, regardless of any confidentiality or noncompetition agreement entered into by the parties.

With respect to post-employment noncompetition obligations, companies have only recently started to implement such obligations with respect to employees in Brazil. Therefore, neither Brazilian courts nor labor laws clearly lay down such provisions' validity or the mandatory requirements for them to be considered valid. Although their enforceability is still under debate, recent labor court decisions accepting such agreements require that:

- The noncompetition period must be limited and a reasonable maximum period of limitation is two years;
- A reasonable territorial limitation for the enforcement of the clause must be established;
- Indemnification must be paid to compensate the employee's "employment market" reduction (since he/she would not be able to render services to certain competitors).

Please note that if the employee fails to follow such noncompetition obligation the company will only be able to claim damages, since Brazilian case law usually

does not enforce such clauses in order to prevent the employee from working for a competitor of the former employer (usually based on the constitutional freedom of work principle); therefore the chance of obtaining an injunction or other judicial remedy to effectively avoid such noncompetition is remote.

In view of such precedents, such clauses have little effectiveness in Brazil. In turn, if the company fails to provide such compensation, there is a risk that the employee claims to receive his/her last salary, since he abided by such obligation.

DISCRIMINATION

Law N° 7.716/89 establishes that to deny or prevent someone's employment on the basis of race is a crime, punishable with two to five years' imprisonment. Additionally, the Brazilian Federal Constitution forbids racial discrimination and Law N° 9.029/95 establishes specific rules regarding discrimination based on gender, race and age.

Brazilian labor courts are authorized to adjudicate claims regarding discrimination, specifically damages arising from pain and suffering sought by the employee in cases of discrimination.

CORPORATE E-MAIL

Some courts understand that corporate e-mails cannot be monitored. However, recent decisions of the Superior Labor Court establish that corporate e-mail is the employer's property which can be used only for professional purposes and may be monitored by the employer as long as the employee is previously informed.

SEXUAL HARASSMENT

Law N° 10.224/01 establishes that sexual harassment is a criminal public offense punishable with one to two years' imprisonment. Some cities contain special police departments focused solely on offenses against women.

At the very least, sexual harassment may be considered a violation of the employment relationship by the employer, thereby giving employees legal just cause to terminate the relationship and entitling them to receive all severance payments referred to above.

Additionally, the offended employee could initiate a labor claim, seeking damages for pain and suffering.

APPRENTICES

In accordance with Brazilian legislation, companies must hire apprentices, corresponding to at least 5% of their staff, to perform functions that include apprenticeships.

HANDICAPPED EMPLOYEE QUOTA

A company shall reserve a certain percentage of positions for handicapped employees. This percentage is determined according to the company's size in the following manner:

- Up to 200 employees - 2%
- From 201 to 500 employees - 3%
- From 501 to 1,000 employees - 4%
- Over 1,000 employees - 5%

STATUTE OF LIMITATIONS

The statute of limitations for an employee to bring a claim against a current employer regarding violation of any of the above-mentioned rights is five years. After the severance of an employment relationship, an employee has two years to file a claim in the labor courts regarding a violation of any of these rights occurring within the five preceding years.

The Cayman Islands are located in the western Caribbean Sea about 480 miles south of Miami and 180 miles northwest of Jamaica. Of the three islands, Grand Cayman is the largest with an area of 76 square miles. The islands of Cayman Brac and Little Cayman are located about 90 miles east of Grand Cayman and have respective areas of 14 square miles and 10 square miles. As of July 2012, the population of the Cayman Islands is estimated to be about 52,560.

During the 1970s, tourism and financial services became the primary economic activities. Today the Cayman Islands are widely recognized as one of the world's leading offshore financial centers and tourism accounts for 50% of its annual GDP.

The Cayman Islands are one of the last self-governing territories of the United Kingdom. A 15-seat Legislative Assembly is elected every four years to handle domestic affairs. From this Assembly, five are chosen to serve as government ministers in a cabinet headed by the governor. The governor is appointed by the British government to represent the monarch. The governor usually allows the country to be run by the cabinet and the civil service to be run by the chief secretary, who is the acting governor when the governor is not able to perform his usual duties.

FOREIGN INVESTMENT

REGULATORY FRAMEWORK

The aim of the regulatory structure is to ensure that investors with assets held by Cayman Islands registered/regulated bodies have recourse against the risk of insolvency, mismanagement or fraud; the financial industry of the Cayman islands remains reliable, stable and internationally respected; the value of the financial services industry of the Cayman islands is enhanced while at the same time ensuring the privacy of investors and customers; and the Cayman islands are not used by criminals for the laundering of the proceeds of drug trafficking or crime.

THE CAYMAN ISLANDS MONETARY AUTHORITY (CIMA)

CIMA was established in July 1997 under the Monetary Authority Law to take over the responsibilities of the former Financial Services Supervision Department. Its duties as an independent regulatory agency include the regulation of insurance companies, banks, trust companies, company management

operations, mutual funds and money transmission services. The regime is intended to conform to the principles of the Basle Concordat and Basle Statement. CIMA is also responsible for issuing and redeeming currency. Under various industry specific laws, its power to regulate, along with that of the Governor in Council, extends to intervention in the running of licensed businesses and the suspension/ revocation of their licenses. CIMA has powers to respond to requests from overseas regulatory authorities for information they need to perform their own regulation functions. If an institution fails to comply with its request for information, CIMA will have to obtain a court order. Along with its program of on-site inspections, CIMA carries out prudential checks on the directors and shareholders of existing and prospective licensees to ensure that they are fit and proper individuals to be concerned in the running of those businesses. This is in addition to its general regulatory functions.

COMPLIANCE AND DUE DILIGENCE

The Cayman Islands have due diligence standards which meet international requirements and are consistent with major onshore and offshore jurisdictions. Cayman Islands service providers are experienced in dealing with sophisticated due diligence issues raised by international investment and financial structures.

IMMIGRATION

Permanent Residency

A Residency Certificate for Persons of Independent Means (RCPIM) is the certificate granted by the Chief Immigration Officer (CIO) to an individual whose application was successful. The Certificate is valid for 25 years and is renewable thereafter by the CIO. This Certificate entitles the successful candidate the right to reside in the Cayman Islands but without the right to work. The spouse and any dependent children of a holder of a (RCPIM) that were listed in the application and who were approved by the CIO will also be granted a Residency Holders (Dependent's) Certificate, which will entitle them to also reside in the Cayman Islands without the right to work for the period of 25 years.

Eligibility Requirements

To be eligible to apply for a RCPIM, the applicant must:

- Be at least 18 years of age
- Not have any serious criminal conviction
- Be in good health and possess adequate health insurance coverage

If they intend to reside in Grand Cayman, applicants must show that they have:

- A continuous source of annual income in the amount of KYD150,000 without having to engage in employment in the Cayman Islands; and
- Invested the sum of KYD750,000 in Grand Cayman of which at least KYD250,000 must be in developed residential real estate.

If they intend to reside in Cayman Brac or Little Cayman, applicants must show that they have:

- A continuous source of annual income in the amount of KYD75,000 without the need to engage in employment in the Islands; and
- Invested the sum of KYD250,000 locally of which at least KYD125,000 must be in developed residential real estate. Where the applicant meets the above criteria, they must also provide the following:
  - Financial statement prepared by a licensed accounting company;
  - Evidence of local investment (KYD750,000 minimum);
  - Bank reference letters detailing the applicant's bank account(s) balance(s);
  - Police clearance certificate (or sworn affidavit attesting to good character for UK nationals);
  - Three character references from persons (not relatives) known to the applicant for some years;
  - Notarized copy of marriage certificate (if married);
  - Notarized copy of children's birth certificates (if any);
  - Evidence of health insurance;
  - Duly completed medical questionnaire (must also be completed by any dependents over the age of 16 and must be taken within six months preceding application).
  - Duly completed application form;
  - Cover letter addressed to the Chief Immigration Officer, explaining the grounds for the application and providing any other information that may be considered relevant;
  - Nonrefundable application fee of KYD500 (USD609.76).

Upon the grant of the application, the applicant will be required to pay a fee of KYD20,000 (USD24,390.24) payable to the Cayman Islands Government.

The premise upon which the CIO will grant a RCPIM is based on the fact that the holders of this particular type of "permanent" residence should not have to

work to support themselves, but should be able to support themselves and their dependents from independent means. If one needs to work in the Cayman Islands to support oneself, applying for this type of permanent residence is not appropriate. Further, one would have to apply for a work permit, to the relevant Immigration Board. In such a case, one should not move to the Cayman Islands in order to seek employment but should first find employment and then apply for a work permit via the proposed employer. Where the work permit application is successful, the individual will be considered a legal resident and thereby permitted to reside and work in the Cayman Islands for a maximum period of seven years at any one time.

BUSINESS ENTITIES

The Cayman Islands Companies Law (2010 Revision) (the Law) requires that Cayman Islands companies maintain certain records and make certain filings. This publication provides a summary of the principal requirements of the Law. Section numbers refer to sections within the Law.

TYPES OF COMPANIES

Cayman Islands companies may broadly be divided into two categories: exempted companies, the objectives of which must be carried out mainly outside the Cayman Islands; and ordinary companies, which may, subject to certain restrictions, carry on business in the Cayman Islands. Exempted companies have traditionally been used as the standard offshore vehicle.

REGISTERED OFFICE AND NAME

All companies must maintain a registered office in the Cayman Islands (s. 50). The name of the company must be displayed outside every office in which the business of the company is carried on, including the registered office, and must appear on all notices and other communications, checks, etc. issued by the company (s. 52).

MINUTE BOOK

The minutes of directors' meetings and shareholders' meetings must be maintained (s. 73) and are typically kept in a minute book. Although there is no requirement that the minute book be maintained at the registered office, in practice, it is generally kept and maintained at the registered office.

COMPANY REGISTERS

Each company is required to keep a register of directors and officers, a register of members and a register of mortgages and charges. All three registers must be

kept and maintained at the registered office, except in the case of an exempted company in which case the register of members may be kept at any place within or outside the Cayman Islands (s. 44).

The register of directors and officers must contain the names and addresses of the directors and officers, and normally also contains their dates of appointment and removal or resignation (s. 55).

The register of members (i.e., shareholders) must contain the names and addresses of the shareholders of the company, the numbers of shares held by each, the distinguishing numbers (if any) of those shares, the amount paid or agreed to be paid on the shares, together with the date on which each shareholder became and ceased to be a shareholder of the company (s. 40).

The register of mortgages and charges must contain details of all mortgages and charges specifically affecting property of the company, including a short description of the property mortgaged or charged, the amount of the charge created and the names of the mortgagees or persons entitled to the charge (s. 54).

ACCOUNTS

Every company is required to keep proper books of account with respect to its receipts and expenditures, sales and purchases, and assets and liabilities. The accounts must give a true and fair view of the state of the company's affairs and explain its transactions (s. 59). All books of accounts are required to be kept under s. 59, subsection (1) of the law to be retained for a minimum period of five years from the date on which they are prepared. There is no requirement that accounts be audited or filed with the Registrar of Companies (the Registrar).

FILINGS AND PENALTIES FOR LATE FILINGS

The Registrar must be notified of certain matters which include:

- Any change of a company's registered office, within 30 days. A change of registered office is not effective until the Registrar is notified (ss. 11, 50, 51).

  A penalty of KYD10 (USD12) per day is imposed for late reporting, although the Registrar has discretion to cap the penalty at KYD500 (USD610).
- The appointment, removal or resignation of any company director or officer, within 30 days (ss. 55, 56). Again, a penalty of KYD10 (USD12) per day is imposed for late reporting, subject to the Registrar's discretion.

- The passing of a special resolution of the shareholders (which is necessary to change the company's memorandum or articles of association, i.e., its constitutional documents, and for certain other purposes such as, for instance, to change the name of the company, to reduce the company's share capital, etc.). A copy of the special resolution must be filed with the Registrar within 15 days (s. 62), and a copy of the special resolution must also be annexed or embodied in every copy of the company's articles of association (s. 63).
- Any increase in the stated authorized share capital, within 30 days. Again, a per diem penalty of KYD10 (USD12) is imposed for late reporting, subject to the Registrar's discretion (s. 45)

Penalties for Late Filing

For both exempted and ordinary companies, penalties for late filing are imposed if the annual return or fee is not paid before April 1 each year. If the annual return or fee is paid between April 1 and June 30, the penalty is one-third of the annual fee; if paid between July 1 and September 30, the penalty is two-thirds of the annual fee; and if paid after October 1, the penalty is 100% of the annual fee (ss. 42, 168 and 169).

It is important to note that the Registrar will only issue a certificate of good standing if the company is current with respect to filing and paying its annual return and fee.

INFORMATION AVAILABLE PUBLICLY AND TO SHAREHOLDERS AND CREDITORS

Only limited information on Cayman Islands companies is publicly available, consisting of the type of company (i.e., ordinary or exempted), the location of its registered office, the company number, the date of incorporation and whether the company is active or not active.

Both exempted and ordinary companies are required to make their register of mortgages and charges available for inspection by any shareholders or creditors (s. 54).

In addition, an ordinary company is required to make its register of members available for inspection by any member of the public on payment of a nominal fee of KYD10 (USD12) (s. 44). Accordingly, it is usual for shares in Cayman Islands ordinary companies to be held by nominees. The register of members of an exempted company is not publicly available, and details thereof are not provided to the Registrar.

INFORMATION REQUIRED FOR INCORPORATION

- Choice of three names for the company in order of preference.
- Whether an ordinary or exempted company is required.
- The authorized share capital of the company. We recommend that a company be incorporated with an authorized capital of USD50,000 as this is the maximum authorized capital permitted for the minimum government fees.
- A brief outline of the main objectives of the company.
- The name and address of the beneficial owners of the shares and the number of shares which are to be issued to each shareholder or, if it be the case, that they are to be registered as bearer shares or in the name of nominees.
- The names, addresses and occupations of the directors and officers. The company may appoint such officers as it requires but only a secretary and an assistant secretary are normally recommended. A sole director may not also be the secretary.

It usually takes about five working days to arrange the incorporation of a standard company, although in certain circumstances this may be considerably reduced.

ORDINARY COMPANIES

These companies may be designated as resident and used for local purposes within the Cayman Islands, or as non-resident and used for offshore purposes.

Annual Filing Requirements

Every ordinary company, whether local or nonresident, must hold an Annual General Meeting of shareholders. Within 21 days after the Annual General Meeting, the company must list all persons who are members of the company on the 14th day after the Annual General Meeting, and those who have ceased to be members of the company since the last list was made. The list must also contain details of the company's share capital. The list must be filed with the Registrar in January of each year, together with the appropriate annual fee which varies (depending on whether the company is classed as resident or nonresident and on the authorized share capital) between KYD300 and KYD815 (approx. USD365.85 and USD993.90) (ss. 58, 41).

In addition:

- The company is required to maintain at its registered office and open to public inspection a Register of Members containing the names and addresses of its past and present shareholders. If

required, nominees may be used and the information contained in the Register will relate to the nominees and not to the beneficial owners.

- The name of the company must include the word "Limited" or "Ltd."
- Subject to certain restrictions the company may alter its Memorandum of Association with respect to the objectives of the company and its share capital.
- The company may own a British registered ship even though the beneficial owners of the company are not British subjects.

EXEMPTED COMPANIES/EXEMPTED LIMITED DURATION COMPANIES

A company which proposes to carry on its business mainly outside the Cayman Islands may be registered as an exempted company.

Annual Filing Requirements

Every exempted company must file an annual return that confirms the company has complied with various provisions of the Law relating to exempted companies since the date of the previous annual return. The annual return is filed with the Registrar, together with the appropriate annual filing fee which varies (depending on the authorized share capital of the company) between KYD700 and KYD2,568 (approx. USD853.66 and USD3,131.71) (ss. 168-169).

Some features of an exempt company are:

- The shareholders of the company are not on public record and are not known to the Registrar of Companies.
- The company may issue bearer shares (which must be held by a licensed custodian under Cayman Islands law).
- Share capital may be denominated in any of the major currencies.
- Issue of fractional shares is permitted.
- The name of the company need not include the word "Limited" or "Ltd."
- The company may obtain a Guarantee from the government against the imposition of future taxes in the Cayman Islands. Such Guarantee is normally granted in the first instance for a period of 20 years.
- The company may alter its Memorandum of Association without restriction.
- There is no requirement that directors or shareholders meetings be held in the Cayman Islands.

- The company may own a British registered ship even though the beneficial owners of the company are not British subjects.

Exempted Limited Duration Companies

Exempted Limited Duration Companies (s.179) have a few different features from standard Exempted Companies which are :

- The company must have at least two shareholders.
- The duration of the company cannot exceed 30 years.
- The name of the company must include at the end the words "Limited Duration Company" or "LDC."
- The transfer of shares may require all other investors' consent.
- The management of the fund may be vested in the investors, who may be considered the directors.

The concept of Exempted Limited Duration Companies originated from the necessity to provide a tax-transparent vehicle for certain U.S. investors, but it is understood Exempted Companies are generally able to make a "check the box" election for U.S. tax purposes to achieve the same effect under U.S. tax law.

Tax Exemption

An exempted company is entitled to apply under Section 6 of The Tax Concessions Law (2011 Revision) for an undertaking that no law enacted in the Cayman Islands after the date of the undertaking imposing any tax to be levied on profits, income, gains or appreciations shall apply to the company or its operations, and that no tax to be levied on profits, income, gains or appreciations or which is in the nature of estate duty or inheritance tax shall be payable on or in respect of the shares, debentures or other obligations of the company or by way of withholding in whole or in part on any dividend payment or other distribution of income or capital by the company to its members or to a payment of principal or interest or other sums due under a debenture or other obligation of the company.

The undertaking may be granted for a period not exceeding 30 years from the date of approval of the application and, in practice, the undertaking is normally given for 20 years.

SEGREGATED PORTFOLIO COMPANIES

An exempted company may be established as a Segregated Portfolio Company (SPC) with segregated portfolios. The assets and liabilities of different segregated portfolios are segregated and each segregated portfolio is protected from the liabilities of other segregated portfolios. An SPC must include either the words "Segregated Portfolio Company" or "SPC" in its name and each must

have its own distinct name or designation including the words "Segregated Portfolio" or "SP."

A business plan must be submitted for each segregated portfolio which will be subject to regulatory approval as if it were a stand-alone entity.

While an SPC may issue shares attributable to specific segregated portfolios, it is not required to do so. The proceeds of the issue of any shares become an asset of the relevant portfolio. Assets allocated to a particular segregated portfolio become known as Segregated Portfolio Assets and may arise from payment of capital, share premium, contributed surplus and retained earnings. The assets must be separately identifiable from assets of the company itself and other segregated portfolios.

Under the law, directors have the responsibility to establish and maintain procedures designed to keep the assets of different portfolios segregated from each other as well as from the general assets of the company. The company's general assets may be subject to a creditors claim if the assets within a segregated portfolio are not sufficient to satisfy the liabilities of such segregated portfolio, but only to the extent the general assets exceed the minimum capitalization requirement set by CIMA and the right of recourse to the general assets can be removed entirely by making specific provision in the Articles of Association of the SPC.

HOLDING COMPANY

The Cayman Islands is a well-known jurisdiction for establishing holding companies with operating structures in many different jurisdictions. The Companies Law governs all companies (including holding companies) and allows for corporate structures that are particularly favorable for holding companies.

In addition, the Cayman Islands have a wealth of experienced and service-orientated professionals, including lawyers, administrators and professional directors, who are able to help establish, maintain and, where required, provide offshore independent directors for holding companies.

Incorporation

An exempted company, which generally serves as the holding company, can be established within one working day. It is invariably a clean vehicle with no trading history. Government incorporation costs can be kept relatively low provided the correct capital structure is adopted. There is no statutory minimum capital requirement for a holding company.

Tax, Accounting and Regulatory Structure

The Cayman Islands are tax neutral (there is no income tax, capital gains tax or corporation tax). Further, the government will issue an undertaking that a holding company, if correctly structured, will remain free of income tax, capital gains tax or corporation tax imposed by any future laws for a period of 20 years (which may be extended for another 10 years). Stamp duty, although imposed, can generally be avoided by keeping original documentation outside the Cayman Islands and, where payable, is normally capped at relatively low levels. Likewise, there are no foreign exchange controls. There is no requirement for pure holding companies to be registered with or regulated by any Cayman Islands authority or governmental body. In addition, there is no particular form required for financial statements or for such to be audited, so parties may choose the most appropriate accounting standards.

Capital Structure

Pursuant to special provisions in the Companies Law, a company's share capital can be structured in such a way as to allow it to have the features of equity while at the same time allowing for all or the majority of the share capital to be repayable as if it were debt, provided the company is solvent. It is critical that the correct capital structure be established from the outset, as trying to do so after the event can, at best, be cumbersome in terms of corporate documentation and, at worst, have unfavorable tax consequences onshore.

A holding company is usually capitalized by transferring shares or assets to the Cayman Islands Company in return for the issue of shares. There are three common ways for this capitalization/share issue to occur as summarized below. As previously mentioned, the method of capitalization has ongoing consequences for the company so it is important the correct structure is chosen from the outset.

Issuing Shares in Return for Paid Up Share Capital

This is the simplest method and arises whenever shares are issued at their nominal or par value in return for assets. Share capital consists of the par value of the shares issued in return for the assets transferred or cash contributed.

For example, where a shareholder contributes USD100,000 worth of assets, and is issued shares with an aggregate par value equal to USD100,000, paid-up share capital will be USD100,000. A company may not make distributions or dividends out of its share capital and the only way to return share capital is on the liquidation of the company, by an application to court to reduce the issued share capital, or, in some circumstances, by the company purchasing its own shares or redeeming its own shares (provided the shares are issued as redeemable shares). By comparison, share premium can be used to pay a dividend or distribution, provided the company's articles of association allow this.

Issuing Shares at a Premium

Share premium arises when the assets or cash contributed in return for shares exceed the par value of the shares. For example, a person contributes USD100,000 of assets in return for 1,000 shares with a par value of USD1 each. The paid-up share capital is USD1,000 and the additional USD99,000 is share premium. Separate entries for share capital and share premium must be made in the company's accounts. Share premium, subject to the company being solvent, may be applied and distributed in such manner as the directors from time to time determine. For instance, a company may pay distributions or dividends to its shareholders out of share premium without restriction provided that the company is able to pay its debts as they fall due in the ordinary course of business immediately following the date on which the distribution or dividend is paid. As mentioned above, the rules regarding the return of share capital are far more restrictive.

Capital Contribution/Capital Surplus

This arises when a person transfers assets to a company other than as share capital or loan capital and for nil consideration, i.e., essentially a gift. For example, a person transfers USD100,000 of assets for no consideration without the issue of shares and without the company becoming correspondingly indebted to such person. In such case, the capital contributed can be treated as profit of the company and the company may make dividends or distributions to its shareholders using this capital contribution. Such capital contributions are sometimes referred to or characterized as contributed surplus. It is important that the person making the capital contribution make it clear that he or it is making a capital contribution for nil consideration and not a loan or a contribution in return for shares. This can be done by a simple letter (although in some circumstances it may be preferable for such transfers to be by way of deed to overcome any issues of consideration and, obviously, the assets in question will need to be effectively transferred to the company in accordance with the laws of the country in which they are situated).

Issuing shares at a premium is often the preferred option for offshore holding companies and group companies, but ultimately this depends on the onshore tax treatment. Generally, a valuation of the assets transferred to the holding company is prepared in conjunction with the capitalization or a certificate as to their estimated value is given by one of the directors.

Preference Shares, Deferred Shares, Ordinary Shares & Other Share Capital

The Companies Law allows for the issue of shares with all manner of rights, privileges or restrictions. Hence, it is possible and indeed common for a holding

company to issue preferred shares (termed "preference shares") and common shares (termed "ordinary shares"). Shares can be issued as redeemable at the option of the company or the shareholder and may be redeemed out of capital provided the company is solvent. Secondary classes of shares with deferred or subordinated rights may be issued.

Further, there is no prohibition on a company granting financial assistance for the purchase of its own shares, provided that the board of directors believes this is in the best interests of the company.

Creditors

The Cayman Islands is a creditor-friendly jurisdiction; there is no equivalent to Chapter 11 or administrative receivership. Recognition of contractual subordination, contractual netting and setting off is enshrined in statute. This ensures that, if issued, the ranking of senior and junior debt will be enforceable and recognized even where creditors are unsecured, and waterfalls between different classes of creditors can be guaranteed. Subordination, contractual netting and setting off provisions may be enforced before as well as after insolvency.

The Cayman Islands Stock Exchange

An added attraction is the Cayman Islands Stock Exchange (CSX) which has introduced streamlined rules for listing debt and preference shares for holding companies. Further, the Board of the UK Inland Revenue has granted the CSX status as a recognized stock exchange. This means that companies whose securities are listed on the CSX can take advantage of the Eurobond Exemption and interest may be paid on their securities without the deduction of UK tax. Companies that are operating in Europe may be able to take advantage of this with regard to their European operations. Moreover, securities listed on a recognized stock exchange are among the categories of securities that can be held by a personal pension scheme in the UK.

As a further attraction, CSX listed securities are regarded as qualifying investments. Most of all the securities held directly in Personal Equity Plans (PEPs) and Individual Savings Accounts (ISAs) must be qualifying investments.

Independent Directors

There are experienced firms established in the Cayman Islands who are able to provide independent directors resident in the Cayman Islands so that the holding company is managed and controlled from offshore. This is often essential to achieve the desired tax treatment onshore.

Bank Accounts

The Cayman Islands have an efficient banking system with many of the retail banks offering Internet Web-based services directed particularly at customers outside the Cayman Islands. A holding company will be able to open a Cayman Islands bank account in most currencies subject to provision of the usual Know Your Customer requirements and account-opening documentation.

FOREIGN COMPANIES

Foreign companies are defined as all bodies corporate incorporated outside the Cayman Islands which establish a place of business or commence carrying on business within the Cayman Islands. Every foreign company must be registered as such within one month after becoming a foreign company as defined above. Once registered, a foreign company has the same power to hold lands in the Cayman Islands as if it were a company incorporated in the Cayman Islands.

Share Registers

It has been clarified that merely maintaining a share transfer or share registration office for a foreign company in the Cayman Islands does not constitute conducting business in the Cayman Islands, requiring such company to register as a foreign company under Part IX of the Company Law. This ensures that the registrar and transfer agency services can be provided to a foreign company in the Cayman Islands without requiring the foreign company to be registered under Part IX of the Companies Law.

A company may now keep a branch register in any country or territory containing such category or categories of members as the company may determine from time to time (section 40A).

Listed shares may be kept in a non-legible form if this complies with the laws and the rules and regulations of an approved stock exchange on which such shares are listed (40B(1)).

INSURANCE COMPANIES

All companies carrying on insurance business in or from within the Cayman Islands must be licensed pursuant to the Insurance Law (2008 Revision) before commencing business. Furthermore, no company may be incorporated or conduct business in the Cayman Islands without either obtaining a license under the Insurance Law, or the consent of the Cayman Islands Monetary Authority (CIMA) if any one of the following restricted words is included in the name:

- Insurance
- Assurance
- Reinsurance
- Underwriting
- Casualty
- Guarantee
- Indemnity
- Surety

Application for an insurer's license is submitted to CIMA, which is responsible for regulating the insurance industry in the Cayman Islands. Once approval in principle is obtained, the company can be incorporated and the license will be issued when all outstanding legal requirements have been satisfied.

Class A License

Class A Licenses are required by those companies specifically wishing to insure domestic risks in the Cayman Islands.

Class B License (Restricted and Unrestricted)

A Class B license can be either an unrestricted license or a restricted license. Both types permit the holder to conduct offshore (but not Cayman Islands) insurance and re-insurance business, but a Restricted B licensee may only write insurance for its shareholders. Application for a Class B license may be made by an exempted company or an ordinary nonresident company incorporated in the Cayman Islands or a foreign company incorporated elsewhere but registered in the Cayman Islands. It should be noted that the Cayman Islands government has expressed a preference for using exempted companies.

In addition, there are provisions for the licensing of insurance managers, insurance brokers, agents and representatives.

Requirements for Category B Insurance License Application

The following information is required to submit an application:

1. The name of the applicant. The proposed name may not be too similar to that of any company carrying on business in the Cayman Islands, or to any major insurance company in any other jurisdiction. Further, the name should be indicative of the nature of the company's business.
2. Whether the license is to be restricted or unrestricted.
3. The date on which the applicant intends to commence carrying on business.
4. Whether the business to be transacted is to be general, long term or a combination of both.

   Long term business is defined as "insurance business involving the making of contracts of insurance

   a) on human life or contracts to pay annuities on human life but excluding contracts for credit life insurance and term life insurance other than convertible and renewable Term Life contracts;
   b) against risks of the persons insured sustaining injury as the result of an accident or of an accident of a specified class or

becoming incapacitated in consequence of disease or diseases of a specified class, being contracts that are expressed to be in effect for a period of not less than five years or without limit of time and either not expressed to be terminable by the insurer before the expiration of five years from the taking effect thereof or are expressed to be so terminable before the expiration of that period only in special circumstances therein mentioned;

c) whether by bonds, endowment certificates or otherwise whereby in return for one or more premiums paid to the insurer a sum or series of sums is to become payable to the person insured in the future, not being contracts falling within paragraphs (a) or (b)."

General business is all other business which is not categorized as being long term.

5. Details of the company's registered office and its principal place of business.
6. If the applicant is to depend on agents or a service company for the provision of underwriting, management, financial or account services, full details must be provided together with evidence of such agent or company's willingness to provide these services. It is usually necessary to employ the services of a local insurance manager unless the applicant maintains a permanent staffed office in the Cayman Islands.
7. A draft of the proposed Memorandum and Articles of Association of the Company. Both the Memorandum and Articles of Association of insurance companies require individual drafting to ensure that each client's needs are fully met.
8. The names, addresses and nationalities of all shareholders. In the event that any of those persons acts as nominee, then full details of this relationship must be disclosed. Further, if the shares are held by a holding company, details of ultimate beneficial ownership must be provided.
9. Curricula vitae of all directors, managers and officers containing details of date of birth, nationality, qualifications and career, with particular emphasis on their experience in the insurance profession.
10. Satisfactory evidence that none of the shareholders, directors, officers or managers has a criminal record. Ideally this should be in the form of police clearance certificates, but an affidavit sworn before a notary public is acceptable in countries where police clearance certificates are not readily obtainable.

11. The regulations require that three references shall be provided, including one financial reference and one professional reference on each of the directors, officers, managers and shareholders. In the case of an insurance company being owned by a company in another jurisdiction, copies of such parent's latest financial statements should be submitted with an insurance reference from such company's existing insurers.
12. The name and address of the principal agent or representative resident in the Cayman Islands, together with details of the principal office where full business records will be kept. It should be noted that full business records must be kept in the Cayman Islands.
13. The name, address and professional qualifications of the auditor together with the accounting standards that are to apply. In addition, evidence that the auditors have agreed to their appointment must be attached.
14. The date of the financial year end of the company.
15. The name and address of one or more persons resident in the Cayman Islands who are authorized to accept service of process in legal proceedings on behalf of the company.
16. Applicants for a Class B (unrestricted) license must provide a written undertaking to comply with the minimum net worth requirements under the law at all times, and must provide evidence to support this undertaking. The net worth requirements are as follows:
    i) in the case of an insurer effecting general business but not long term business, not less than USD120,000;
    ii) in the case of an insurer effecting long term business but not general business, not less than USD240,000;
    iii) in the case of an insurer effecting long term business and general business, not less than USD360,000.

    Net worth is defined as follows:

    "... excess of assets (including any contingent or reserve fund secured to the satisfaction of CIMA) over liabilities other than liabilities to partners or shareholders."

    Assets held to satisfy the statutory net worth requirement should preferably be in cash or cash-type readily realizable investments. It will be a condition of the license that net worth be maintained.

    However, if any part of the funding of the insurer is to be provided in the form of a Letter of Credit, that Letter of Credit should be automatically revolving, or be in force for a period of

at least three years. In the event that this is not the case, some other form of security is required to ensure that the requisite net worth is maintained even if the Letter of Credit is not renewed.

For restricted licenses, the Law does not set out any specific net worth requirements and each application is considered in light of its business plan. However, CIMA will normally recommend that the business conducted by the company conform to industry practice in regard to the net worth of the company.

Although the current regulations do not specify premium-to-capital ratios or ratios for individual risk exposure to total capital, it should be noted that CIMA insists that the company's insurance program be structured with a sound capital base.

It should be noted that loans to related parties made by the insurer will normally be treated as inadmissible assets for the purposes of satisfying net worth requirements. CIMA has requested that any such arrangement should be submitted for prior approval.

17. CIMA will require a three-year business plan which should cover the following:
    - capitalization of the company
    - volume of premiums to be written
    - classes of business to be transacted
    - whether or not a fronting company is to be used
    - the proportion of business to be re-insured
    - the nature of the reinsurance program
    - retentions of net premiums and maximum liability per risk and catastrophe
    - in the case of a restricted license, the names and addresses of the insured and their relationship (if any) to the company or its shareholders

    The importance placed on this document cannot be over-emphasized.

    Copies of reinsurance contracts and treaties should accompany the business plan where appropriate.

    CIMA has indicated that where a fronting company or a reinsurer is to be involved, approval will only be given to one having a rating of B-Plus or better in Best's Insurance Manual.

18. Full details must be given if any of the parties connected with the application has ever applied either individually or in conjunction with others for authority to transact insurance business in any other jurisdiction.

19. CIMA will also wish to know whether it has permission to disclose any information to inquirers and in particular details of the following:
    - the principals of the insurer
    - the management of the insurer
    - the total asset position of the insurer from time to time
    - the net worth position of the insurer from time to time; and
    - the type of business conducted by the insurer

    It should be emphasized that such authority to disclose is entirely in the insurer's discretion and refusal to permit such disclosure will not in any way prejudice the outcome of the application.

Annual Requirements

Once the license has been granted and the Company incorporated, there are a number of annual requirements including:

1. The annual license fee must be paid on or before January 15 each year.
2. An audit must be carried out under the approved generally accepted accounting principles within six months of the financial year end and submitted to CIMA.
3. A Certificate of Compliance must be provided by the appointed independent auditor or underwriting manager. This certificate of compliance will state the period under consideration and that the company has carried on its insurance business in accordance with the original business plan subject to any other approved changes.

INVESTMENT FUNDS

The investment funds industry in the Cayman Islands has achieved significant growth in recent years, with over 10,871 active investment funds recorded in official Cayman Islands registers at 30 June 2012. In addition, there are a significant number of investment funds, primarily closed-ended funds, which are not recorded, so the number is likely to be significantly higher. The amount of funds under management is difficult to estimate, but it is safe to say that it is in the trillions of U.S. dollars.

The Cayman Islands has developed into the preeminent global jurisdiction for offshore investment funds across the investment spectrum. The growth of the investment fund industry in the Cayman Islands is attributable, in part, to the sensible policies of the Cayman Islands government and the commercially practical regulatory system and favorable laws.

Further, the Cayman Islands' "no tax" status, proximity to the financial markets of the United States and Europe and sophisticated world-class professional and banking infrastructure have contributed to its success as a base for investment funds.

The key legislation involved is as follows:

- Companies Law (2012 Revision), which provides for the incorporation of exempted companies, exempted limited duration companies and segregated portfolio companies;
- Exempted Limited Partnership Law (2012 Revision), which provides for the establishment of exempted limited partnerships;
- Trusts Law (2011 Revision), which provides for the establishment of exempted unit trusts;
- Mutual Funds Law (2009 Revision), which sets up a straightforward platform for the regulation and administration of investment funds;
- The Securities Investment Business Law (2011 Revision), which regulates securities investment business; and
- Proceeds of Crime Law (2008 Revision) and Money Laundering Regulations (2010 Revision), which require financial services providers to follow anti-money-laundering procedures.

SELECTION OF THE FUND STRUCTURE

Investment funds established in the Cayman Islands take a number of different forms and new types of fund structures are constantly being developed. However, the core investment vehicles are companies, unit trusts and limited partnerships, or a structured combination thereof. Each of these vehicles is described in more detail below.

The appropriate form of investment vehicle will be determined largely upon:

- The tax efficiency for investors and management in relation to profits and gains of the fund;
- The general preference of prospective investors at whom the investment product is being targeted;
- The costs in establishing and administrating the fund structure.

While all of these considerations will be important in selecting whether the corporate, trust or partnership form is used, the taxation implications for investors will generally be the determining factor. The promoters of the investment fund will generally wish to ensure that, at the least, the fund achieves tax neutrality, whereby an investor will be in the same tax position whether he makes his investment directly in the underlying assets or through an investment in the fund.

In some jurisdictions, the corporate form, by virtue of being a separate legal entity, is treated as being nontransparent or opaque for taxation purposes; profits and gains of the company do not constitute taxable income of investors until actually received by investors. It should be noted that current U.S. tax law allows some companies to elect to be transparent for U.S. tax purposes.

On the other hand, a limited partnership and a unit trust will for tax purposes generally be treated as being tax transparent. The effect of this is that profits and losses of the limited partnership or unit trust are attributed to the partners or unitholders themselves (regardless of whether they have actually received such profits) who will be taxed according to their proportionate share of such profits and losses.

Investors in different jurisdictions will be more familiar with some fund structures than others. Nearly all jurisdictions will be quite familiar with the corporate structure as a separate legal entity, issuing shares which each carry a proportional share of profits of the particular class of shares of the fund. However, some jurisdictions are not familiar with either limited partnerships or unit trusts. This is usually due to these structures both having limited liability for investors, while not being a separate legal entity. In particular, trusts are a concept derived from UK common law principles and have no equivalent in some civil law jurisdictions. For these reasons, some investors prefer a corporate form given their familiarity with that structure.

The cost in establishing and administrating an investment fund can vary significantly depending on the structure. Companies tend to be the simplest structure with issued shares, and no necessity for trustees or general partners.

In contrast, limited partnerships and unit trusts tend to have higher operating costs as general partner companies and licensed trustees are required. As a general comment, obviously the greater the complexity and number of entities involved, the higher the establishment and ongoing costs.

In all circumstances, tax advice should be obtained in any jurisdiction where the fund, investors or management are liable for taxation to analyze the specific circumstances, as tax laws can differ.

EXEMPTED COMPANIES/EXEMPTED LIMITED DURATION COMPANIES

Exempted Companies and Exempted Limited Duration Companies have many of the characteristics of companies in other jurisdictions where investment funds exist. A board of directors manages the operation of the company (except for some Exempted Limited Duration Companies – see page 98), while investors own shares which each carry an entitlement to a proportion of the profits or

gains of the class of shares of the company, equal to that of any other share in the same class of shares in the company.

Most corporate investment funds are what are known as open-ended investment companies. This means that investors have the right to redeem their interest in the investment fund periodically, or subscribe for more shares periodically, both usually based on the then prevailing net asset value per share of the particular class of shares of the investment fund.

An open-ended investment company will usually have participating redeemable shares held by investors which are redeemable at their net asset value and carry no or very limited rights to vote at shareholder meetings. There may also be a different class of shares often called management shares, which are non-participating and which also carry voting control of the company. Such shares are often held by the promoter or management or may be held upon the terms of a charitable or purpose trust, so that control of the company is not vested in onshore persons for taxation reasons. Campbell Corporate Services Limited are able to act as trustee of a charitable trust for this purpose.

The participating redeemable shares usually are issued with a minimal par value and a very large share premium amount, to facilitate redemption of shares under Cayman Islands law. As long as the company is solvent, the company can redeem shares without needing to evidence profits of the company or the issue of new shares. Shares redeemed and cancelled may subsequently be reissued to new shareholders.

Other particular characteristics of these companies include:

- The ability to issue bearer shares (which must be held by a licensed custodian under Cayman Islands law);
- No requirement to disclose the identity of shareholders;
- Share capital may be denominated in any of the major currencies
- The issue of fractional shares is permitted
- The necessity to lodge an annual return with the prescribed fee

Exempted Limited Duration Companies have the following features different from standard Exempted Companies:

- The company must have at least two shareholders
- The duration of the company cannot exceed 30 years
- The transfer of shares may require all other investors' consent
- The management of the fund may be vested in the investors, who may be considered the directors

The concept of Exempted Limited Duration Companies originated from the necessity to provide a tax-transparent vehicle for certain U.S. investors, but it is understood Exempted Companies are generally able to make a "check the box" election for U.S. tax purposes to achieve the same effect under U.S. tax law.

The Exempted Company is currently the most popular entity employed in structures for hedge funds and other open-ended funds.

SEGREGATED PORTFOLIO COMPANIES

Some funds will pursue multiple distinct investment strategies and offer investors the choice to have their investment monies applied to only some of the investment strategies, rather than to all investment strategies adopted by the fund. In that situation, investors expect that their return on investment will not be affected by the activities of the fund in relation to the other unrelated investment strategies. However, as creditors of a company are usually able to claim against all assets held by a company, the assets and profits relating to one investment strategy may be liable to claim to satisfy liabilities incurred from a wholly separate investment strategy. Accordingly, prior to the introduction of the segregated portfolio company concept, investors often insisted on a separate legal entity for each investment strategy to ensure complete legal protection from the losses and liabilities incurred by another investment strategy.

The segregated portfolio company provides a cost-effective solution to this issue by allowing the creation of separate portfolios which each operate as a separate cell/pool of assets and liabilities, as a matter of Cayman Islands law. The assets and liabilities of each portfolio are thereby segregated and legally protected from the assets and liabilities of other portfolios. If one portfolio should incur substantial liabilities in excess of its assets, that will not affect other segregated portfolios. It is unclear whether other jurisdictions will legally recognize the concept of segregated portfolios as wholly separate from each other and so all contracts that a Cayman Islands segregated portfolio company enters into should state that the counterparty is not able to claim against assets of other unrelated segregated portfolios and preferably be governed by Cayman Islands law and be subject to the jurisdiction of the Cayman Islands courts.

The segregation of assets provides legal protection for umbrella funds created within a single legal entity, and potentially lessens the administrative burden for the investment fund. In some circumstances, it may also allow investors to switch between portfolios without incurring a tax charge in their tax domicile.

Current Amendments to SPC (s. 217-228A)

Provisions relating to segregated portfolio companies have been amended as follows:

- Personal liability of directors in the case of misattribution of an asset or liability to a segregated portfolio has been removed and replaced with a procedure for resolution of such misattribution (s. 218);
- To allow assets and liabilities to be transferred between segregated portfolios or (which was not previously the case) between a segregated portfolio and the general assets at full value (s. 219);
- To require that the Registrar of Companies is given notice of all existing portfolios when filing the annual fees due and the portfolios which have been terminated since such notice was last given (s. 213(5) and (6));
- To enable terminated portfolios to be reinstated which may be desirable, for instance, if assets attributable to a terminated portfolio are subsequently discovered or received (s. 228A);
- To establish a procedure for terminating portfolios which no longer have any assets or liabilities (s. 228A).

EXEMPTED UNIT TRUSTS

In contrast to an investment fund company, an exempted unit trust is not a separate legal entity as such under Cayman Islands law, but a trust arrangement whereby legal ownership of the funds assets is vested in a trustee who holds the assets of the fund on trust for the benefit of the unitholders.

The exempted unit trust will be constituted by means of a trust instrument usually made by a Cayman Islands licensed trustee company and will be governed by the Trusts Law (2011 Revision).

The investment manager is also commonly a party to the trust instrument. It is usual for the trust instrument to contain such provisions regulating the issue, redemption and valuation of units, as would in the case of shares of an open-ended investment company be found in its articles of association.

For most practical purposes, an exempted unit trust can operate and be regulated in a similar manner as a corporate investment fund.

EXEMPTED LIMITED PARTNERSHIPS

An exempted limited partnership is a type of partnership arrangement widely used for investment funds. One or more of the partners is a general partner who has legal responsibility for operation of the partnership and management of

its business, and also has unlimited liability for the debts of the partnership. These are either Cayman Islands Company, foreign companies registered to do business in the Cayman Islands or itself an exempted limited partnership, which have very few assets, to avoid serious financial loss pursuant to the general partner's unlimited liability for the debts of the partnership.

The remaining partners are limited partners, who are restricted from participating in the management of the partnership's business, but who have liability for the debts of the partnership limited to the extent of their investment. An exempted limited partnership is not a separate legal entity from its partners under Cayman Islands law.

Exempted limited partnerships are used for various international tax planning purposes and extensively for closed-ended fixed term investment funds, e.g., private equity and certain real estate funds.

In order to establish an exempted limited partnership, a statement needs to be filed with the Registrar containing the following:

- Name of the partnership
- The general nature of its business
- Name and address of registered office in the Cayman Islands
- The term (it may be for an unlimited duration)
- The name and address of the general partner, along with a certificate of incorporation/registration and a certificate of good standing
- A declaration that it will not undertake business in the Cayman Islands except to the extent necessary to carry on business outside the Cayman Islands

Various activities may be carried out by limited partners without limited partners becoming liable as general partners by virtue of participating in the management of the partnership. In particular, a limited partner will not be deemed to be participating in the management of the partnership by:

- Holding an office or interest in, or having a contractual relationship with, a general partner or being a contractor for or an agent or employee of the exempted limited partnership or a general partner or acting as a director, officer or shareholder of a corporate general partner;
- Consulting with and advising a general partner or consenting or withholding consent to any action proposed, in the manner contemplated by the partnership agreement with respect to the business of the exempted limited partnership or exercising any right conferred by the Law;

- Investigating, reviewing, approving or being advised as to the accounts or business affairs of the exempted limited partnership or exercising any right conferred by the Law;
- Acting as surety or guarantor for the exempted limited partnership either generally or in respect of specific obligations;
- Approving or disapproving an amendment to the partnership agreement;
- Calling, requesting, attending or participating in any meeting of the partners;
- Taking any action that results in the winding up or the dissolution of the exempted limited partnership;
- Taking any action required or permitted by the partnership agreement or by law to bring, pursue, settle or terminate any action or proceedings brought pursuant to section 13(2) of the Law which permits the equivalent of shareholder derivative actions for an exempt company; or
- Appointing a person to serve on any board or committee of the exempted limited partnership, a general partner or a limited partner or removing a person therefrom; or
- Voting as a limited partner on:
  - the dissolution or winding up of the exempted limited partnership;
  - the purchase, sale, exchange, lease, mortgage, pledge or other acquisition or transfer of any asset or assets by or of the exempted limited partnership;
  - the incurrence or renewal of indebtedness by the exempted limited partnership;
  - a change in the nature of the business of the exempted limited partnership;
  - the admission, removal or withdrawal of a general or limited partner and the continuation of business of the exempted limited partnership thereafter; or
  - transactions in which one or more of the general partners have an actual or potential conflict of interest with one or more of the limited partners.

MUTUAL FUNDS LAW

The establishment and regulation of most investment funds in the Cayman Islands are governed by the primary legislation, the Mutual Funds Law (2009 Revision), referred to hereafter as the Mutual Funds Law. The regulatory authority which oversees the operation of the Mutual Funds Law is the Cayman Islands Monetary Authority, referred to hereafter as CIMA.

Only those funds which fall within the definition of a "Mutual Fund" are subject to the provisions of the Mutual Funds Law.

A summary of the definition of the term Mutual Fund is:

- A company, unit trust or partnership;
- That issues shares, trust units or partnership interests that BOTH:
  - carry an entitlement to participate in the profits or gains of the fund; and
  - are redeemable or repurchasable at the option of the investor;
- The purpose of which is the pooling of investor funds to spread investment risks.

Therefore the following types of investment funds are not regulated at all by the Mutual Funds Law:

- Investment funds which provide no redemption or repurchase rights for investors (known as closed-ended funds); and
- Investment funds which issue debt interests or instruments.

Investment funds which are "Mutual Funds" but exempted from the substantive provisions of the Mutual Funds Law are those where the shares, trust units or partnership interests are held by not more than 15 investors, the majority of which are capable of removing the directors, trustee or general partner (as the case may be). A nominee owner holding an interest for multiple beneficial "investors" counts as only one investor. Certain foreign funds marketing in the Cayman Islands are also exempt.

Investment funds which need to comply with only a minimum of requirements (known as "4(3) Funds") are those where EITHER:

- The minimum subscription per investor is at least USD100,000 (or USD50,000 for funds registered with CIMA before 14 November 2006); OR
- The investment fund is listed on an approved stock exchange.

The registration requirements are to file a form MF1 and near-final offering document with CIMA, along with the registration fee and consent letters from the administrator and auditor. Notably, there is no requirement to have a Cayman Islands licensed administrator. Registration with CIMA normally takes a week from the date of filing.

All other investment funds which fall within the definition of a "Mutual Fund" must either:

- Apply for and be issued with a Mutual Funds License (known as "Licensed Mutual Funds"); OR
- Have its principal office in the Cayman Islands at the offices of an administrator licensed under Cayman Islands law (known as "4(1)(b) Funds").

CIMA usually issues a Mutual Funds License between a month to six weeks after receipt of all documentation, while registration for 4(1)(b) Funds with CIMA usually takes a week from the date of filing.

For all categories of registered Mutual Funds, if a Cayman Islands licensed administrator provides administration services to such fund, the administrator must be satisfied of both the promoter's sound reputation and the administration of the fund is being undertaken by persons of sufficient expertise and by persons who are of sound reputation. For 4(1)(b) Funds, the administrator must also be satisfied that the business of the fund and the offer of equity interests is being carried out in a proper way. For 4(1)(b) Funds, the Cayman Islands licensed administrator is required to confirm such in writing to CIMA. For Licensed Mutual Funds, additional documents need to be provided to CIMA to verify such matters.

Licensed Mutual Funds, 4(3) Funds and 4(1)(b) Funds must each ensure their annual accounts are audited by approved auditors situated in the Cayman Islands, are electronically filed by those auditors along with the Fund Annual Return form and pay the prescribed annual fee to CIMA.

All Mutual Funds must ensure their offering document describes the interests being offered in all material respects and contains such other information as is necessary to enable a prospective investor to make an informed decision as to whether or not to subscribe for or purchase the interest.

The vast majority of investment funds do not fall within the category of Licensed Mutual Funds or 4(1)(b) Funds as either:

- It is closed-ended, i.e., investors have no rights of redemption or repurchase during the life of the investment fund;
- There are not more than 15 investors, and the majority of which are capable of removing the directors, trustee or general partner (as the case may be); OR
- The minimum subscription per investor is at least USD100,000 and qualifies as a 4(3) Fund.

CIMA's records at June 2010 show that of existing 4(1)(b) Funds, 4(3) Funds and Licensed Mutual Funds, over 94% are 4(3) Funds.

The Securities Investment Business Law

The Securities Investment Business Law (2004 Revision) (referred to as SIBL hereafter) requires persons involved in securities investment business to be licensed under the SIBL, unless they or their activities fall within certain categories of excluded persons or excluded activities. In summary, SIBL provides for:

- The licensing and regulation of most activities involving securities;
- General exclusions for certain kinds of activities; and
- Limited exclusions for certain restricted classes of persons.

Of primary importance is that investment funds themselves will generally not be required to be licensed in their own right. It is far more likely that investment managers and advisers, administrators or company managers may be required to obtain a license.

SIBL applies to:

- Companies and partnerships established or registered under Cayman Islands law, including registered foreign companies; and
- Other persons who have established a place of business in the Cayman Islands.

Accordingly, foreign entities which do not establish a place of business in the Cayman Islands will not require a license under SIBL, which should exempt most non-Cayman Islands investment managers and advisers.

The provisions describing which activities and which entities require a license are extensive and shall not be commented upon in detail here. The most likely exemptions to apply are as follows:

- The business is carried on exclusively for:
  - high net worth persons being persons with:
    - net worth in excess of usd1 million; or
    - gross assets in excess of USD5 million; or
  - sophisticated persons being persons:
    - regulated by CIMA (which includes 4(1)(b) Funds, 4(3) Funds and Licensed Mutual Funds);
    - regulated by an approved overseas authority;
    - whose securities are listed on an approved securities exchange; or
    - who by virtue of knowledge and experience in financial and business matters are reasonably regarded as capable of evaluating the merits of a proposed transaction and participates in a transaction of at least usd100,000; or

- A company, partnership or trust of which all participants are either high net worth persons or sophisticated persons; or
- The person is regulated by an approved overseas regulatory authority where the securities investment business is conducted; or
- The business is carried out for members of the same corporate group – this applies where the investment manager holds the management/voting shares of an investment fund.

If these exemptions apply, the entity must only be registered as an excluded person (rather than licensed) and registration and annual fees are payable. Specific advice is required on the structure of an investment fund to determine whether exemption categories are available.

If registration or a license is required under SIBL, briefings on SIBL and the requirements to take the benefits of exemption and to apply for, and hold, a license have been prepared by Campbells and are available on request.

Taxation

The Cayman Islands offer a location for investment funds which does not impose its own tax burden on an investment fund or its investors.

Under current legislation in the Cayman Islands, there is no capital gains tax, income tax, wealth tax, estate or inheritance tax payable in respect of either:

- The issue, transfer or realization of shares in a closed-ended or open-ended exempted company, units in an exempted unit trust or interests in an exempted limited partnership; or
- Any profits, income, gains or appreciation of the investment fund, for either the fund, or its investors in respect of their interest in the fund.

A Cayman Islands investment fund will upon application normally receive an undertaking from the Governor that no law enacted after establishment of the fund for a certain period imposing any tax on profits, income, gains or appreciations shall apply to the fund or its investors in respect of their interest in the fund. Exempted companies currently receive an exemption for a period of 20 years, while exempted unit trusts and exempted limited partnerships receive an exemption for a period of 50 years.

No stamp duty is payable on the transfer of shares, units or partnership interests in an investment fund not holding land in the Cayman Islands.

As there is no capital gains tax in the Cayman Islands, it is possible to accumulate income and realized gains tax-free in the Cayman Islands.

The Cayman Islands are free from all exchange control restrictions.

All investment funds are required to pay annual prescribed fees, the amount of which is dependent upon several issues:

- Whether it is a company, exempted unit trust or exempted limited partnership;
- What type of company it is and the authorized capital; and
- Whether it is regulated under the Mutual Funds Law.

Campbells can advise on the applicable fees for particular circumstances.

There are legal fees and other outlays in addition to establish a fund structure in the Cayman Islands.

ANTI-MONEY-LAUNDERING REQUIREMENTS

For some years, the Cayman Islands have had in place comprehensive legislation and guidelines aimed at combating money-laundering practices. The principal legislation is the Proceeds of Crime Law and the Money Laundering Regulations (referred to as the Regulations hereafter) which apply to a range of business activities conducted in the Cayman Islands. These include:

- Banking or trust business by licensed persons (covering trustees);
- Mutual fund administration or the business of Mutual Funds;
- Company management by licensed persons;
- Any trading for own account or account of customer of money market instruments, foreign exchange, futures and options and exchange and interest rate instruments, and transferable securities;
- Participation in securities issues and provision of such services;
- Portfolio management and advice;
- Certain services relating to the Cayman Islands Stock Exchange; and
- The conduct of securities investment business as defined in the Securities Investment Business Law (2004 Revision).

Any of these activities could form part of the operations of an investment fund or of its service providers.

Generally, any person conducting such business activity must not carry on business unless he maintains the following procedures:

- Identification to "know your client"
- Record-keeping for dealings with investors
- Internal reporting to a designated person in certain circumstances

- Internal control and communication procedures as appropriate
- Taking of measures to make relevant employees aware of all these procedures as well as the Regulations
- Provision of staff training in the recognition and handling of suspicious transactions

The Regulations acknowledge that a number of other countries have implemented anti-money-laundering requirements which are equivalent to the standards imposed by the Regulations (such countries referred to as Approved Countries hereafter). Accordingly, where registrar and transfer agency services are undertaken by a fund administrator subject to anti-money-laundering requirements in an Approved Country, such will be deemed to suffice for Cayman Islands law. The list of Approved Countries has the vast majority of sophisticated large financial jurisdictions including the U.S. and most countries in the European Union.

Some important exemptions where full identification documentation may not be required of a prospective investor in an investment fund are as follows:

- Where the investor is a:
  - government or governmental body
  - financial institution regulated in an Approved Country
  - company quoted on an approved stock exchange
  - person already regulated by the Regulations
- Where an intermediary regulated by an overseas regulatory authority in an Approved Country has completed a form confirming they have already complied with the necessary requirements in their own jurisdiction;
- Where a client is introduced by a reputable law firm or accountant firm regulated in an Approved Country;
- The subscription monies are provided via a bank account in the investor's name in an Approved Country; and
- Where the responsibility for undertaking anti-money-laundering requirements has been delegated in certain circumstances, such as the delegate being subject to an Approved Country's rules.

Anti-money-laundering requirements have been dealt with in summary form here, and specific advice is always recommended.

EU TAXATION OF SAVINGS DIRECTIVE

The Cayman Islands Government agreed with the UK Government to implement the European Union (EU) Directive on Taxation of Savings Income in the form of Interest Payments (the Savings Directive). This demonstrates the

commitment of the Cayman Islands to maintain its position as a preeminent offshore financial services jurisdiction. The Savings Directive is dealt with only in summary here; a more detailed explanation is available from Campbells Attorneys on request.

The Savings Directive requires that the countries implementing its provisions adopt one of two approaches. Either certain interest payments are reported to EU member states by the "paying agent" (reporting regime) or an amount of tax is withheld by the paying agent for forwarding to the investors' home state authorities (withholding regime). Pursuant to this commitment, the Reporting of Savings Income Information (European Union) Law (2007 Revision) (the 2007 Law) sets out the mechanics for the implementation of a reporting regime in the Cayman Islands.

The most notable feature of the 2007 Law is that savings income from investment funds which fall within the scope of the Savings Directive only includes payments from Undertaking for Collective Investment in Transferable Securities (UCITS) funds (a European regulatory term) or their equivalent in the Cayman Islands. Cayman Islands domiciled investment funds registered under section 4(1) or 4(3) of the Mutual Funds Law, referred to as 4(1)(b) Funds and 4(3) Funds above (as nearly all hedge funds are), are treated in the same way as European non-UCITS funds under the 2007 Law. Therefore most Cayman Islands funds fall outside the scope of the Savings Directive as they are treated as non-UCITS funds. Only certain funds licensed under section 5 of the Mutual Funds Law are affected by the Savings Directive and the 2007 Law.

The paying agent is likely to be deemed to be the fund administrator in most cases. It is the paying agent that has the reporting obligations. Payments effected by the Cayman Islands hedge fund or the fund administrator will fall outside the 2007 Law if the fund administrator is located in any of the following:

- The Cayman Islands;
- A jurisdiction in which the fund administrator can rely on the Cayman Islands non-UCITS designation, the so-called "home rule test"; or
- A jurisdiction outside the scope of the Savings Directive.

However, the 2007 Law may still affect certain investors in a Cayman Islands investment fund. Where an investor is acting as nominee (a function performed by some private bankers) or otherwise as paying agent (being an economic operator who pays interest to, or secures the payment of interest for the immediate benefit of the beneficial owner) and is situated in an EU country or a country which has agreed to be subject to the Savings Directive, then the investor must consider whether payments made by them to the beneficial owner are reportable under the Savings Directive under their own laws.

CAYMAN ISLANDS STOCK EXCHANGE

The Cayman Islands Stock Exchange (CSX) was established in 1997, in recognition of the strength of the mutual fund and structured finance sectors. The CSX is the leading offshore exchange in a North American time zone for the listing of mutual funds and hedge funds with approximately 2,000 fund listings to date, among which are several of the largest hedge funds in the world.

The advantage of a listing is that it enables certain investment institutions, which are permitted to invest only a small percentage of their assets in unlisted securities, to obtain an interest in the fund. Listing also provides a market for the shares where there is no facility to redeem.

Among other achievements for the CSX:

- In 1999, CSX became the first offshore stock exchange to be granted approved organization status by the London Stock Exchange (LSE) and as a result, securities listed on CSX are eligible for trading on the LSE's international equity market;
- In 2001, CSX and Euroclear established a link which allows CSX-listed funds to participate in Fund Settle, which is a platform designed for high volume cross-border fund transactions;
- In 2004, the Inland Revenue granted the CSX status as a "recognized stock exchange." This means that companies with securities listed on the CSX can take advantage of the "Eurobond Exemption" and interest may be paid on their securities without the deduction of UK tax.
- In 2004, securities listed on the CSX became regarded by the UK Inland Revenue as "qualifying investments." Most of the securities held directly in Personal Equity Plans and Individual Savings Accounts must be "qualifying investments." Also, among the categories of securities a personal pension scheme can hold are securities listed or dealt in on a "recognized stock exchange." Accordingly, CSX listed securities can now form part of the investments held by these personal pension schemes.

Campbells attorneys are listing agents with the CSX and are able to advise on these matters.

TRUST COMPANIES

Any company that intends to

- carry on trust business (i.e., act as trustee) from within the Cayman Islands, OR
- act as trustee of a Special Trust Alternative Regime (STAR) trust

must hold a trust license under the Banks and Trust Companies Law (2009 Revision) (the B&TC Law).

Accordingly, a company whose name includes the word "trust" or derivations thereof may not be registered in the Cayman Islands unless it holds a trust license, or approval in principle for the grant of a trust license.

A company that intends to restrict its trust business to acting as trustee of no more than 20 specifically named and approved trusts, can obtain a restricted trust license rather than a full, unrestricted trust license. The requirements and annual fees for a restricted trust license are less onerous than those for a full trust license. This summary is limited to the requirements for obtaining a restricted trust license. Additional considerations apply for a full, unrestricted trust license.

APPLICATION FOR A RESTRICTED TRUST LICENSE

In the Cayman Islands, trust licenses are processed and granted by CIMA.

An application for a restricted trust license, together with the application fee of KYD2,000 (approx. USD2,439), are submitted in the prescribed form to CIMA, which will examine the application and, if it meets the formal requirements, will grant the license subject to such terms and conditions, if any, as CIMA may deem necessary. Where the application is approved, the license fee of KYD7,000 (approx USD8,536) must be paid prior to the grant of the license.

Some of the key items that must be submitted are:

Personal Questionnaire

All proposed shareholders, managers, controllers and directors must complete a detailed questionnaire that asks for personal particulars, as well as work experience and history.

References

Three reference letters (one financial reference letter and two character reference letters) are required for each director, shareholder, manager and controller application. All references must be dated within six months of receipt of the application.

Business Plan

A complete and detailed business plan for the trust company must be prepared and submitted. The business plan should include the reasons for applying for a restricted trust license, details of the company's current business activities accompanied by its audited statements for the past two years (if applicable), the customer base including a completed personal questionnaire for each person that is a settlor of a managed trust and a description of the source of trust assets, the range of applicant's proposed services, a detailed statement of expected assets and liabilities, and the proposed management structure, among other details.

Supervisory Authorities

If the Cayman trust company will also be subject to regulation in another jurisdiction, CIMA will require confirmation from the parent supervisory authorities that it has no objection to the applicant being licensed as a trust company in the Cayman Islands, and confirmation of consolidated supervision from the parent supervisory authority. This requirement applies even where there is no obligation imposed by the supervisory authority in question for the trust company to seek such clearance.

REQUIREMENTS FOR PRIVATE TRUST COMPANIES

The Law establishes certain requirements for private trust companies that need to be met at the time of application for the trust license and thereafter. Some of the principal requirements are as follows:

Principal Office

All trust companies must have both:

- Two individuals or a body corporate approved by CIMA to be its agent in the Cayman Islands, and
- An approved physical place of business in the Cayman Islands.

Generally, in the case of a private trust company, both of these requirements are met by appointing a Cayman Islands-licensed institutional trust company to administer the private trust company.

Net Worth Requirements

The minimum net worth required for the holder of a restricted trust license is KYD20,000 (USD24,390) or its equivalent in another currency. Generally, this requirement is satisfied by the trust company issuing shares to an equivalent value, but other methods of funding may also be acceptable, such as a guarantee from an approved bank. The minimum net worth must be maintained during the term of the license.

Directors

The trust company must have at least two directors. The directors and any change in the directors must be approved by CIMA.

Shareholders

The shareholders and any changes in the shareholders of the trust company must be approved by the Governor in Council.

Registration in the Cayman Islands

If the trust company is not a Cayman Islands registered company, it needs to be registered as a foreign company with the Cayman Islands Registrar of Companies under Part IX of the Companies Law.

RESTRICTIONS ON CAYMAN ISLANDS INCORPORATED PRIVATE TRUST COMPANIES

A licensee incorporated under the Cayman Islands Companies Law may not change its name or open subsidiaries, branch or agency offices without CIMA's consent.

Auditors and Accounts

Each trust company must appoint auditors approved by CIMA. All applicants must submit an audited balance sheet to CIMA at the time of application, and annually thereafter within 90 days of their financial year end. At the time of application for the trust license, the auditors must also file a statement that states the auditors are aware of their obligations under the Law.

STAR TRUSTS

The Special Trusts (Alternative Regime) Law 1997 (STAR) created a new type of trust in the Cayman Islands, which is now referred to as a STAR trust. That law has now been incorporated into the Trusts Law (as Revised) as Part VIII.

Traditionally, English Law, on which Cayman Islands trust law is based, did not allow trusts to be established for the benefit of a purpose rather than persons. Exceptions to this rule have been developed by the law courts over the past few hundred years, notably charitable trusts. However, in the context of the modern business world and particularly complex financial transactions undertaken in the Cayman Islands, these accepted purpose trusts were not adequate. In 1997, the Cayman Islands Government brought into effect the STAR legislation. The legislation created an optional new regime for all types of trusts, whether or not purpose trusts. This distinguishes the Cayman Islands legislation from other offshore jurisdictions where legislation has allowed for purpose trusts, but such legislation does not go so far as to create a separate regime for other trusts.

Key Features of STAR Trusts

Enforcement. Historically, the main difficulty under English Law with purpose trusts was that, unlike a traditional trust where beneficiaries can enforce the terms of the trust, a purpose trust had no one with that ability. In STAR trusts, the function is delegated to a person named the enforcer. The enforcer is designated by the trust deed and provision is usually made in the trust deed for changing enforcers and for successor enforcers. In a STAR trust, the enforcer is the only person that has the right to enforce the terms of the trust. No beneficiary, if any, has any rights of enforcement. Accordingly it is possible, and common, for a settlor to appoint a non-beneficiary as the enforcer or make the beneficiary's rights under the trust conditional on not challenging the trust.

Mixed Objects. The objects of a trust are, simply stated, the reason behind the settlor's decision to establish the trust. In most trusts the objects are the persons (i.e., the individual beneficiaries, either named or part of a group of persons) that may benefit from the trust. Alternatively, a trust object may, under English Law, be charitable or for certain limited permitted purposes. The STAR legislation provides that the objects of a STAR trust may be persons, purposes or both. This gives settlors greatly enhanced flexibility when settling their assets on a STAR trust for the ultimate benefit of perhaps their family or future generations. It also enables a "standard" discretionary trust or other trust to be established for the benefit of a settlor's family and to be governed by and have the benefits of the STAR regime.

Perpetuities. The rule of law known as the rule against perpetuities, which limits the potential lifetime of a traditional trust, does not apply to STAR trusts. This means that STAR trusts can continue indefinitely.

Obsolescence. The STAR legislation allows for the trust deed to provide a mechanism for reforming the trust and provides the Court with a cy pres jurisdiction similar to that which the Court could exercise in relation to charitable trusts. This means that if a change in circumstances undermines the stated purpose of a trust, it may be amended.

Due to the particular features of STAR trusts, the trustee must be or include a Cayman Islands-licensed trust corporation.

Uses of STAR Trusts

One of the strengths of STAR trusts and reasons for their increasing use is their flexibility. Another is that the regime allows for a trust to be created where the settlor maintains a greater degree of control than he may be able to under a traditional trust. Below are some of the uses of STAR trusts Campbells has encountered:

- Where a settlor wishes some of his assets to be applied for philanthropic purposes which are not legally charitable.

- Where a settlor wants the business he has built up to be continued after his death with regular dividends paid to his family or with certain objects in mind which may not necessarily be considered by a court or trustee to be in the best interest of the ultimate beneficiaries, e.g., if the settlor wishes to encourage the company to pursue a risky business strategy or to be particularly entrepreneurial.
- Dynasty Trusts, where a settlor wishes to set up a trust which will continue indefinitely for his or her descendants.
- As the owner of shares of a special purpose vehicle so that ownership for that vehicle may be "orphaned," whether for tax reasons or otherwise.
- As the owner of a private trust company which acts as trustee for various trusts.

TAX INFORMATION AUTHORITY LAW

In 2005 the Cayman Islands enacted the Tax Information Authority Law (the TIA Law), now the 2009 TIA Law. The purpose of the TIA Law is to provide enforcement for the terms of a scheduled agreement (i.e., Tax Information Exchange Agreements), the provision of information in a taxation matter, and for the purpose of the provision of information in taxation matters on request to a scheduled country under Part IV, including for the purposes of any proceedings taken by parties or scheduled countries, as the case may be, or by any persons acting on their behalf, connected with, arising from, related to, or resulting from taxation matters.

TAXATION

On the basis of present legislation, Cayman Islands companies are not subject to taxation in the Cayman Islands. There is currently no Cayman Islands Corporation, income, capital gains, profits or other taxes.

Cayman Islands exempted companies may apply for and expect to receive from the Governor-in-Council of the Cayman Islands an undertaking under section 6 of the Tax Concessions Law (2011 Revision) that for a period of 20 years from the date of the undertaking: (a) no law that is thereafter enacted in the Cayman Islands imposing any tax to be levied on profits, income, gains or appreciation will apply to the Cayman Islands exempted company or its operations, and (b) no such tax in the nature of an estate duty or inheritance tax will be payable on the shares, debentures or other obligations of the Cayman Islands exempted company or by way of withholding in whole or in part of any relevant payment as defined in Section 6(3) of the Tax Concessions Law (2011 Revision).

Shareholders who are not otherwise subject to Cayman Islands taxes by reason of their residence, domicile or other particular circumstances should not become subject to any such taxes by reason solely of the ownership, transfer or redemption of shares of Cayman Islands exempted companies.

The foregoing summary does not address tax considerations, which may be applicable to certain shareholders under the laws of jurisdictions other than the Cayman Islands. Tax may be withheld at source in certain countries in respect of dividends paid to Cayman Islands companies.

TAX INFORMATION EXCHANGE AGREEMENTS (TIEAS)

On 27 November 2001, a Tax Information Exchange Agreement (TIEA) was entered into between the government of the United Kingdom, including the Cayman Islands and the United States of America. The TIEA was signed to give effect to a commitment that the Cayman Islands had given to the Organization for Economic Development and Cooperation (OECD) on 18 May 2000 committing the Cayman Islands to a program of effective exchange of information on criminal, civil and administrative tax matters.

The most significant provisions of the TIEA are as follows:

Article 2: Jurisdiction

This provides that required information shall be provided in response to a TIEA request wherever the person to whom the information relates is, and will cover information present in the Cayman Islands or in the possession or control of a person in the Cayman Islands.

Article 3: Taxes Covered

The TIEA covers only U.S. federal income taxes. The TIEA can, however, be extended by agreement between the parties in the form of tax exchange letters to cover other taxes.

Article 4: Definitions

The "competent authority" for the Cayman Islands which receives requests from the U.S. Internal Revenue Service (IRS) is the Cayman Tax Information Authority.

The definition of "criminal tax evasion" is important as it provides an immediate restriction on the circumstances in which the TIEA can be used for criminal tax matters. The key elements of the definition are:

- Willful, and dishonest intent on the part of the taxpayer;
- Defrauding the public revenue, evading or attempting to evade any tax liability where an affirmative act constituting an evasion or attempted evasion has occurred;

- The tax liability must be of a significant or substantial amount, either as an absolute amount or in relation to an annual tax liability; and
- The conduct involved must constitute a systematic effort or pattern of activity designed or tending to conceal pertinent facts from or provide inaccurate facts to the tax authorities of either party.

The Cayman TIEA authority will have to be satisfied that elements have all been met before a request by the IRS could proceed further through the TIEA procedure. In particular, the request for assistance can only be made by the IRS in relation to U.S. federal income taxes. The IRS will not be able to seek information for any other reason or purpose or on behalf of any other agency of the U.S. or of a foreign government.

Article 5: Exchange of Information Upon Request

If a request under the TIEA is acted on and the provisions of the TIEA have been satisfied then the relevant information will have to be obtained by the requested party (in practice, this will invariably be the Cayman Islands). The requested party has the power to obtain any relevant information from the party that holds it, including financial institutions and anyone acting as nominee, trustee or in a fiduciary capacity. The information includes details of, for example, beneficial owners of companies or other legal entities and beneficiaries of trusts.

However, the relevance of the information to the request made for assistance has to be demonstrated before it will be provided. Specifically, the requesting party must provide:

- The identity of the taxpayer under examination or investigation;
- The nature of the information requested;
- The tax purpose for which the information is sought;
- Reasonable grounds for believing that the information requested is present in the territory of the requested party or is in the possession or control of a person subject to the jurisdiction of the requested party;
- To the extent known, the name and address of any person believed to be in possession or control of the information requested;
- A declaration that the request conforms to the law and administrative practice of the requesting party and would be obtainable by the requesting party under its laws in similar circumstances, both for its own tax purposes and in response to a valid request from the requested party under the TIEA.

The most important point about the above is that it clearly establishes that the IRS cannot engage in "fishing expeditions" or make general requests for information.

Article 7: Possibility of Declining a Request

The competent authority of the Cayman Islands can decline to assist with a request where it is not made in conformity with the TIEA, where the IRS has not pursued all means available in the U.S. to obtain information or evidence, unless to do so will give rise to disproportionate difficulty, or where the disclosure of information would be contrary to the public policy of the Cayman Islands.

Article 8: Confidentiality

The TIEA provides that information given by the IRS to the Cayman Islands competent authority in relation to a request is to be kept confidential. Any information provided to the IRS cannot be used for any purposes other than those set out in Article 1, i.e., civil or administrative tax matters or the prosecution of criminal tax evasion. The information can only be disclosed by the IRS to persons or authorities officially concerned with the latter purposes but can be disclosed in public court proceedings or judicial proceedings.

Article 12: Entry into Force

For criminal tax evasion, the TIEA came into effect on 1 January 2004 and for taxable periods that commenced from 2004. For civil and administrative tax matters covered by the TIEA, the effective date was 1 January 2006 for taxable periods that commenced on January 2006.

Since the signing of the TIEA with the United States, the Cayman Islands have signed further TIEAs with the following countries:

Jurisdiction	Date Signed	Date Entered Into Force
Argentina	18 Oct 2011	31 Aug 2012
Aruba	20 Apr 2010	1 Dec 2011
Australia	30 Mar 2010	14 Feb 2011
Canada	24 Jun 2010	1 Jun 2011
China	26 Sep 2011	not yet in force
Curaçao	29 Oct 2009	not yet in force
Denmark	1 Apr 2009	6 Feb 2010
Faroe Islands	1 Apr 2009	not yet in force
Finland	1 Apr 2009	31 Mar 2010
France	5 Oct 2009	13 Oct 2010
Germany	27 May 2010	20 Aug 2011
Greenland	1 Apr 2009	not yet in force
Guernsey	29 Jul 2011	5 Apr 2012
Iceland	1 Apr 2009	not yet in force
India	21 Mar 2011	8 Nov 2011
Ireland	23 Jun 2009	9 Jun 2010
Japan	7 Feb 2011	13 Nov 2011
Mexico	28 Aug 2010	not yet in force
Netherlands	8 Jul 2009	29 Dec 2009
New Zealand	13 Aug 2009	30 Sep 2011
Norway	1 Apr 2009	4 Mar 2010
Portugal	13 May 2010	18 May 2011
Saint Maarten	29 Oct 2009	not yet in force
South Africa	10 May 2011	23 Feb 2012
Sweden	1 Apr 2009	27 Dec 2009
United Kingdom	15 Jun 2009	20 Dec 2010
United States	27 Nov 2001	10 Mar 2006

The above, however, is not an exhaustive list as it is expected that the Cayman Islands will continue to sign further TIEAs with more and more countries in its ongoing commitment to the OECD.

Chile's business environment is the result of a policy-driven strategy that has focused on building sound macroeconomic fundamentals and strong institutions, promoting competition and international integration, and creating a more equitable society in which all citizens benefit from economic development. Its open and export-driven economy, combined with an active policy of bilateral, regional and multilateral trade agreements, has meant a steady increase of foreign trade in goods and services and in the country's competitiveness.

Chile offers numerous advantages to the potential investor. The Chilean market is open, stable and well regarded both regionally and worldwide. Free trade agreements allow companies in Chile to access 86% of the world's GDP while the government's macroeconomic policies provide market stability and decreased investor risk. Chile has also signed numerous double-taxation agreements which further aid the international investor in doing business. All of this, combined with an excellent location and highly developed public infrastructure, make Chile an ideal investment location.

FOREIGN INVESTMENT

Foreign investors in Chile can own up to 100% of a Chilean-based company, and there is no time limit on property rights. They also have access to all productive activities and sectors of the economy, except for minor restrictions in certain areas such as coastal trade, air transport and mass media. In the case of fishing, restrictions are subject to the rules of international reciprocity.

Any foreign individual or legal entity, as well as Chileans with residence abroad, can invest through Decree Law N° 600 (DL 600), provided that the investment involved is at least USD5 million. Under this regime, investors enter into a legally binding contract with the Chilean State, which cannot be modified unilaterally by the State or by subsequent changes in the law, unless they are duly indemnified. However, investors may, at any time, request the amendment of the contract to increase the amount of the investment, change its purpose or assign its rights to another foreign investor.

DL 600 guarantees investors the right to repatriate capital one year after its entry and to remit profits at any time. Once all relevant taxes have been paid, investors are assured access to freely convertible foreign currency without any limits on the amount, for both capital and profit remittances. They are guaranteed the right of access to the formal exchange market. The repatriation

of the capital invested is not subject to any tax, duty or charge up to the amount of the originally materialized investment. Only capital gains over that amount are subject to the general Chilean tax regulations.

Additionally, foreign investors must comply with a debt-equity-ratio (currently 25/75), when investing through DL 600.

The DL 600 acknowledges as foreign investment the following:

- Freely convertible currency
- Tangible assets
- Technology
- Credits associated to foreign investment
- Capitalization of foreign loans, debts and profits transferable abroad

Foreign investors may request a maximum time limit of three years to materialize their contributions. Investments of not less than USD50 million for industrial or non-mining extractive projects can request a time limit of up to eight years. In the case of mining projects, the time limit is also eight years, but, if previous exploration is required, the Foreign Investment Committee may extend it to up to 12 years.

SPECIAL ADVANTAGES

DL 600 offers some tax advantages for foreign investors. It offers several different tax options, but basically allows the investor to lock into the tax regime prevailing at the time an investment is made.

Invariability of the Fixed Overall Tax Rate

All Chilean companies must pay a First-Category Tax (Corporate tax) equivalent to 20%. Nonresidents are subject to an additional 35% withholding tax currently levied on distributed or remitted profits (Variable Tax Regime). Under DL 600, a foreign investor (nonresident) can opt to lock into an effective fixed overall tax rate of 42%—instead of the 35% tax rate—on taxable income for up to 10 years (Invariable Tax Regime). The lock-in can be waived at any time, but an investor cannot subsequently revert to the guaranteed 42% rate. The First-Category payment of 20% can be set against tax returns under both the Variable Tax and Invariable Tax Regimes. Interest paid to nonresidents is also subject to a 35% withholding tax; however, interest on loans granted by foreign banks or other financial institutions is subject to a 4% tax, provided that excess indebtedness provisions do not apply.

TAX REGULATION FOR MINING PROJECTS

The income tax law establishes a special tax on mining producers. Such tax, commonly known as "royalty," was originally enacted in 2005 and has had several amendments. According to the current drafting of the rules, enacted on October 2010, mining companies with sales between 12,000 and 50,000 metric tons of copper (or its equivalent in other minerals) will be subject to a progressive tax scale from 0.5% to 4.5% of the sales. In the case of mining companies with sales exceeding 50,000 metric tons of copper (or its equivalent in other minerals) the progressive tax scale is calculated depending on the operational margin and ranges from 5% in case the operational margin is less than 35% of the gross income, to a rate of 34.5% in case the margin is less than 85%. Above 85% of margin, a flat 14% rate shall be applicable to the entire operational income. In the new regime, the value of the metric ton of copper shall be determined in accordance with the average value of Grade A copper during the respective period in the London Metal Exchange, which shall be published by the Chilean Copper Commission during the first 30 days of each year.

Transitory Article 3 of the law that enacted the new rules on royalty (Law 20,469) sets forth that the foreign investors who had filed a foreign investment application prior to 31 August 2010, will remain subject to the former rules on royalty. However, they may choose to become subject to the new regime. If they choose to do so, they will be subject to the following taxation regime:

For the first three years they will be subject to the tax scale indicated above calculated depending on the operational margin, but which will range from 4% in case the operational margin is less than 40%, to 19.5% in case it is less than 75%. Above 75%, a flat 9% rate shall be applicable to the entire operational income.

From the fourth year until the termination of the tax invariability periods set forth in each investment contract signed by such investors, they will be subject to the original tax invariability regime set forth in such contracts, i.e., they will go back for such remaining period to the tax regime that was applicable to them prior to the enactment of Law 20,469.

On the expiration of the invariability periods under each of the original investment agreements, and for a period of six years thereafter, the investors will be subject to the current tax rates set forth in articles 64 bis and 64 ter of the Income Tax Law, i.e., the progressive tax scale calculated depending on the operational margin and ranging from 5% in case the operational margin is less than 35%, to 34.5% in case it is less than 85%, and with a flat 14% rate applicable to the entire operational income in case the operational margin is higher than 85%.

After the expiration of the additional six year invariability period, the investors will be subject to the tax rates then in effect.

Therefore, the advantage of the new regime for the companies that choose to become subject to it is that, although it increases the rate for the first three years, it returns to the original regime after the third year and for the entire duration of the original invariability period under the original foreign investment contract, and then grants an additional invariability period of six more years during which the applicable tax rates will be those existing as of this date.

Invariability of Indirect Taxes

Under DL 600, the foreign investors have the right to request in their investment contracts for the invariability of a tax regimen during the time of their agreed investment for sale and services and import tariff applicable for machinery and equipment which are not produced in the country and which are included in a list compiled for this purpose by the Ministry of Economy. Goods that comply with these conditions will be exempt from payment of the corresponding value-added tax (VAT). The same invariability can be obtained by entities that receive such foreign investment, in the amount that the investment was made.

Foreign investors who enter into a DL 600 contract are exempted from VAT on other technology imports, provided they appear on the list referenced above published by the Ministry of Economy.

CHAPTER XIV OF THE FOREIGN EXCHANGE REGULATIONS OF THE CHILEAN CENTRAL BANK (THE CENTRAL BANK)

The foreign investor is subject to use this regime where no investments contract has been signed with the State of Chile.

This regulation applies to international exchange operations involving credits, deposits, investment and capital contributions from abroad, as long as the involved amount is not less than USD10,000. Basically, Chapter XIV establishes information requirements, which must be fulfilled by the investor vis-à-vis the Central Bank, when doing said international exchange operations.

Under this regime, investors have the right to repatriate capital and to remit profits at any time, and to access, for this purpose, the formal exchange market. This regime does not grant the special advantages referred above for the DL 600.

ACQUISITION OF LAND BY FOREIGNERS

Foreigners have the right to acquire land in Chile. The only limitation refers to land located in the state borders.

Residency Requirements

Foreigners traveling to Chile for business are allowed to enter the country without a special visa for a renewable period of 90 days ("tourist visa"). Foreigners who wish to work in Chile must obtain a visa subject to a labor contract. The basis of the application is a labor contract prepared according to Chilean labor law and executed by the employer in Chile. While the visa application is being processed, the employee will not be authorized to work until a special work permit is granted which will allow the foreigner to work during the visa approval.

ENVIRONMENTAL REGULATION

The Chilean Constitution, as well as Law N° 19,300, guarantees the right to live in a pollution-free environment, the protection of the environment, the preservation of nature, and the conservation of the environmental heritage. Law N° 19,300 contains the principles which inspire environmental law, as well as the instruments of environmental management. Among such instruments are the Environmental Impact Assessment System, quality and emission norms, and Prevention and Decontamination Plans.

Environmental laws are mandatory and binding for all investment projects, such as thermoelectric and hydroelectric plants, nuclear plants, mining, oil and gas plants; airports; highways and roads; ports, real estate developments in congested areas; water pipelines; manufacturing plants; forestry projects; sanitary activities: production, storage and reusing of toxic, inflammable and hazardous substances, regardless of whether these are public or private projects, among others.

In this context, and within the Environmental Impact Assessment System, the projects or activities must be environmentally assessed in order to determine whether they meet the thresholds set forth by Law N° 19,300. This assessment can be carried out through the filing of an Environmental Impact Study or Declaration, to determine if the effects, circumstances or characteristics set forth in Law No. 19,300 are generated by their execution. All projects that must be environmentally assessed as previously described shall be assessed by the Environmental Authority.

Additionally, Law N° 19,300 imposes liability to those who willingly or negligently cause environmental damage. Liability includes payment for cleanup of environmental damage and indemnification according to law. Failure to comply with the obligation to prevent damage to the environment, clean-up plans and with legal provisions are sanctioned with warnings, fines, temporary or permanent closure of facilities and even immediate suspension of the activity causing damage.

In January 2010, Law N° 20,417 came into effect thereby creating the Environmental Ministry, the Environmental Assessment Agency and the Environmental Superintendence, who, in general terms, shall be in charge of developing policies and environmental plans, as well as coordinating the environmental assessment of projects and activities and the control and sanction thereof. Moreover, Law N° 20,417 amended Law N° 19,300 in several aspects, some of them regarding the assessment of projects, as well as incorporating access to environmental information and strategic environmental assessment. In turn, on 28 June 2012, Law N° 20,600 was published, which created environmental courts. Said courts should become operational by the end of December 2012, thereby completing the installation of the new environmental institutions. In addition, with the start of operations of the environmental courts, all of the enforcement, punishment and control powers of the Environmental Superintendence shall come into effect.

TAX-FREE ZONE SPECIAL REGIMES

Chile has two tax-free zones, one in the northern port of Iquique and the other in Punta Arenas, located in the extreme south of the country.

Merchants and manufacturers in these zones are exempt from first-category corporate tax and from VAT and customs duties on imports. Goods can be re-exported without paying taxes, but goods sold within Chile must pay regular import duties and VAT upon leaving the tax-free zone.

In addition, goods that are moved to the area surrounding a tax-free zone (qualified legally as an "extension area") are liable only for a tax of 0.6% on the CIF value of the goods. This can be set against import duties and VAT, if the goods are subsequently transferred to the rest of the country, or be reimbursed, if they are subsequently exported.

On 3 July 2012 the Executive Branch of the government sent to Congress a bill that seeks to create new tax-free zones in isolated areas of the country, particularly in Magellan.

COMPETITION AND ANTITRUST REGULATIONS

DL 211, as amended, promotes and protects free competition, prohibits monopolistic practices, such as agreements between competitors, abuse of dominant position and, in general, any other unfair practice that may limit economic freedom. DL 211 prohibits any practice, arrangement or agreement that prevents, restricts or hinders free competition or tends to produce such effect. DL 211 applies to all individuals and legal entities, including government companies, engaged in economic activities.

Amendment of acts, agreements or contracts, fines and the amendment or dissolution of legal entities may be imposed due to infringement of DL 211.

The merger control in Chile, save for some exceptions like radio and television, is voluntary. The parties of the transaction, the National Prosecutor or a third party with legitimate interest in the transaction, can submit the merger to the Antitrust Court for review.

BUSINESS ENTITIES

Among the legal alternatives for companies or individuals to structure their business in Chile, there are inter alia limited liability companies (*sociedades de responsabilidad limitada*, LLC), stock corporations (*sociedades anónimas*, S.A.), limited liability stock company (*sociedad por acciones*, SpA), contractual mining companies (*sociedades contractuales mineras*, SCM), and branches of foreign corporations (*agencia*).

In any of these alternatives, it is important to note that a representative with domicile in Chile must be appointed and registered before the tax authorities in order to act on behalf of the Chilean legal structure with relatively broad powers of attorney.

LIMITED LIABILITY COMPANY

This type of company is regulated in Law N° 3,918, as amended. The liability of the partners of LLCs is limited to the amount of their capital contributions as agreed in the bylaws (*Estatutos*). Partnership interest may be transferred only with the consent of all partners. There is great flexibility in the provisions that can be included in the bylaws.

Minimum Capital

No minimum capital is required and the timing for capital contribution is fixed in the bylaws.

Number of Partners

There must be at least two and not more than 50 partners who may be Chilean or foreign, individuals or companies.

Management

Management responsibilities are shared by all/some partners or by managers appointed by them.

Formal Requirements

LLCs are formed by the execution of the articles of association by public deed granted by a Chilean notary public, which abstract must be filed with the

competent Commercial Registry and published in the Official Gazette. The formation process takes approximately 15 to 30 days. The incorporation of LLCs requires no governmental approval.

INDIVIDUAL LIMITED LIABILITY ENTERPRISE

Law N° 19,857 established Individual Limited Liability Enterprises (ILLE). Only individuals may incorporate ILLE, which require neither minimum capital nor partners. It is managed by the owner of the enterprise or by managers appointed by the owner. Incorporation requirements are the same as those mentioned for LLCs. The owner is liable up to the amount of the capital obliged to contribute to the ILLE.

STOCK CORPORATION

Chilean corporations are governed by Law N° 18,046, as amended. Its capital stock is represented by shares, which may be transferred without any limitation. Shareholders' liability is limited to capital contributions made or promised to the corporation.

Stock corporations can be either open (listed) or closed corporations. Open corporations are those that:

- Make public offer of its shares under Law N° 18,045 of 1981, on the Capital Market
- Have 500 or more shareholders
- Have at least 10% of their subscribed capital belonging to at least 100 shareholders

Open corporations are registered in the National Securities Register and are supervised by the Superintendence of Securities (SVS). Financial statements of closed corporations must not be disclosed.

Minimum Capital Stock

There is no requirement on minimum capital stock, except for banks, financial institutions and insurance companies and others, such as stockbrokers. The capital of the corporation must be determined in the articles of incorporation (*Estatutos*) and may be increased or reduced by virtue of a decision of the shareholders' meeting. The initial capital must be fully paid within a three-year term. Except by unanimous consent, open corporations must distribute profits of no less than 30% of total net profits. However, closed corporations may expressly adopt another provision in its articles of incorporation.

Number of Shareholders

Stock corporations require at least two shareholders. Nonresident foreign individuals or legal entities can be shareholders of stock corporations. Such

shareholders, either individuals or entities, domestic and foreign must have a Tax Identity Number at the time of the incorporation of the stock corporation.

Shareholders' Meeting

This is the corporation's governing body and it is comprised of its shareholders.

An ordinary shareholders' meeting is held annually, inter alia to elect the members of the board of directors, and to approve the annual financial statements and distribution of dividends.

Special shareholders' meetings are held whenever called by the board of directors or by 10% or more of the shareholders, and only matters specified in the call may be discussed and voted on in the meeting.

Special shareholders' meetings are required for important issues like the dissolution, transformation, merger or division of the corporation, or the amendment of its bylaws.

Except for special cases as in those just mentioned above, resolutions of both ordinary and special shareholders' meetings shall be adopted by simple majority of the shares present with voting rights.

Board of Directors

The board of directors manages the corporation. It is elected in ordinary shareholders' meetings and consists of a minimum of three directors in closed corporations and a minimum of five directors in open corporations. Directors do not need to be shareholders and can be foreigners. The law does not limit the number of boards on which an individual may sit and does not impose a sanction for the lack of attendance to board meetings. Directors may physically be present to participate in board meetings or join the meeting through technical devices. Directors must discharge their duties with the care and diligence that individuals ordinarily use in their own business endeavors. Directors who as a result of their fraudulent or negligent acts damage the corporation, shareholders, or third parties, are held personally, jointly and severally liable for damages.

Management

The company may have one or more managers (*gerentes*) appointed by the board of directors. The manager is liable to the company and its shareholders for damages caused by his fraudulent or negligent actions.

Formal Requirements

Corporations are formed without special governmental authorization, although corporations dedicated to banking, insurance, mutual funds or stock exchange business do require such an authorization. A stock corporation is governed by

its articles of incorporation (*Estatutos*) contained in the public deed of incorporation, having been duly executed before a notary public. An abstract must be published in the Official Gazette and filed with the Registry of Commerce. The formation process of a closed stock corporation takes approximately 15 to 30 days.

An amendment to the articles of incorporation adopted by a shareholders' meeting is likewise published and recorded with the Registry of Commerce.

SOCIEDAD POR ACCIONES

A *Sociedad por Acciones* (SpA) is a stock corporation that may be solely owned by one shareholder. The capital of a SpA is divided into shares. Subsidiary SpA shall be regulated by the same laws as those governing stock corporations, and its provisions may not be contrary to the nature of the latter.

Minimum Capital

No minimum capital is required and the timing for capital contribution is fixed in the articles of incorporation, but may not be over five years.

Number of Partners

There may be only one shareholder, who may be Chilean or foreign, individuals or companies.

Management

There is significant flexibility in the choice of management structure, which shall be included in the articles of incorporation.

Formal Requirements

SpA is formed without special governmental authorization and is governed by its articles of incorporation contained in the public deed or a private deed of incorporation having been duly executed before a notary public. An abstract must be published in the Official Gazette and filed with the Registry of Commerce. The formation process of a SpA takes approximately 15 to 30 days.

An abstract of the amendment to the articles of incorporation adopted by its shareholders or in a public deed wherein all of its shareholders appear, must be published and filed in the Registry of Commerce.

FOREIGN CORPORATION BRANCHES

Foreign stock corporations planning to conduct business in Chile on a permanent basis can form a branch (*agencia*). The branch is not subject to the control of a governmental agency either in its formation or in its operation, with the exception of branches of foreign banks. The foreign corporation is required to appoint a representative in Chile, granting him broad powers of attorney. The

branch does not require a board of directors or other formalities for its management. Although the branch needs a certain assigned capital, there is no minimum requirement. Branches of foreign corporations must disclose on an annual basis a branch balance sheet.

In order to register a branch, the following documents in the official language of the country of origin, duly translated into Spanish, must be submitted for notarization before a Chilean notary public:

- Evidence of legal incorporation of the foreign corporation under the laws of the country of origin and certificate of present existence and good standing
- A copy of the current bylaws of the foreign corporation
- General power of attorney granted by the foreign stock corporation to the attorney in fact in Chile

This registered branch structure is considerably less used than the independent corporate structures described above. Branches may have certain practical problems derived from the fact that they are not independent legal entities from the foreign corporation, beginning with the direct responsibility of the head office for the acts of the branch.

An abstract of the public deed is registered with the Commercial Register and published in the Official Gazette. The formation process takes approximately 30 to 60 days, as the required documentation must be legalized and officially translated into Spanish.

Costs for the establishment of a branch are similar to the establishment of the independent corporate structures mentioned above.

CONTRACTUAL MINING COMPANY

This type of company is incorporated by the execution of its incorporation deed and charters, through public deed granted before a Chilean notary public, an abstract of which must be filed with the competent Mining Registrar. It must own at least one mining concession. It must have at least two shareholders, who may be either Chilean or foreign, individuals or companies. The shareholders are liable up to the amount of the contributions committed in the charter of the company. However, shareholders may agree to be liable for the company's obligations. The equity interest of the company is divided into shares. The parties are free to determine the form of management, including the creation of a board of directors. Notwithstanding the previous, the shareholders' meeting will always be in charge of the final management of the company. There is great flexibility regarding this type of entity, including distribution of profits in kind. No governmental agency is required to approve or supervise its operation.

TAXATION

The Chilean Tax System includes mainly income tax (*Impuesto a la Renta*), value added tax (*Impuesto al Valor Agregado*), stamp tax (*Impuesto de Timbres y Estampillas*) and import duties (*Aranceles*).

INCOME TAX

Residing individuals or domiciled legal entities in Chile are subject to tax on income derived from any source, either domestic or nondomestic. Nondomiciled/nonresident individuals or legal entities are subject to tax on income of Chilean source only. The four types of legal structures are subject to the same income tax treatment with few differences.

A tax holiday is granted to foreign individuals who recently arrive in the country and establish domicile or residence in Chile. During the first three years since its arrival, they will pay taxes only from its Chilean sources incomes.

The Income Tax Law contains the following taxes:

First Category Tax (Tax on Business Profits)

The First Category Tax (FCT) is a business profits tax. It is levied on income deriving from capital and from companies that undertake commercial, industrial, mining and other activities. FCT is levied on profits from any commercial activity.

The current rate of FCT is 20% and applies to income, which is calculated on a received or accrued basis. A loss incurred may be carried back and/or forward and deducted against profits without time limit. Inter-company dividends and profits received between local companies are exempt from FCT in the receiving company.

Second Category Tax (Tax on Employment Income)

Second Category Tax (SCT) applies to income from dependent employment, such as salaries. The SCT is a progressive tax, with rates ranging from 0% to 40%. It is calculated on total salary and remuneration for work, less compulsory and voluntary social security payments. The SCT is withheld and paid by the employer on a monthly basis.

Income earned by individuals from independent professional activities or any other lucrative occupation is not subject to SCT but is liable to pay the Global Complementary Tax (in case of residents) or Additional Tax (in case of nonresidents). Residents are normally subject to a withholding tax of 10% on gross income. The withholding tax received by the Treasury can be used as a credit against the Global Complementary Tax and, if the taxes withheld monthly are more than the final tax due, the taxpayer can claim reimbursement over the difference.

Global Complementary Tax (Personal Tax on Total Income)

Global Complementary Tax (GCT) is an annual tax, which affects individuals domiciled or residing in Chile and is levied on the overall taxable income. It is calculated on progressive rates ranging from 0% to 40%.

To calculate GCT, individuals who receive dividends should include the FCT paid corresponding to those dividends in the tax base and the income is thus grossed-up. The corresponding tax rate is applied on total income and the FCT already paid may be credited against the GCT due.

Additional Withholding Tax (Tax on Income Derived by Legal Entities or Individuals not Residing or Domiciled in Chile)

The Additional Withholding Tax (or Additional Tax) affects individuals or legal entities that are not residing or not domiciled in Chile and applies to income derived from Chilean sources (generally when the income is made available from Chile to a legal entity or individual resident in a foreign country). Additional Tax is normally paid through a withholding mechanism. Depending on the type of income, returns must be filed annually or monthly.

The general rate of Additional Tax is 35%, with lower tax rates applying for some types of income.

Royalties and other amounts paid for the use of trademarks and similar services are subject to a 30% tax rate. Royalties for the use of patents, computer programs and similar services are subject to a tax rate of 15%. However, if the beneficiary is related to the payer, the tax rate will increase to 30%.

Payment of engineering services, and professional or technical services rendered through an advice, report or map, supplied in Chile or overseas, is subject to a 15% tax rate, unless the beneficiary is a related party in which case the tax rate increases to 20%.

FCT paid at the corporate level can be used as a credit against the Additional Tax to which its owners are liable when they receive dividends or make profit withdrawals whether they are shareholders of a Stock Corporation, partners of a Limited Liability Company, or the Head Office of a Branch or Agency operating in Chile. A special ledger, known as *Fondo de Utilidades Tributables* (FUT), is required to track retained profits and the corresponding tax credit.

Foreign Tax Credit

At a unilateral level, taxes paid in foreign countries on certain commercial activities can be used as a credit against FCT in Chile. Any unused tax credits may be carried forward against future tax liabilities.

At a bilateral level, if there is a Double Taxation Treaty in force, all income taxes paid in one country are creditable in the other.

Capital Gains

Generally, capital gains are considered normal income and, as a result, are subject to ordinary taxation. However, in certain cases, capital gains by transfer or sale of shares in a Stock Corporation or of equity rights in a Limited Liability Company may be subject to a sole tax of 20% or entirely exempt under certain conditions.

Business Platform Companies

Law N° 19,840, enacted in November 2002, enables foreign investors to set up a platform company in Chile for channeling and managing investments in third countries, allowing them to tap into Chile's advantages, such as not paying Chilean taxes on earnings obtained from these overseas investments.

Companies set up as a Business Platform must be incorporated in accordance with Chilean law and can either be open-listed stock corporations or closed stock corporations, subject to the same regulations and governmental supervision as listed stock corporations.

Double Taxation Treaties

To date, apart from the Double Taxation Treaties in force with Argentina, Belgium, Brazil, Canada, Colombia, Croatia, Denmark, Ecuador, France, Ireland, Malaysia, Mexico, Norway, New Zealand, Paraguay, Peru, Poland, Portugal, Russia, South Korea, Spain, Sweden, Switzerland, Thailand and the United Kingdom, other Double Taxation Treaties have been signed with Australia and the United States, which are awaiting legislative approval prior to their effectiveness. Negotiations are underway with several other countries, for example, with South Africa.

All these Double Taxation Treaties, with the exception of Chile-Argentina, follow the OECD Model Convention.

VALUE ADDED TAX (VAT)

VAT is Chile's main consumption tax. It is levied at the current rate of 19% on sales of goods and services (with a few exemptions for some services), and on sales of real estate property when this is owned by a construction company and was built totally or partially by said firm. The same general rate applies to imports, recurrent or otherwise, made by any individual or legal entity.

VAT must be declared and paid on a monthly basis.

Exports are exempt from VAT and are entitled to reimbursement of the VAT borne on purchases of goods and services that are used as part of their export activity.

STAMP TAX

Any kind of document reflecting a loan or credit operation (e.g., bills of exchange, promissory notes or letters of credit) is subject to stamp tax at the rate of 0.05% of the face value for every month elapsing between the date of issuance and the maturity of the document with an overall cap of 0.6%. If the document has no expiration date, a sole tax rate of 0.25% should apply. Even foreign loans or credit operation not reflected in such documents are subject to this stamp tax at the moment they are registered in the accounting records of the Chilean borrower.

IMPORT DUTIES

There is a general 6% custom duty rate applied to all imports (with certain exceptions), unless they come from a country with which there is a Free Trade Agreement. To the extent the imported assets are used in merchandise exported abroad, the duties can be exempt. Imports are not subject to income tax provided that the transfer prices are among the market values.

INTELLECTUAL PROPERTY

In general, Chilean law provides for the protection of intellectual property, (that in its restricted civil law meaning includes, among others, copyright and related rights), as well as industrial property.

Such rights may be owned by any individual or legal entity, Chilean or foreign, save from some rights with moral content.

APPLICABLE REGULATIONS

Industrial property in Chile includes mainly trademarks, patents, utility models, industrial designs and drawings, geographical indications, appellations of origin and lay-out designs (topography) of integrated circuits.

These rights, including the procedure to obtain its recognition by the authority, its duration term, protection mechanisms among other related matters, are regulated mainly by Law N° 19,039 amended, by Law N° 19,996 and Law N° 20,160, and its Regulation, among others.

Intellectual property in Chile is governed by Law N° 17,336, as amended and its Regulation.

At an international level, Chile has also signed such agreements as the Berne Convention and the Paris Convention, along with the Patent Cooperation Treaty (PCT), WIPO Performance and Phonograms Treaty (WPPT), WIPO Copyright Treaty (WCT) and the Trademark Law Treaty (TLT).

Also, given the fact that Chile is part of the World Trade Organization, it is governed by one of its multilateral agreements, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

It is also important to mention that Chile has replicated several international obligations contained in the intellectual/industrial chapters of the free trade agreements it has signed, such as chapter 17 of the Free Trade Agreement with the U.S. and title IV of the Free Trade Agreement with the EU.

APPLICATION REQUIREMENTS

Trademarks

Applications, along with payment, must be presented to the trademark register of the Chilean National Trademark and Patent office (INAPI). INAPI will examine the application and once the trademark subject to evaluation is formally accepted, it must be published in the Official Gazette. If there are no observations against or oppositions to it, the trademark will be granted and for all legal effects will be deemed as registered.

The aforementioned application can be presented by any legal entity or individual, Chilean or foreign, and in the cases where the presentation is made by a representative, the power of attorney granted to him/her for this purpose must be submitted along with the application.

Patents

It is necessary to file a text of the patent application in Spanish. That text must consist of a specifications presentation, set of claims and an abstract.

Patents application must also be filed to the INAPI, which after a preliminary examination will order its publication in the Official Gazette. After this is done, an expert will verify the compliance with the novelty, non-obviousness and usefulness requirements for industrial purposes. If the expert considers these requirements to be met by the application, he will issue a favorable report, which leads to the patent's granting.

A power of attorney must be presented together with the application if the applicant and the inventor are different persons.

Once the patent is granted, the owner can partially or completely assign his patent rights.

Copyright

This is done through an application for the registration of the work in the Intellectual Property Registry, operated by the Intellectual Rights Department of the Libraries, Archives and Museums Direction (DIBAM). The inscription has a

cost of 10%, 35% or 40% of one UTM equivalent to approximately USD80 as of October 2012.

It is important to mention that the Intellectual Property Registry is not authorized to reject applications, as well as that third parties are not involved in the procedure of the application, and that in connection with accepted international principles, this procedure grants only a presumption of copyright over the work with its registration.

TERM OF EFFECTIVENESS

Trademarks

Ten years as from the granting date. A registration can be renewed indefinitely before expiration for subsequent new terms of 10 years. No annuities are due during the time the registration is in force. Use of a registered trademark is not compulsory.

Patents

Twenty years from the filing date. No renewal is possible. Two annuities are due during the time the patent is in force.

Copyright

Protection is granted for the whole life of the author and is extended up to 70 years after author's death.

INDUSTRIAL PROPERTY OFFICE

The INAPI acts both as the registration authority and also as an administrative court in case of conflicts (oppositions, cancellations, etc.). The decisions issued by INAPI may be appealed before the new Industrial Property Appeals Court (*Tribunal de Propiedad Industrial*).

For copyright, the competent office is the Intellectual Property Registry (*Departamento de Derechos Intelectuales*) of the DIBAM.

LABOR LAW

The Labor Code, together with other labor laws, applies to the employer-employee relationship when it qualifies as under-subordination or dependency. When the services are performed without such subordination or dependency, the agreement is not ruled by the Labor Code but by the Civil or Commercial Code.

The Labor Code contains minimum mandatory conditions applicable to the relationship between employers and employees. The parties are entitled to

negotiate other conditions provided that they are above the minimum guaranteed by law. The Labor Code states that the rights contained in the labor laws cannot be waived. Therefore, notwithstanding any agreement of the parties to the contrary, the minimums contained by law are applied.

HIRING OF EMPLOYEES AND LABOR CONTRACTS

The agreement must be in writing, and executed within 15 days from the start-up of services. In case the employer does not comply with that provision, the employee's declaration on the content of the labor contract will be deemed as true.

BENEFITS AND LABOR RIGHTS

The maximum working period for employees is 45 hours per week; exceptions may arise due to the nature of the work or if parties agree on a shorter working period. Overtime must be paid with a 50% surcharge over the agreed remuneration. The regulations relating to working hours are not applicable to senior employees such as managers and executives or to those employees that work without direct and regular control or supervision. The labor authority may authorize special distribution of the working period, when the nature of the activity performed requires an ad hoc regime.

MINIMUM WAGE

A minimum wage is fixed by law every semester (currently approx. USD405 per month).

HIRING OF FOREIGN EMPLOYEES

A maximum of 15% of the employees are allowed to be foreigners. This rule does not apply to technicians and companies with 25 employees or less.

NON-WAGE LABOR COSTS

Each employee must pay contributions to pension funds, which are accumulated in an individual account. The contributions amount to 13% (approx.) of the salaries. They also must pay contributions for health care insurance, at a minimum of 7% of the salary.

TERMINATION OF EMPLOYEES; SEVERANCE BENEFITS

The employer may terminate the labor contract as may be required by the needs of the company. The unilateral termination of the contract by the employer triggers a severance payment. Such an indemnity can be agreed upon by the parties; in the absence of an agreement, the employer must comply with the severance payment equivalent to the last monthly remuneration paid to the

employee for every year worked with an upper limit of 330 days (11 months) and approximately USD4,200 per year of services rendered. In the case of employees with authority to represent the employer, such as managers, the employer does not need to invoke a cause of termination. Some causes allow the employer to terminate the labor agreement without the mandatory severance payments referred to above (e.g., gross misbehavior or dishonesty and other material breaches of the contract).

TRADE

IMPORT RESTRICTIONS

In general, Chile has a regime of freedom for foreign trade. Nevertheless, certain products such as foods, medicines, agrochemicals and some others require registration before importation, because of sanitary considerations. The fixed import duty is 6%. Chile has signed numerous Free Trade Agreements, especially with the European Union, the United States, Canada, Mexico and recently with China, that reduce or eliminate import duties for several or all products depending on the exporting country.

EXPORT RESTRICTIONS

There are no restrictions to the export of goods. Exports are exempt from VAT and enterprises are entitled to reimbursement of VAT on purchases of goods and services that they use as part of their export activity.

DISTRIBUTION PROTECTIONS

There are no limitations to the distribution of imported goods. A foreseeable and transparent customs regime exists, which guarantees liberty in foreign trade.

INTERNATIONAL INTEGRATION[1]

Chile's open economy, combined with an active policy of bilateral, regional and multilateral trade agreements, has underpinned a sustained increase in foreign trade in goods and services and in the country's international competitiveness, consolidating its position as an active international player.

For imports from countries with which it does not have a trade agreement, Chile applies a flat-rate tariff of 6%. Its Free Trade Agreements (FTAs) and its low level of non-tariff barriers, make it one of the world's most open economies, a position that is further reinforced by the Double Taxation Avoidance Agreement it has signed with 24 countries.

[1] Chile Land of Opportunities, Foreign Investment Committee, second edition, June 2012

Chile's 22 trade agreements, covering a total of 59 countries, have expanded its domestic market of 16.8 million inhabitants to one of over 4,302 million potential consumers around the world (representing 85.7% of global GDP and 62% of the world's population). At present, 93% of Chile's exports take place under the preferential terms of these trade agreements, which include:

Free Trade Agreements: Australia, Canada, Central America, China, Colombia, EFTA (Norway, Switzerland, Iceland and Liechtenstein), Malaysia, Mexico, Panama, Peru, South Korea, Turkey and the United States.

Economic Association Agreements: European Union (EU), Japan and P4 (New Zealand, Singapore and Brunei Darussalam as well as Chile).

Economic Complementation Agreements: Bolivia, Cuba, Ecuador, Mercosur and Venezuela.

Partial Scope Agreements: India.

Agreements Under Negotiation (but not yet in force)

Nicaragua and Vietnam.

Agreements Under Negotiation (as of May 2012)

Thailand: Thailand is Chile's fourth largest Asian trading partner. Bilateral trade reached over USD800 million in 2012, with Chile exporting goods for USD287 million to Thailand and importing goods worth USD528 million from Thailand. Talks on a FTA between Chile and Thailand began in May 2011 and several rounds of negotiations have since been held to discuss tariff reductions. Thailand is of strategic interest to Chile since it's a members of ASEAN and has a market of over 68 millions inhabitants.

Trans-Pacific Partnership – TTP (Australia, Brunei, Malaysia, New Zealand, Peru, Singapore, the United States and Vietnam as well as Chile): These talks aim to create a free trade area bringing together the economies of the Asian Pacific region. The first round of talks took place in Australia in March 2010.

ANALYSIS OF SELECTED FTAS

European Union (EU)

The Chile-European Union Association Agreement, signed on 18 November 2002 and in force since 1 February 2003, established the complete elimination of tariffs and non-tariff barriers on trade in goods (excluding only some fishing and agricultural products), divided into six categories depending on the period for this process which reaches a maximum of 10 years. The agreement's full implementation began on 1 March 2005.

Since the agreement came into force, tariffs have been totally lifted on 7,426 products, representing 94% of those negotiated and 98.2% of Chile's exports to the EU.

In 2011, EU countries accounted for 18% of Chile's total exports. Its main markets in the euro zone were Netherlands, Italy, France, Spain and Germany. Imports from the EU were up by 27.2% in 2011. The growth of Chile's exports to the EU has been boosted by factors that include their increased competitiveness as a result of the lifting of tariffs.

United States

The Chile-U.S. FTA, signed on 6 June 2003 and in force since 1 January 2004, consolidated and increased the access of Chilean products to the vast U.S. market, which accounts for 19% of global GDP by establishing clear long-term rules for trade in services and investment as well as trade in goods.

Out of the 7,705 products covered by the agreement, 98% obtained immediate tariff-free access. This has increased to 99%, and as from 1 January 2015, 100% of trade between the two countries will be tariff-free.

In 2011, bilateral trade between Chile and the United States reached USD23.822 million, up by 41.3% from the previous year. This represented 15.4% of Chile's total foreign trade, up by two percentage points from 2010, due principally to a 28.7% increase in its exports to this market. Tariff liberalization means that Chilean products now compete on more favorable terms, with the agribusiness sectors as the main beneficiary.

China

With a population of close to 1.350 billion and sustained growth of over 8% in recent years, China is today the most important player in the world economy, accounting for 14% of global GDP. Under the FTA, tariffs were immediately lifted on 92% of Chilean products and on 50% of China's exports. The Chilean products included copper and other minerals, market garden produce, fish oil, pork and other processed food while tariffs on fresh and frozen salmon, apples and grapes will be eliminated over a period of 10 years.

The Chile-China FTA, signed on 18 November 2005 and in force since 1 October 2006, was the result of rapid and effective negotiations. As well as boosting bilateral trade and eliminating barriers, it establishes a framework for future regional and multilateral cooperation. Tariffs have already been totally eliminated on 63% of the products negotiated and under the agreements, 7,336 products exported by Chile will have duty-free access to the Chinese market by 2015.

Since this FTA came into force, China has increased its importance in Chile's foreign trade, emerging as its single largest trading partner. China is today indeed its largest export market and its second largest supplier of imports.

South Korea

The Chile-South Korea FTA, signed on 15 February 2003 and in force since 1 April 2004, has led to an approximately three-fold increase in bilateral trade. By 2010, 6,938 Chilean products had obtained tariff-free access to the South Korean market and a further 59 products were added in 2011, representing in total 93% of Chile's exports to this market.

This FTA has proved important in expanding the range of Chile's exports to South Korea. This is reflected not only in the number of products but also in the number of exporters, which now reach over 450, up from 288 in 2003. South Korea is, as a result, Chile's fifth largest export market and its seventh largest supplier while Chile's exports to this market are growing at annual rate of 6%.

Malaysia

The Chile-Malaysia FTA came into force on 18 April 2012 and eliminates tariffs on 98.6% of Chile's exports to Malaysia and 95% of its imports from this country. The Malaysian economy is similar to that of Chile but also complementary in that it imports raw materials and food and exports fuels and manufactured goods. In terms of market potential it is important to note that it has a per capital income of close to USD14,700.

Chile's annual exports to Malaysia reach over USD210 million and, since the 2009 world economic crisis, have shown a positive trend, expanding by 106% in both 2012 and 2011, while over the past five years the number of companies engaged in bilateral trade has increased by 24% to 759.

Colombia is located in the northernmost part of South America. Its population is estimated at over 45 million people, with at least 10 million living in the capital city of Bogotá. Colombia's main language is Spanish.

Colombia has a democratic and centralized government. It is divided politically into departments, districts and municipalities.

The President of the Republic is the Chief of State and is elected for a four-year term. Reelection is available for an additional term. The Congress is divided in two chambers, one of national constituency and one of territorial constituency. The courts hold power over the administration of justice. In May 2010, Juan Manuel Santos was elected as Colombia's president and he will be in office until 2014.

Colombia's Gross National Product (GNP) has constantly increased over the past years. Up to the second trimester of 2012, it closed with a 4.4% increase.

FOREIGN INVESTMENT

The cornerstone principle of foreign investment regulations in Colombia is the nondiscrimination of the foreign investor vis-à-vis national investors (and vice versa). Foreign investment is permitted in nearly all economic sectors except for the national defense industry and the processing or disposal of hazardous, toxic or radioactive waste not manufactured in Colombia. In addition, there are limitations applicable to the oil and gas and financial sectors, as well as to the concessions for the television media and certain activities of private security.

There are screening laws applicable to foreign direct investment in the banking industry. An investment in more than 10% of the outstanding voting stock of a financial institution requires prior approval of the Financial Superintendence. This approval may not be denied provided the investment "promotes public welfare, and that investor duly credits its moral and financial solvency" as such is ascertained by the Financial Superintendence. Additionally, companies that participate in concessions for television media services may not have a participation of foreign investment beyond 40% of their total capital.

There are two modalities of foreign investment: foreign direct investment and portfolio foreign investment. Foreign direct investment is defined as the equity contribution made to the capital of local companies or for the acquisition of real estate by non-Colombians. Foreign direct investment may take the form of, inter alia, the importation of freely convertible currencies for the purchase of

capital quotas, shares issued by local companies, real estate properties or the investment in private equity funds.

Portfolio foreign investment can be characterized as investment made through local capital markets. Investors are driven by their interest in earning investment returns, rather than controlling a productive enterprise conducted within the country. Such investments must be channeled through portfolio foreign investment funds duly authorized by the Financial Superintendence. Such funds are organized as collective investment accounts funded through contributions made by foreign companies or individuals.

RIGHTS OF FOREIGN INVESTORS

Except for the need to report a foreign investment before the Central Bank (*Banco de la República*), normally carried out through a local bank or other financial institution and the requirement to meet other periodic reporting obligations, the remittance of proceeds and other investment returns are free under the foreign investment regime in Colombia.

As corollary to the nondiscrimination principle enshrined in the Colombian foreign investment laws, duly reported foreign investments confer the following rights to the investor:

- Remittance abroad of proceeds of invested currency (i.e., dividends)
- Reinvestment of all proceeds, if so desired by the investor
- Capitalization of investment proceeds
- Remittance of investment sale proceeds or remaining funds abroad after the local company is wound up or liquidated

These exchange rights may not be diminished or curtailed, except as a consequence of temporary measures adopted by the Central Bank or the government whenever the country's international reserves are reduced to less than three months of imports. This has not occurred since the exchange regime was liberalized in 1991.

Additionally, Colombian law prohibits illicit expropriation of private property. Therefore, expropriation is only possible when there is valid justification for reasons of public use or social interest, in good faith, with respect to the due process and having made a prompt, adequate and effective compensation.

LEGAL STABILITY AGREEMENTS

Law 963 of 2005, regulated by Decree 2950 of 2005, established the possibility for private investors to enter into legal stability contracts when making new investments or expanding the existing ones in the amount of COP3.907 billion (USD2.17 million) or more. These agreements are entered into with the

respective ministry in charge of the sector where the investment is targeted. Their purpose is to promote fresh foreign or local investments in certain business areas such as tourism, mining, oil, energy and infrastructure, among others, by guaranteeing the application of a stable legal framework for the investor. As consideration for such stability, investors pay a premium ranging from 0.5% to 1% of the amount to be invested.

Stability agreements must specify the exact regulations applicable at the time of execution in order for these to be applied without change during a period of no less than three years and not exceeding 20 years.

Investors interested in this type of agreement must file an application, along with a feasibility study relating to the investment to be made. Any such request shall be revised and approved by an official committee established as per Decree 2950 of 2005 for such purpose.

The main obligations of an investor under a stability agreement include that of actually making the investment, or enhancing an existing investment. There is, of course, the obligation to pay the stability premium. Failure to observe any of the foregoing requirements will result in an early termination of the agreement.

Finally, it is worth mentioning that legal stability agreements may not contravene mandatory provisions of local or international law. Once the parties execute a stability agreement, and it has been evaluated and approved by the relevant committee, it must be filed before the Department of National Planning (*Departamento de Planeación Nacional*).

ANTITRUST

All integration operations (i.e., mergers and acquisitions) with any effect in Colombia need the prior clearance from the Superintendence of Industry and Commerce (SIC) as established by Law 1340 of 2009, provided that the concerned parties have a local market share of more than 20% and that for the year immediately prior to the projected transaction their Colombian operation results in (i) turnover or (ii) assets (individually or in aggregate) beyond a threshold established yearly by the SIC. Such threshold is normally established in minimum monthly legal salaries (MMLS), determined yearly by the national government. For the year 2012, the MMLS is COP566,700 (equivalent to USD315 at an average exchange rate of COP1,800 per USD1) and Resolution 69901 of the SIC determined the antitrust clearance threshold is 150,000 MMLS (equivalent to USD39.75 million). If any or both of the thresholds are met but the market share is below 20% no prior clearance is required; the SIC only has to be notified of the transaction. For the above purposes it is understood that the parties share a common market whenever they engage in the same activity or are part of the same value chain.

SETTLEMENT OF DISPUTES

In Colombia, applicable regulations provide for different types of judiciary and nonjudiciary procedures for settlement of disputes. Such dispute settlement alternatives are available to foreign and local parties, including governmental agencies.

As of enactment of Law 315 of 1996, arbitration clauses in international contracts are valid in Colombia. Such law also recognizes the possibility for parties to an international contract to choose the law applicable to any possible dispute that may arise therefrom. Such provisions are only prohibited if included with the intention to evade mandatory provisions otherwise applicable under Colombian law. This law was repealed in 2012 and will only be applicable to the arbitral processes that had initiated when it was in force.

The arbitral awards that are initiated on September 2012 or later will be ruled by the National and International Arbitrage Statute (Law 1563 of 2012), that was enacted in mid-2012. Its main purpose was to simplify and streamline national arbitration and modernize international arbitration regulations in Colombia, for which it was based on the UNCITRAL Model Law on International Commercial Arbitration. In this vein, it must be noted that Colombia is a signatory party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

In addition, Colombia is a party to the Convention on Settlement of Investment Disputes between States and Nationals of Other States. Therefore, subject to certain conditions, arbitration before the International Centre for Settlement of Investment Dispute (ICSID) is available to foreign investors in Colombia.

BUSINESS ENTITIES

The mere holding of ownership interests in investment concerns in Colombia does not create the obligation to be legally established within the country. However, if in addition to holding an investment, the intention of the investor is to conduct permanent activities in Colombia, the establishment of a local branch office or a local company will be required under applicable regulations. Both vehicles can be used for the performance of any activities in Colombian territory and in that aspect there is no distinction between them. The decision of one or the other will be contingent mostly on the needs of the beneficial owner, namely how it intends to manage the fund flow to the local Colombian vehicle and how much of the activity of such vehicle is likely to be changing.

For the incorporation of a company in Colombia, the investor needs to select a suitable corporate form. The Colombian Commerce Code provides for a number of corporate forms, ranging from partnerships to stock corporations.

SIMPLIFIED SHARES CORPORATION (SAS)

As of enactment of Law 1258 of 2008, the preferred corporate form is that of a simplified shares corporation (by its Spanish initials SAS) which has proven to be the simplest, easiest vehicle for both local and foreign investors. Not only can this type of company be incorporated with a single shareholder and by private document but capital contributions do not have to be made at incorporation. In addition, the liability of shareholders is limited to their actual capital contribution (even for tax and labor obligations) and the corporate veil can only be lifted if it is proven that the vehicle has been used to defraud third parties. Further, an undetermined corporate purpose and an undefined term of existence may be established. Finally, this type of company allows shareholders to freely agree on the terms of the company's bylaws.

Minimum Equity

The amount of authorized (reserve shares), subscribed and paid capital can be freely established by the shareholder(s), as well as the means and term of payment, the latter not to exceed two years.

Number of Shareholders

An SAS can be incorporated with any given number of shareholders (even with a single shareholder).

Shareholders' General Assembly /Board of Directors

The shareholders' assembly is the chief body of the SAS, unless authority is given to other corporate bodies if so decided by the shareholders. An SAS is not mandated to have a board of directors, and if it does, it can be made up of a single member.

This body is to be convened at least once a year, within the first quarter of each calendar year, to approve yearly financial statements along with a management report for the preceding fiscal year and the distribution of profits.

Management

Management of the SAS is entrusted in principle to appointed officers (to be shared with the board of directors if such body is included in the articles of incorporation) with the powers and limitations freely determined.

Statutory Auditor

The company shall only be compelled to have an external fiscal auditor when the value of its gross assets as of December 31 of the immediate prior year is or exceeds 5,000 MMLS (approx. USD1.57 million) and revenues in excess of 3,000 MMLS (approximately USD944,500).

The external fiscal auditor shall be a licensed accountant, bearer of an in effect professional card.

Restrictions

According to a legal provision, companies that intend to trade their shares in the stock market cannot have the SAS structure. If they are intended to act for the rendering of public utilities, certain specific requirements need to be met.

Formal Requirements

The shareholders or their representatives (by proxy) shall execute the document containing the company's bylaws which is a private document (document of incorporation). The content and the signatures of such document must be authenticated before a notary public or the Chamber of Commerce secretary.

The document of incorporation, once authenticated, shall be recorded in the Chamber of Commerce of the municipality chosen as main domicile of the company. This type of company is understood incorporated once the incorporation documents have been duly recorded in the corresponding mercantile register.

LIMITED LIABILITY COMPANIES

These are called *Sociedades de Responsabilidad Limitada* or *Ltda*. for its Spanish abbreviation, which must be included in the corporate name. This type of corporate form limits partners' liability to the amount of their respective capital contributions, except for labor and tax liabilities. With respect to such liabilities, partners will be held subsidiary, albeit jointly, responsible with the company.

Minimum Equity

There is no minimum capital required for this type (or any type of company in Colombia). However, the company's capital contributions must be fully paid at all times as from incorporation.

Capital is divided into quotas of same par value each, which are negotiable according to the law and the bylaws. Except as otherwise agreed under the bylaws, partners to a limited liability company are vested with a preferential right of purchasing the company's outstanding quotas when other partners decide to sell their participation. The assignment of quotas is deemed as a bylaw amendment and therefore requires that a decision by the board of partners be taken and thereafter enacted by means of a public deed to be later registered with the Chamber of Commerce of the city of domicile of the company.

Number of Partners

A limited liability company must be incorporated by a plural number of partners, without exceeding 25.

Board of Partners/Board of Directors

The board is the corporate body at which venue material decisions for the company are taken, *inter alia*, amendment of corporate bylaws, early dissolution, mergers, split-offs, spin-offs, appointment of administrators, profit distribution, etc.

The board of partners needs to be convened at least once a year, within the first quarter of each calendar year. At this yearly meeting, yearly financial statements are approved along with the administration activities for the preceding fiscal year and the distribution of profits.

This type of company is not mandated to have a board of directors but such body can be included within the corporate structure if so decided in the incorporation documents.

Management

At least one of the partners is called to manage the company. However, any individual without capital ownership may be appointed to administer the company.

Formal Requirements

Except as noted below, the bylaws of the company must be extended through a public deed granted before a Colombian notary public. A copy of this public deed of incorporation must be registered before the Chamber of Commerce of the domicile of the company.

Notwithstanding the foregoing, if the company's assets at the time of incorporation do not exceed 500 MMLS (approx. USD157,416) and the number of employees is fewer than 10, the company can be incorporated through the execution of a private document signed by the partners. Such private instrument must be registered before the corresponding Chamber of Commerce. If the company exceeds these asset and employee thresholds, it will be required to amend its bylaws through a public deed.

Statutory Auditor

Limited liability companies must have a statutory auditor when they have assets in excess of 5,000 MMLS (approx. USD1.57 million) and revenues in excess of 3,000 MMLS (approx. USD944,500).

The auditor must be a certified accountant.

STOCK CORPORATIONS

Stock corporations, known as *Sociedades Anónimas,* are the classic for-profit corporate form. They are essentially characterized by the shareholders' liability

limitation up to the amount of their respective stockholdings. Although any such corporation may well negotiate its shares within the local capital market, its corporate bylaws may establish preemptive rights for the subscription or negotiation of shares issued by the corporation.

Minimum Equity

There is no minimum required capital stock. However, at least 50% of the corporation's share capital must be subscribed on the date of incorporation. In addition, at least one-third of each subscribed share must be paid in full. Payment of the remaining share price may be deferred for up to one year.

Number of Shareholders

Stock corporations must be organized with at least five shareholders, none of whom may hold 95% or more of the corporation's outstanding share capital.

Shareholders' Meeting

The shareholders' meeting is the corporation's supreme governing body. It is to be convened at least once a year, within the first quarter of each calendar year in order to approve the preceding year's financial statements, the administration activities for the preceding period, and profit distribution.

Board of Directors

A board of directors is a mandatory corporate body for administration in stock corporations. This decision-making body is entrusted with the establishment of the day-to-day management policies of the corporation. Normally, the board of directors approves the execution of certain agreements (depending on their nature or number), and adopts decisions that are material in the ordinary course of the corporation.

The board of directors must have at least three members with their respective alternates. The shareholders' meeting is in charge of appointing directors.

It is noteworthy that directors are not allowed to act as such on more than five boards of directors simultaneously. This prohibition also applies to affiliated companies.

Management

Management officers of stock corporations are appointed by the shareholders' meeting. Management is normally comprised of at least one executive officer who is responsible for the representation of the company vis-à-vis third parties.

Powers and limitations of the authority of legal representatives are set forth in the company's bylaws. Such powers and limitations need to be duly publicized by the mercantile registry kept by the corresponding Chamber of Commerce. If no such limitations are specified in the bylaws, or if so specified are not

publicized in the mercantile registry, it is understood that legal representatives may act on behalf of the company without restrictions as long as such activities fall within the company's corporate purpose or relate directly with its ordinary course of business.

Statutory Auditor

The statutory auditor is an independent individual within the corporation's structure. The statutory auditor is mandatory for stock corporations.

The statutory auditor has the duty to ensure

- That all acts and contracts of the corporation are in compliance with legal and corporate requirements
- That accounting records are kept in accordance with Colombian generally accepted accounting practice
- That all adequate safeguard measures are set in place to protect and defend the assets of the corporation

Formal Requirements

Bylaws of the corporation need to be extended through a public deed granted before a Colombian notary public. A copy of this public deed of incorporation needs to be registered before the Chamber of Commerce of the domicile of the company.

Notwithstanding the foregoing, just as the stock companies, if the company's assets at the time of incorporation do not exceed 500 MMLS (approx. USD283.35 million) and the number of employees is fewer than 10, the company can be incorporated through the execution of a private document signed by the partners. Such private instrument must be registered before the corresponding Chamber of Commerce. If the company exceeds these asset and employee thresholds, it will be required to amend its bylaws through a public deed.

BRANCH OFFICES OF FOREIGN COMPANIES

As indicated above, nationals of other countries intending to directly conduct permanent activities within Colombian territory have to be present in Colombia as a matter of law, at least through a branch office. Even though Colombian law does not provide a defined term to determine whether or not an activity is permanent, it is generally accepted that the term is of six months or more.

The opening of a branch under Colombian regulations requires the decision from the competent body of the parent company. Such decision will need to address not only the decision to open a branch in Colombia but further (i) the activities to be carried out; (ii) the local domicile; (iii) duration of the branch; (iv) causes for termination of the venture in Colombia; (v) allocation of capital

contribution to the branch; and (vi) appointment of general representatives and fiscal auditors. Such decision is to be legalized (by apostille or consular certification) and notarized in Colombia together with its parent company's bylaws.

All the above documents are to be legalized by means of a public deed to be registered before the Chamber of Commerce of the place of its domicile; thereafter both the parent company and the branch will share the same tax identification number (NIT) that will be granted by the tax authorities.

TAXATION

Relevant Colombian taxes include income tax, value added tax (VAT), stamp tax, levy over financial transactions, equity tax, and municipal commercial tax (ICA). Further information on import and export duties is included under the Trade section on page 171.

INCOME TAX

As from the year 2008, the income tax rate for corporations and other legal entities is 33%.

However, as established by Law 1429 of 2010, from 1 January 2011, all "small" companies with less than 50 employees and assets below 5,000 Colombian monthly minimum wages (USD1.57 million) incorporated in the country, can benefit from a progression in the income tax rate that goes from 0% during the first and second year, to 75% of the tax in the fifth year, being fully applied in the sixth and subsequent years.

For individuals, tax regulations bring a table detailing differential tax rates levied by reference to yearly earnings thresholds. Although the corresponding amounts of earnings are annually increased in accordance with inflation percentage, current income tax rates for individuals range between 19% and 33% as shown in the following chart.

Yearly Earnings	Applicable Rate
COP29,393,410 – COP44,283,300 (USD15,774.11– USD24,601.83)	19%
COP44,283,300 – COP106,800,900 (USD24,601.83 – USD59,333.83)	28%
Over COP106,800,900 (USD59,333.83)	33%

Individuals with physical presence within Colombian territory for 180 days or more during a taxable year, be it continuous or not, shall be deemed Colombian residents for tax purposes. Likewise, branches, corporations or companies in general, domiciled in Colombia, will be treated as Colombian residents for tax purposes.

Non-Colombian residents will only be liable for tax over Colombian-sourced income. As from the fifth year of residence in Colombia, they will become liable for their income tax over their worldwide income.

VAT

Sales, services and imports are subject to VAT. The general VAT rate is 16%. The general rate is subject to exceptions with respect to specific goods or services as named by applicable tax regulations.

STAMP TAX

Written instruments that set forth monetary considerations to be discharged in Colombia are subject to stamp tax. Stamp tax will accrue over such written instruments as from certain thresholds established by the national government. Please take into account that since 2010 the applicable stamp tax rate is 0%, except for some cases like the payment of checks and bonds, the issue of visas and some licenses, among others.

LEVY OVER FINANCIAL TRANSACTIONS

Any transaction involving the disposition or transfer of

- funds deposited in savings or checking accounts, or deposits of any nature
- funds deposited in the Central Bank (*Banco de la República*)
- drawing of cashiers' checks

is subject to the levy over financial transactions calculated at a rate of 0.4% over the relevant amount of the disposition or transfer. Savings accounts with outstanding amounts below COP9.12 million (approx. USD5,065) are exempt from this levy. This levy is deductible from the income tax at 25% in 2012 and at 50% from 2013-2018. This levy will be eventually terminated, starting with a reduction to 0.2% in 2014 until achieving 0% in 2018.

MUNICIPAL COMMERCIAL TAX

Gross income of entities with a corporate purpose that includes commercial or industrial activities, or the rendering of services, is taxable at the municipal level with ICA. ICA rates range between 0.2% and 1.4%, applicable on the activity being conducted within the relevant municipal jurisdiction.

BENEFITS OF THE "FIRST EMPLOYMENT LAW"

In addition to the benefits brought by Law 1429 of 2010 in relation to the tariff of the income tax to small companies, there are other benefits worth mentioning:

- They are not subject to tax withdrawal during the first five years of existence.
- Approximately 35% of the amount that must be paid for payroll taxes and contributions (see section below) may be discounted from the income tax amount.
- Economic resources that may be provided by the government as initial capital of the company or as a company strengthening aid will not be considered as income or occasional gain for tributary purposes.

INTELLECTUAL (INDUSTRIAL) PROPERTY

General provisions governing intellectual property are contained in Decision 486 of 2000, a supranational law applicable to the signatory parties to the Andean Community of Nations (Bolivia, Colombia, Ecuador and Peru). This decision is regulated in Colombia by means of Decree 2591 of 2000 and also by regulation enacted by the Superintendence of Industry and Trade.

ACQUISITION OF RIGHTS

Rights over patents and trademarks are acquired in Colombia by means of their registration before the Superintendence of Industry and Trade. Such registration entitles the petitioner to prevent third parties to use, without authorization, the respective trademark or patent. The holder of the trademark and the patent is entitled to both judicial and administrative remedies.

APPLICATION REQUIREMENTS

Trademark and patent registration filings are effected through the completion and presentation of certain prescribed registration forms provided by the Superintendence of Industry and Trade for such purpose. Usually, these forms include, among others, the following information:

- Applicant's name, address, contact numbers and e-mail
- Name of legal representatives or agents filing the application on behalf of corporate entities and contact information
- For patents, an indication of the title and the name of the designer of the invention

- A brief description of the trademark or patent subject to the registration request
- For trademarks, a description of the products and services covered
- Indication of payment of registrations fees
- Applicant's signature

TERMS OF EFFECTIVENESS

Once trademarks have been registered before the Superintendence of Industry and Trade, such registration grants an exclusive right of use for a period of 10 years, which can be extended for additional successive terms of 10 years each. The cancelation of the registry is possible when there is a three years' lack of use and it is requested by an interested party.

The registration of new inventions entitles the holder thereof to an exclusive right to exercise its rights for a term of 20 years. The exclusive term for registered improvements to existing inventions and for industrial designs is 10 years. The foregoing terms are not extendable.

INDUSTRIAL PROPERTY OFFICE

The Superintendence of Industry and Trade is the trademark and patent office for Colombia. In addition, the Superintendence of Industry and Trade has the power to impose fines to any person (either legal entities or individuals) infringing industrial property rights, such as trademark and industrial property regulations, as well as unfair competition practices, business restrictive practices, consumer protection, and rules applicable to measurements (system of units).

LABOR LAW

EMPLOYMENT AGREEMENT

Under Colombian law, labor agreements may be fixed term or indefinite term. The trial period for the indefinite term of an agreement is a maximum of two months, after which the causes to unilaterally terminate the agreement by any of the contracting parties are exhaustively listed in the Colombian Labor Code.

Termination of the employment contract without a just cause results in the payment of an indemnification fixed by law. In fixed-term agreements, indemnification will be equivalent to the amount due for the remaining period. In indefinite-term contracts, indemnification varies depending on the salary and the time of employment. No other severance payment need be made by the employer upon termination of employment.

The following table shows the values of indemnification payable to employees, upon contract termination:

Number of Years Worked	Amount payable (expressed in days)
1 or less	30 days if salary is below 10 MMLS*
	20 days if salary is over 10 MMLS
1 or more	20 days per year/proportionately per year fraction if salary is below 10 MMLS
	15 days per year/ proportionately per year fraction if salary is over 10 MMLS

* Minimum monthly legal salaries

BENEFITS AND LABOR RIGHTS

By mid-February of each year, employers in Colombia have the obligation to make an annual payment to the severance fund (*Fondo de Cesantías*) chosen by each employee. This payment constitutes the yearly severance (*cesantía*), which is equal to one monthly salary. In addition to this annual severance fund payment, employers must pay directly to the employee an amount equal to 12% of the severance payments accrued during the immediately preceding calendar year. This payment must be made during January of each year.

There is also a service premium equal to one month's salary, payable in two installments. The first half-month's salary is payable on the last day of June and the other half during the first 20 days of December. If the employee has not worked during the entire calendar year, the service premium accrues on a pro rata basis for the time worked during each semester.

Employees are entitled to a minimum of 15 business days of vacation per year, which may be taken proportionally to the time worked. In any case, employees must take at least six days of vacation for each calendar year.

Minimum Monthly Legal Salary

Each year, the national government, in consultation with the industry trade associations and unions, sets the minimum monthly legal salary to be paid to employees during each calendar year. For 2012, the minimum monthly legal salary was set at COP566,700 (approx. USD315).

Payroll Taxes and Social Security Contributions

There is a comprehensive list of payroll taxes and contributions to the social security system that Colombian employers are obligated to make. These legal contributions are determined by reference to the monthly salary of each employee and amount to approximately 29.5% of the monthly salary. An additional contribution to the professional risks system must be made. This

payment varies between 0.348% and 8.7% of the monthly salary, depending on the types of risks to which the employee is exposed.

Foreign Employees

Foreign employees who acquire working connections in Colombia must obtain a temporary working or business visa, as required, which must be processed by the employer. If the visa obtained is in force for more than three months, the employee must also have an alien certificate issued by national migration authorities. Depending of the profession of the employee, it may be necessary to obtain a permit or favorable concept from the pertinent Professional Council.

Additionally, employers have the obligation to officially notify to the Colombian Migration Administrative Unite when hiring or firing a foreign employee, during the 15 calendar days following the determination.

TRADE

IMPORTS

Colombia has an open regime for the introduction of goods and services into its territory. Once the importer has received the goods, he may dispose of them freely, as long as the compliment with all the customs duties is verified. However, there are restrictions applicable to certain goods, namely:

- A permit from the Ministry of Agriculture and Rural Development, for goods such as bird meat, wheat, corn, sorghum and starch, among others
- Quota limitations for products such as bovine meat
- The use of a designated customs area for the introduction of fauna and flora
- Importation of guns and explosives is only authorized to defense authorities

EXPORTS – SPECIAL REGIMES

Additional to the fact that in Colombia exports do not cause customs duties, Colombian applicable regulations provide for several legal schemes that offer advantages to exporters.

Plan Vallejo

This is an export facility available upon request by any manufacturer, exporter or merchant that allows them to introduce raw materials and inputs destined towards the production of export goods with total or partial exemption for customs duties and VAT.

Temporary Importations for Re-exportation

This is a facility available to goods that are imported into the country with the purpose of being subsequently re-exported within a prescribed period of time, without being altered except for their own depreciation. Under such scheme, neither VAT nor customs duties are accrued over such goods. In the event that the goods in question are not exported within the prescribed period of time, then the goods are deemed imported into the country. At such juncture, payment of import taxes and duties will accrue.

International Leasing

This type of financing operation makes it possible to finance the temporary importation of capital goods on a long-term basis. Under such a scheme, a foreign company leases to a Colombian resident an asset in exchange for periodic rental payments.

This scheme offers the following tax benefits:

- Custom duties are payable in biannual fees for a maximum period of five years
- Leasing-related payments are VAT-free
- If the leasing is operational, the lessor may deduct 100% of leasing payments made abroad

Altex

Corporations labeled by the local tax authorities as Altex or large exporters (*Altamente Exportadores*) have tax benefits such as:

- Using depository facilities in order to conduct industrial alteration processes over goods, which allows the importation of raw materials and inputs and the deferral of custom duties and VAT
- Consolidating all shipments for the same product in one single export form
- Avoiding the actual inspection of goods in transit in the country, whether for import or export
- Becoming a permanent customs user

FREE CUSTOMS ZONES

Free customs zones are special-purpose areas within the national territory created to promote the industrialization and trade of goods and services within these areas. Any individual or entity intending to operate within the confines of these areas must request a prior authorization before the local tax authorities. Once this permit is granted, the investor will be afforded the following benefits.

Tax benefits:

- Income tax at a rate of 15% (subject to certain exceptions)
- Customs duties will not accrue for goods introduced and consumed within the special customs zone
- Goods transformed, manufactured or stored in the free zones are exempted from VAT

Foreign exchange benefits:

- Free possession and negotiation of currencies
- The possibility of maintaining currencies in deposits or bank accounts in national or foreign banks
- Foreign exchanges generated as a result of export operations need not be refunded into Colombia for tax purposes
- General access to national credit

FOREIGN TRADE

Colombia is party to a number of trade and preferential agreements that secure benefits for Colombian products that access certain foreign markets.

- Andean Community of Nations Agreement (CAN)
- Agreement of Economical Complementation between the member parties of CAN and MERCOSUR (Brazil, Argentina, Uruguay, Venezuela, Paraguay, and Bolivia, Chile, Colombia, Ecuador and Peru as associate members)
- CARICOM-Colombia Agreement of Preferential Tariffs of 1994, modified by the First Protocol of 1998

There is the also the Andean Trade Preference Drug Eradication Act entered into with the USA, which is in full force, and the Generalized System of Preferences adopted by the European Union, which gives some of our national products preferential treatments. Recently, Colombia and the USA have entered into a free trade agreement, the effectiveness of which has been in force since 15 May 2012.

The country is also part of the Multilateral Investment Guarantee Agency (MIGA) and the Overseas Private Investment Corporation (OPIC). Both of these multilateral organizations aim to promote investment in developing countries and support investors against threats of noncommercial risks such as political instability and foreign currency inconvertibility.

Colombia has entered into free trade agreements with Canada, the European Free Trade Association - EFTA (Norway, Switzerland, Republic of Iceland and Liechtenstein), Chile and North Central American Triangle (El Salvador,

Honduras and Guatemala). In fact, it has signed a Free Trade Agreement with the European Union that has not yet entered into force.

Colombia has entered into double taxation agreements with Spain, Switzerland, Chile and the CAN. These agreements are based on the principle of nondiscrimination, according to which the situation of the taxpayer cannot be made more burdensome than under national legislation. They regulate the taxing power over income tax and equity tax (when applicable). Indirect taxes like VAT or regional taxes like the Municipal Commercial Tax are not enshrined in these agreements.

In the last ten to fifteen years, Costa Rica has expanded its economy to include strong technology, services and tourism sectors. Its 2012 population was estimated at just over 4.6 million people.

The Costa Rican legal system is based on the Spanish civil law system with judicial review of legislative acts in the Supreme Court. Costa Rica is a democratic republic; the president is elected by popular vote for a four-year term. Legislative power is centered in the National Congress.

FOREIGN INVESTMENT

Costa Rica has long been recognized as a regional leader of social and economic development in Latin America. The Costa Rican government welcomes foreign investment. This positive attitude is backed by all major political parties. Since 1982, Costa Rica has consistently improved investment conditions. The Costa Rican Coalition for Development Initiatives (CINDE), an association of private sector leaders, actively promotes investment through offices located in several countries.

The last successive governments have been moving away from state controls and toward an open economy. A series of free trade agreements with nations like the United States, Dominican Republic, Mexico, Chile, Panama and China, are currently in force. A free trade agreement with Singapore has been signed and is waiting to be ratified by Costa Rican congress. Agreements with Japan, South Korea and others form part of the government's agenda. Also, a number of Bilateral Investment Treaties (BITs) have been signed.

In 2011, Foreign Direct Investment (FDI) represented 5.3% of GDP and FDI per capita reached USD467. Costa Rica ranks among the top countries in Latin America in both indexes (information obtained from CINDE).

MAIN RIGHTS

Foreign investors can freely convert and remit abroad any income generated in Costa Rica before payment of a withholding tax. Their capital investments can be repatriated at any time. No government approval or reporting of any kind is required.

Constitutionally, neither the law nor its application can distinguish or make differences of any kind between foreign or local investment. All investors are considered the same under Costa Rican law.

BUSINESS ENTITIES

Costa Rican law recognizes several structures for doing business, the following being the most common.

CORPORATIONS

Corporations are the most common entity given their structural flexibility. Partners' liability is limited to their capital contributions.

Minimum Capital Stock

There is no requirement on minimum capital stock, except for banks, financial and insurance companies and other specific companies such as stockbrokers.

Number of Shareholders

Since local laws define a corporation as a bilateral agreement, they must be formed by at least two parties. However, immediately after formation, a single party may legally own 100% of the shares of stock, without altering the legal status of the original corporation. Founding parties (and any shareholders thereafter) may be individuals and/or any type of registered legal entity, regardless of citizenship or domicile.

General Shareholders' Meeting

This is the corporation's governing body and is made up of shareholders. There are different types of shareholder meetings held for different purposes.

Ordinary

Annual meeting within the three-month period following the closing date of the tax year. Its purpose is to discuss and approve (or disapprove) the financial statements of the previous business year; distribution of earnings; appointment and/or revocation of officers; and any other matters provided for in the articles of incorporation.

Extraordinary

Meeting held at any time during the year for the purpose of resolving amendments, if any, to the articles of incorporation, for changes and issues regarding share capital, and all other subject matter and issues referred to in the law and the articles of incorporation. Preferred shareholders may hold extraordinary shareholders' meetings. Quorum rules are applicable for all above-mentioned meetings.

Board of Directors

Every corporation must have a board of directors comprised of a minimum of three individuals to hold the positions of president, secretary and treasurer. Additional board members may be appointed at will. Board members are not

required to be simultaneous shareholders and there are no nationality or residence requirements.

The president, as the statutory legal representative of the corporation, holds full power of attorney. However, if deemed suitable, other directors, as well as managers and outside individuals, may hold power of attorney of any kind to act individually or jointly on behalf of the company. The power of attorney to directors or officers other than the president may be limited or restricted to maintain the company's internal controls.

Board members are appointed at the initial shareholders' meeting upon formation of the corporation and from time to time thereafter. Appointments thereof are for fixed time periods at will and made in accordance with provisions set forth in the articles of incorporation.

Board resolutions are valid when approved by 50% of the members. Official board meetings may be held at any location outside the country when so provided for in the articles of incorporation.

Management

The company may have any number of managers appointed by the board of directors. The manager is liable to the company, shareholders and third parties for damages caused by nonfulfillment of obligations, fraud, abuse of authority or gross negligence.

Formal Requirements

In order to incorporate a legal entity, it is necessary to draft and execute a deed containing the articles of incorporation and the bylaws of incorporation before a notary public, publish notice of the incorporation in the official gazette and record the incorporation deed with the public registry.

LIMITED LIABILITY COMPANY

A limited liability company is comprised of partners whose liability is limited to their capital contributions. The LLC's legal structure is equivalent to the U.S. concept of partnerships, and thus qualifies as such for U.S. tax purposes. The owner of a Costa Rican LLC can "check-the-box" and consolidate its income or losses with a U.S. company as a pass-through entity. Incorporation procedures and costs for LLCs are very similar to those of corporations. However, there are a series of significant differences.

Minimum Capital

LLCs divide their share capital into what local regulations call quotas as opposed to shares. Unless specifically provided otherwise in the articles of incorporation, transfer of quotas requires unanimous consent of all partners.

Number of Quotaholders

Just as for corporations, LLCs must be formed by at least two parties. However, immediately after formation, a single party may legally own 100% of the quotas, without altering the legal status of the original corporation. Founding parties (and any stockholders thereafter) may be individuals and/or any type of registered legal entity, regardless of citizenship and domicile.

Quotaholders' Meeting

As has been stated for simple corporations, it is the corporation's governing body and is made up by quotaholders.

Management

The LLCs are run by one or more managers or assistant managers who hold power of attorney as provided for in the articles of incorporation.

BRANCHES

In addition to the aforementioned entities, foreign companies may conduct business in Costa Rica through branches of their parent company provided that the following requirements are duly met:

- Appointment of a legal representative(s) with full powers of attorney to act on behalf of the branch.
- Statement of the branch's corporate purpose.
- Statement of the parent company's
  - Corporate purpose
  - Share capital
  - Full names of all current officers and managers
  - Legal term
- Formal statement whereby it is fully represented and acknowledged that the proxy (that will act on behalf of the Branch) and the Branch itself shall be subject to Costa Rican laws and jurisdiction with regard to those acts performed or that shall be executed within the country and that, consequently, the parent company submits a waiver of the laws of its domestic jurisdiction therewith.
- The power of attorney must be notarized and legalized by the corresponding Costa Rican General Consul in the jurisdiction of the parent company where the power of attorney is granted.

JOINT VENTURES

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

TAXATION

The Costa Rican income tax system is based on the territorial principle whereby only income derived within Costa Rican territory and from Costa Rican sources is subject to income tax. According to Article 1 of the Income Tax Law, "a tax is imposed on occasional or continual revenues received by legal entities and individuals, obtained within the national territory, without regard for the recipient's nationality or domicile." The aforementioned law also imposes a levy on Costa Rican occasional or continuous revenues accrued or received by domiciled individuals and on any other type of income not exempt by law. Income obtained from foreign sources is not taxable in Costa Rica. The statutory tax year for companies starts October 1 and ends September 30 of the following year. However, in case of local subsidiaries and branches of foreign entities, the Tax Authorities may authorize the use of the parent company's tax year. Banks use a calendar year and similar authorization may be granted to certain companies with agricultural activities.

INCOME TAX

A tax is applied on all income earned in Costa Rica or from Costa Rican sources, regardless of citizenship, domicile, residence, place of incorporation or meetings of the board of directors from:

- Real estate transactions (as a trade or business)
- Assets, goods and rights invested or used in Costa Rica
- Commercial, industrial, agricultural and any other trade or business activities conducted within the country
- Services rendered within the country

Companies may deduct from gross income all costs and expenses necessary to produce taxable income as well as to protect investments. Expenses incurred to obtain exempt income are not deductible. If expenses produce both taxable and exempt income, the deduction is limited to the portion related to the production of taxable income.

Tax Authorities are empowered to deny the deduction of expenses if, by their judgment, any of the following criteria apply:

- Not considered necessary to produce taxable income
- Excessive or unreasonable
- Pertain to a different tax year
- Not supported by appropriate documentation
- Not registered in the accounting records
- Proper income tax not withheld at source (if applicable)

The Costa Rican Income Tax rate for legal entities is 30%.

VALUE ADDED TAX AND EXCISE TAX

The general sales tax is a value added tax levied on the sale of merchandise and the import of merchandise to Costa Rican territory. With the exception of certain services, most services are not subject to sales tax. This tax is assessed on value added and the final liability is calculated by subtracting total sales taxes paid on imports or purchases from total sales taxes derived from taxable sales during the same period. The sales tax is levied at the manufacturer, wholesaler, retailer or customs level.

All individuals, legal entities, and "de facto" companies, public or private that habitually sell merchandise or render specific services in Costa Rica, or that import or introduce goods into Costa Rica, are treated as taxpayers and must register as such with the Tax Authorities.

In addition to sales taxes, excise taxes apply to selected goods of importers and producers. The current general sales tax rate is 13%. The excise tax rates vary according to a table.

IMPORT DUTIES

Import duties are established in the Central American Customs System Book (SAC), whereby each type of good has a number or classification for customs purposes. The rates vary depending upon the classification of the goods.

Although import duties are normally subject to a maximum 20% and a base of 5%, certain "luxury items" (e.g., tobacco) still have customs duties that in some cases are close to 100% of the item's value. Moreover, there is a special tax (Law N° 6946) of 1% payable upon importation of certain goods.

Tax Treaties

There is a Tax Information Exchange Agreement (TIEA) between Costa Rica and the U.S. government. This treaty allows the establishment in Costa Rica of

Foreign Sales Corporations (FSC) as defined by the U.S. Internal Revenue Code Sections 921-927. Moreover, convention costs incurred in Costa Rica are fully deductible for U.S. tax purposes.

INTELLECTUAL (INDUSTRIAL) PROPERTY

Industrial property rights in Costa Rica are regulated by Law N° 7978 (Trademark Law) and Law N° 6867 (Patents, Industrial Draws and Models, and Utility Models Law) as well as the international conventions to which Costa Rica is party, like the Berne Convention for the Protection of Literary and Artistic Works, the Paris Convention for the Protection of Industrial Property, Patent Cooperation Treaty (PCT), Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and other WTO and WIPO agreements.

APPLICATION REQUIREMENTS

Applications for patents and trademarks must be in an application form containing the following information:

- Full name, exact business address, and place of incorporation of the applicant and of the inventor in the case of patent applications
- Title of the invention (patents) or name of the trademark
- Full description of the invention or trademark
- Statement of claims defining the scope of the protection requested (patents)
- List of products or services which the trademark intends to protect, and desired international class
- Other specific information required by law in certain cases

Nonresident applicants must designate power holder through a power of attorney.

TERMS OF EFFECTIVENESS

Patents are valid for a 20-year term from the date on which the application is filed. Trademarks are valid for a 10-year term from the date of the resolution granting the registration and can be renewed indefinitely for 10-year periods.

INDUSTRIAL PROPERTY OFFICE

The Industrial Property Registry (*Registro de Propiedad Industrial*) is the state agency in charge of granting and regulating property rights as well as enforcing industrial property laws to operate effectively in Costa Rica. The Industrial

Property Registry is judicially autonomous. Its decisions granting, refusing or revoking any industrial property right, or when solving disputes between parties, are administrative decisions that can be challenged with the courts.

LABOR LAW

HIRING OF EMPLOYEES AND LABOR CONTRACTS

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

BENEFITS AND LABOR RIGHTS

The Costa Rican Constitution guarantees basic rights conferred on the labor force within national territory. Such rights are specifically stipulated in the Constitution, the Labor Code and in other legal provisions. Those rights cannot be waived by any employee in Costa Rica. They include a one-day weekly rest and some holidays, and two weeks of paid vacation after 50 weeks of continuous service. Furthermore, one month's salary is paid in December as bonus for Christmas.

MINIMUM WAGE

Minimum wages are enforced for all labor activities. Such wages must coincide with an official cost-of-living index and are adjusted twice a year by the National Wages Council. The current minimum wage is approximately USD287 per month. Compensation structures may be chosen freely as long as the statutory minimum wage is observed.

HIRING OF FOREIGN EMPLOYEES

Foreigners without residency status or work permits are not allowed to work legally in Costa Rica. Local and foreign entities engaged in business activities in Costa Rica may apply for special authorization from immigration authorities to bring temporary labor into the country, namely high-ranking executives and/or technicians.

SOCIAL SECURITY SYSTEM

CCSS is a public institution accessible nationwide which, along with the Ministry of Health, works to promote the health of Costa Ricans. Mandatory contributions are established for both employers and employees, equivalent to 26.17% for the employer and 9.17% for the employee. Such contributions are

computed based on the employee's monthly salary. The social security system is comprised of two systems: 1) illness and maternity, and 2) disability, old age and death. Both systems are mandatory for all legally established employers and employees.

CCSS does not prevent employers or employees from creating or joining previously existing complementary pension, health or retirement plans.

TRADE

IMPORT RESTRICTIONS

Costa Rica has an open import law. No goods are banned due to their origin. Nevertheless, certain products such as foods, medicines, agrochemicals and some others require registration previous to import because of sanitary considerations. Import duties are established in the Central American Customs System Book (SAC), whereby each type of good has a number or classification for customs purposes. The rates vary depending upon the classification of the goods.

EXPORT REGIME

There are no restrictions to the export of goods. Exports are not taxed. Furthermore, there are several tax incentive systems, such as the Free Zone Regime, whereby the state grants a company a set of incentives for a period ranging from six to 18 years. The tax benefits include income tax exemption, duties exemption from goods and raw materials to be used in the production of export goods, sales tax, municipal tax exemptions and other important benefits. Free Zones are designed for the export of goods as well as services. Service Free Zones have become very popular for Shared Service Centers.

ENVIRONMENTAL LEGISLATION

Costa Rica has a very strong environmental legislation and government controls.

Main Environmental Regulations

In June 1994 the Costa Rican constitution was amended to include a new constitutional right: the enjoyment of a sound and equilibrated environment. Simultaneously, it mandated the state to guarantee, preserve and defend it. However, before this, the Legislative Assembly had enacted laws that regulated and protected certain environmental resources such as: the Water Law (1942), the Mining Code (1982), the Wildlife Conservation Law (1992), and the Hydrocarbons Law (1994), among others. After the constitutional amendment, the Organic Environmental Law (1995), the Forestry Law (1996), the Soil

Conservation and Protection Law (1998), and the Biodiversity Law (1998) were also approved.

Through these laws, international treaties, executed decrees and several government environmental administration agencies, Costa Rica controls and protects the environment, including but not limited to the following areas: integrated pollution prevention and control; soil pollution; waste; air emissions; climate change; fresh and sea water; forests; etc.

Costa Rica has a very well-defined environmental assessment process for all types of projects to be developed in the country. The environmental impact assessment process begins with a preliminary phase needed to determine the impact level of the proposed project. Based on this level, SETENA (technical administration agency) might require an environmental impact study or an environmental monitoring probe. After the interested party has submitted the documentation for analysis, if approved, SETENA grants the environmental license. Public consultation is reserved for certain projects which may potentially affect the environment in a significant way, for example: hydroelectric power projects, hydrocarbons exploration or exploitation, etc.

The Dominican Republic offers outstanding advantages to foreign and national investors. The significant incentives and facilities offered by the Dominican State complement the many inherent factors that make this Caribbean country an attractive target for investments.

The Dominican Republic is:

- A country with a long and consolidated democratic free enterprise tradition in the region
- The second largest country in the Caribbean region
- Beneficiary of preferential access to the United States and European Union
- The principal commercial partner of the United States in the Caribbean
- Member of the Multilateral Investment Guaranty Agreement
- Signatory to the Dominican Republic - Central American Free Trade Agreement (DR-CAFTA)
- A popular tourist spot in the Caribbean region
- A world-class model in the development of duty-free zones
- Fertile for agricultural harvest
- Rich in mining resources of bauxite, nickel, gold, silver and other materials
- A country with abundant, trainable and economic hand labor
- A country with social and political stability

The Dominican Republic Constitution establishes a democratic government divided into three powers, similar to the United States. Presidential, congressional and municipal elections are also held every four years. The current and recently elected President, Danilo Medina, was elected in May 2012. The Dominican Republic territory is divided in 31 provinces and one national district.

FOREIGN INVESTMENT

The Dominican Republic guarantees full convertibility and rights of repatriation of 100% of a foreign investor's dividends, after the payment of the corresponding applicable taxes. The Foreign Investment Law No. 16-95 of 1995 and its Ruling of Application No. 380-96 grants foreign investors exactly the same rights as domestic investors, eliminating any discrimination to the foreign investment, which is encouraged by the government. There are neither controls nor restrictions over the free conversion of currency.

Investment in the Dominican Republic generally has significant guarantees against political risks, inconvertibility and expropriation, granted by institutions such as the Overseas Private Investment Corporation (OPIC), the United States agency that provides financing and insurance for major international projects and the Multilateral Investment Guarantee Agency (MIGA), a World Bank agency.

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

AREAS OF INVESTMENT

Free Zones and Other Special Investment Areas[1]

A Free Zone is defined as an area under special customs and tax controls established by law. Companies in the Free Zones are authorized to produce goods and services destined for the external market., i.e., its export. The Dominican government acknowledges the importance of them for the generation of jobs and development of the country, and for that reason grants significant tax incentives to free zone companies, in accordance with Law No. 8-90 of Free Zones in the Dominican Republic.

Among these incentives are the following exemptions:

- **Taxes**, custom rights, tariffs, and any other incumbency, on the import of raw material, equipment, construction materials, edifications parts, office equipment, etc., so long as they are destined to habilitate or operate the Free Zones.

[1] It is important to point out that by virtue of the Article 27, paragraph 4 of the Subvention Agreement of the World Trade Organization, adopted in the Fourth Ministerial Conference of said organization, celebrated in Doha, Qatar, from the 9 to 14 of November of 2001, it is likely that by 2015 the National Council of Free Zones of Export (CNZFE) will review/withdraw some of the incentives contained in Law No. 8-90.

- **Income Tax**. Except those in which the Free Zone companies transfer or render services to individuals or legal entities in the Dominican Republic. This due to the fact that the transfer of goods and services by a Free Zone to the Dominican Republic is considered an import, and in that vein, in addition to the import tax stated in the Tariff of the Dominican Republic, regarding the specific good, the ex-fabric value, plus the services related to the movement of the cargo, the Tax to Selective Consumption (if applicable) and the Tax on Transfer of Industrialized Goods and Services, a 2.5% tax over the value of the gross sales made in the local market, must be paid, for the concept of income tax.
- **Transfer of Industrialized Goods and Services** (ITBIS) or added value of those goods acquired for the development of the operations of the Free Zone.

The exports are exempt, and the exporters have the right to deduct the value of the taxes of the goods used to make the imported goods. The goods and services transferred from the Dominican Republic to a Free Zone are treated as exports, and thus are exempt.

Over the past 20 years, Free Zones have become an important sector of the Dominican economy.

The Free Zone enterprises are classified in three categories:

- **Industrialized and of Services**. Those dedicated to the manufacture of goods and the provisions of services.
- **Border line**. Those that are necessarily located within 3 to 25 kilometers from the border line that separates the Dominican Republic and Haiti.
- **Special Free Zones**. Those that, due to the nature of their production processes, require for some of its operations, proximity to immovable resources (i.e., the industries may need to be established in a specific location near natural resources, or geographic, economic and/or infrastructure conditions may require them to be located at a specific spot). In these cases, Special Free Zones can be created. The incentives to special Free Zones last for 15 years, which can be renewed.

Different Types of Investment in Free Zones and the Procedure for Installing a Free Zone Company

Investors interested in the Free Zone segment can do so under the following methods:

- Establishing an Export Free Zone company;
- Establishing themselves as an operator of Free Zones;
- By investing in one or both of the above.

From the options described above, the most common one is the establishment of an Export Free Zone. Virtually all Free Zone applicants choose to apply by means of a special purpose corporate vehicle. All its shareholders can be foreigners.

The applicant corporation proceeds to negotiate and obtain a lease for the industrial building to be used at a Free Zone Park, taking into account factors such as available transportation facilities, labor force, and accessibility to sea and airports, among others. Some industrial Free Zone Parks are privately owned; others are owned by the governmental Corporation for Industrial Promotion (*Corporación de Fomento Industrial*).

The National Council of Export Free Zones grants authorization to qualified Free Zone businesses, upon receipt of the following:

- Request form for permit;
- Contract or letter of intent of lease of a Free Zone authorized park;
- Incorporation documents of the company, indicating the relation of the shareholders or partners, their nationality and contribution;
- Solvency letter or similar document that identifies the investors;
- Certificate check covering the costs of the permit issuance;
- Sample of the product that is going to be manufactured and the expectations of the jobs and investment that will be made.

TOURISM

The Dominican Republic, due to its stunning beaches and landscape, climate and privileged geographical location, has developed along different parts of its territory areas that are mainly devoted to tourism, one of the main sources of the national economy. The Ministry of Tourism is the entity responsible for ensuring the promotion of tourism in the Dominican Republic and the compliance with the provisions of the Organic Law of Tourism No. 541-69 and its amendments.

Within this sector, the areas that have been flourishing are related to the establishment of:

- Hotels, ruled by the Regulation No. 2115 of Classification and Standards for Hotel Establishments dated 13 July 1984, and its amendments.
- Restaurants whose legislation is Regulation No. 2115 of Restaurants' Classification and Standards dated 13 June 1984, and its amendments.
- Casinos, which are governed by Law No. 351 of Gaming Venues from 1964, and its amendments.

In consideration of the revenues that the tourism industry represents to the Dominican economy, the Law No. 158-01 of Promotion of Tourism Development, and its amendments, declared certain areas for the development of tourism activities that are of special interest for the Dominican government, and in order to encourage investment in them, awarded to companies domiciled in the country a series of exemptions, among which are included exemptions from taxes and import tariffs, income taxes, assets and the transfer of industrialized goods and services or value-added, for a period of 10 years. The Promotion Council (CONFOTUR) is the organism in charge of the enforcement of said law.

TELECOMMUNICATIONS

The development of the Telecommunications sector for the development of any nation in the world is vital. Previously, the only companies that rendered telecommunication services in the Dominican Republic were "CODETEL" and "TRICOM." In November 2000, the subsidiary of the France Telecom Group, Orange Dominicana, came to the Dominican Republic, and received a warm welcome. From then on, other companies have embarked as competitors in this segment. Currently the number of competitors in the telecommunications market has increased vigorously, and today we have more than 10 companies rendering telecommunication services. Among them are Orange, ONEMAX, Claro-Codetel, BEC-TEL, WIND TELECOM, TRICOM, VIVA and ASTER, among others.

Consequently, the participation of telecommunications in the Gross Domestic Product (GDP) has been, since 2008, over 15%.

This is a result of certain reforms adopted by the Dominican Republic since 1998. Specifically, the promulgation and publication of the General Law of Telecommunications No. 153-98, which promotes fair competition, effective and sustainable within the telecommunications sector.

The referred Law regulates the installation, maintenance and operation of networks, services and the provision of telecommunication equipment, and establishes the classification of communication services, which can be public or private. Likewise, it consecrates the secrecy and inviolability of communications and information issued through telecommunications services, except where any judicial intervention is involved.

The regulatory entity in telecommunications matters, created by said law, is the Dominican Telecommunications Institute (INDOTEL), and it is authorized to grant concessions to third parties for the provision of public telecommunications services, and licenses for the use of radio public domain, and to watch over the quality of the service rendered to the end consumer.

CONSTRUCTION AND REAL ESTATE SECTOR

Construction in the Dominican Republic has reached a considerable development level. The population growth has contributed to this impulse, which has been mostly vertical. Additionally, the Dominican Republic has increased the level of its public infrastructure, through the construction of elevators, bridges, highways and recently the Santo Domingo Metro, which is currently under construction of its second line. This segment of the economy is regulated by Law No. 675 of 1944, and its modifications, relating to Urbanization, Public Ornament and Constructions, and by Law No. 687 of 1982, about the Creation of an Engineering System, Architecture, and related branches.

Also by virtue of Law No. 189-11 for the Development of the Mortgage Market and Trust in the Dominican Republic, the creation of trusts for low-cost housing is conceived. These type of homes are described by the Law as housing units with a sales cost equal or inferior to two million pesos (DOP2 million), annually adjusted by inflation, that count with the participation of the public and/or private sector. In order to incentivize and stimulate the creation of construction trusts for the development of low-cost housing, the Law grants several tax incentives and exemptions.

REAL ESTATE SECTOR

Law No. 108-05 of 23 March 2005 on Real Estate Registration, and its modifications, establishes a system for the registry of ownership and other rights over real property. The Registry of Titles, as the organism in charge of the registry of the real estate rights previously adjusted, issues a Title Certificate to the name of the owner, which serves as justification for the right of ownership, irrevocably, perpetually, absolutely and enjoying the full guarantee of the State.

A real estate purchase is registered in the Registry of Titles corresponding to the jurisdiction in which the property is located. It is extremely important for

the prospective purchaser to request, prior to purchase, a copy of the Title Certificate to verify that everything is in order and the property has no registered mortgage or other encumbrance, and that the Title Certificate is transferable to the purchaser.

Acquisition of Real Estate Property by Foreigners

For a bit over a decade, foreigners, whether an individual or legal entity, can acquire real estate in the Dominican Republic, by complying with practically the same requirements as a Dominican national. Previously, Decree No. 2543, which was repealed by Presidential Decree No. 21098 of 19 January 1998, required foreigners to get an authorization from the President of the Dominican Republic before being able to purchase a property.

Currently, the Ministry of Interior and Police keeps a record of all real estate property in the Dominican Republic acquired by foreigners for statistical purposes only. Title Registrars, Civil Registries Directors and mortgage offices must send a copy to the Ministry of Interior and Police of every act or document whereby a foreign individual or legal entity (even if resident and domiciled in the country) acquires one or more real properties located in the Dominican Republic, within 15 days of receipt of same.

Film Industry in Dominican Republic

Law No. 108-10, for the stimulation of the Cinematographic Activity, modified by Law No. 257-10, has as its main purpose the stimulation and regulation of the creation, production, distribution, exhibition and cinematographic and audiovisual formation, and related technical industries, in the Dominican Republic. Likewise, and through said legal document, it has created:

- The General Direction of Cinema (DGCINE), whose main role is the promotion and incentivizing of the development of the national cinema industry, as well as other aspects related to cinematographic and audiovisual development;
- The Intersectorial Council for the Promotion of the Cinematographic Activity in the Dominican Republic (CIPAC), which works as a superior organ of the General Direction of Cinema (DGCINE); and
- The Cinematographic Promotion Fund (CIPAC), administered by the Board of the Intersectorial Council for the Promotion of the Cinematographic Activity (CIPAC), through the General Direction of Cinema (DGCINE), for the stimulation and permanent promotion of the national cinematographic and audiovisual industry, facilitates a system that provides financial support, warranties and investments for the benefit of the producers, distributors, merchants and exhibitors of national

film, as well as for the development of formative politics within the cinematographic environment.

Finally, it is important to highlight that the law for the stimulation of the cinematographic activity brings along considerable fiscal incentives from which any national or foreign individual or legal entity can benefit, that administers, generates, promotes or develops cinematographic plays and other audiovisual plays that comply with the requirements established by said law.

BUSINESS ENTITIES

Different types of legal vehicles have traditionally existed in the Dominican Republic to organize business. However, until recently, the predominant way to establish commercial operations was by setting up a Joint Stock Companies (Sociedades Anónimas). With the enactment of the General Law of Commercial companies and Individual Enterprise of Limited Liability, No. 479-08, and its modification through Law No. 31-11, new corporate means of doing business are made available to the current options that exist under the old, and partially overruled, Commerce Code.

While there are several corporate forms in the Dominican Republic, the most common corporate vehicles are:

LIMITED LIABILITY COMPANY (LLC)

An LLC can be formed with a minimum of two partners and a maximum of 50. Its corporate capital has to be of at least DOP100,000 and is divided into quotas of at least DOP100 that are represented in non-negotiable titles and the partners' responsibility is limited to the value of their contribution. All companies are subject to a tax payment of 1% of the incorporation capital.

While the quotas are freely transferable among partners, so long as the preferred rights among them is respected, approval of three-quarters of the rest of the quotaholders is needed to transfer the quotas to a third party.

LLCs are directed by one or more managers who necessarily need to be an individual, regardless of whether they are partners of the company or not, resident or not in the Dominican Republic.

An annual partners' meeting needs to take place within the three months after the end of the fiscal year. Nonetheless, and so long as it is stated in the bylaws, the rest of the decisions, or some of them, can be adopted through a written consult or by the consent of all of the partners, contained in an act with or without the need to have an in-person meeting. Likewise, the vote of the partners

can be manifested through any electronic or digital means, in accordance with the Law of Electronic Commerce, Documents and Digital Signature of the Dominican Republic, keeping evidence of said manifestation.

INDIVIDUAL COMPANY OF LIMITED LIABILITY
(EMPRESA INDIVIDUAL DE REPONSABILIDAD LIMITADA, E.I.R.L.)

An Individual Company of Limited Liability, as indicated by its name, can only be incorporated by one individual and its commercial name chosen freely. There is no minimum or maximum for its corporate capital and the company can be transferred as a business unit. The company is run by a manager who can be the owner itself or any other individual appointed by the owner. The manager must prepare an annual management report within three months of the closing of the fiscal year.

It works as a commercial entity in the sense that it has its own patrimony and full legal personality to develop any kind of business.

JOINT STOCK COMPANY *(SOCIEDADES ANÓNIMAS, S.A.)*

For its incorporation, a minimum of two shareholders is required, and there is no maximum. Its corporate capital must be at least DOP30 million and its shares, which are freely negotiable, must have a nominal value of at least DOP1.

The company is managed by a board of directors of at least three members, who can be a legal entity, except for the title of president, which necessarily has to be executed by an individual. For the other positions in the board, if a legal entity is designated, an individual must be appointed as a representative of the legal entity and that person will assume all the conditions, obligations and liabilities as if that individual was named director on its own name.

Also one or more surveillance officers called "*comisarios de cuentas*" must be appointed, and they must necessarily be an accountant, a business administrator, economist or financier, with three years of experience, and will hold their title for at least two fiscal periods.

An annual shareholders' meeting must be convened within 120 days after the closing of the previous fiscal year. Nonetheless, and so long as it is stated in the bylaws, the rest of the decisions, or some of them, can be adopted through a written consult or by the consent of all of the shareholders, contained in an act with or without the need to have an in-person meeting. Likewise, the vote of the shareholders can be manifested through any electronic or digital means, in accordance with the Law of Electronic Commerce, Documents and Digital Signature of the Dominican Republic, keeping evidence of said manifestation.

SIMPLIFIED JOINT STOCK COMPANY *(SOCIEDAD ANÓNIMA SIMPLIFICADA, SAS)*

This company type is incorporated with the participation of two or more shareholders, and there is no maximum number of shareholders that can be part of it.

The minimum corporate capital must be at least DOP3 million from which at least one-tenth (DOP300,000) must be paid-in. The value of its shares is established by the bylaws, and they can only be nominative.

The shareholders decide if the administration of the company is going to be through a board of directors, a president or single director.

An annual shareholders' meeting must be convened within 120 days after the closing of the previous fiscal year. Nonetheless, and so long as it is stated in the bylaws, the rest of the decisions, or some of them, can be adopted through a written consult or by the consent of all of the shareholders, contained in an act with or without the need to have an in-person meeting. Likewise, the vote of the shareholders can be manifested through any electronic or digital means, in accordance with the Law of Electronic Commerce, Documents and Digital Signature of the Dominican Republic, keeping evidence of said manifestation.

ESTABLISHMENT OF A FOREIGN BRANCH

Any foreign company that complies with the requirement for its incorporation in its country of origin can have a registered domicile in the Dominican Republic and obtain a Mercantile Registry at Chamber of Commerce and a Tax Payer ID, by depositing a certified copy of its articles of incorporation and bylaws and Mercantile Certificate Registry or similar document (duly notarized with the Apostille or legalized before the Dominican Consulate of the country where the commercial entity is incorporated), along with the minutes of the shareholders' meeting approving the establishment of a branch in the Dominican Republic.

Also, according to the General Law of Commercial companies and Individual Enterprise of Limited Liability, foreign entities are subject to registration in the Dominican Republic when, in accordance with the referred company law when doing any business in the Dominican Republic, and pursuant to the Law of Mercantile Registry, all commercial entities must be registered in the corresponding Chamber of Commerce, which will depend on the location of the domicile fixed in the Dominican Republic. Certificate Registry must be renewed every two years and updated as needed.

TAXATION

INCOME TAX

The Dominican Republic has a taxation system that is mainly territorial. In this sense, individuals as well as legal entities, nationals and foreign, are subject to tax payment of their rent originated from Dominican source.

Applicable Rate to Individuals

All persons whose annual income amounts to DOP290,243.01 will be subject to the payment of income tax of a rate of 15% to 25%, depending on the amount of their income. This amount is annually adjusted by inflation.

Applicable Rate to Legal Entities

An income tax rate of 29% is applied to legal entities domiciled in the country.

WITHHOLDING AGENT

The Dominican Tax Code requires that some persons, depending on their condition, act as withholding agents with regard to the taxable income that they pay to certain people, among which are:

- The employer with regard to the payments made to their workers every month, in accordance with the fixed rate established for each case;
- Commercial entities, 10% in relation to the dividend payment made from a Dominican source, disbursed to its shareholders, regardless of whether it's an individual, legal entity, foreign or national.

  The legal entities that acquire shares or quotas, 1% with regard to the value paid to the seller of the shares or quotas, whether an individual, legal entity, national or foreigner, which constitutes a payment to the tax on capital earning, generated in occasion to the sale, if applicable.
- The legal entities, with regard to the payments and commissions paid to individuals that are not dependent on them.

DIVIDENDS

A dividend is all distributions made by a legal entity to its shareholders or partners, by virtue of their participation, but does not include the distribution made in shares or quotas in favor of its shareholder or partner. The dividends from Dominican sources disbursed to individuals or corporations are taxed at a 10% rate.

A 10% withholding applies to all repatriation of local income from a locally established branch to its parent company abroad.

Foreign Payments and Tax Withholding in the Source

All payments or credits from Dominican sources made to persons neither resident nor domiciled in the Dominican Republic are subject to a withholding of 29%, with few exceptions.

Interest Paid

Payments or credits from Dominican sources proceeding from loans contracted with foreign institutions are subject to a withholding of 10%.

TAX ON ASSETS

Commercial entities must annually pay a 1% tax on all their assets. This payment can be made in two parts, with six months of separation from one another; the first payment is due at the same date as the income tax. A tax asset becomes a credit for income tax payments.

TAX ON REAL ESTATE PROPERTY AND TRANSFER

The tax on real estate property (IPI/IVSS) imposes a 1% annual rate on all real estate properties destined for living or commercial activities and/or those urban properties with no edification whose proprietor is a individual. This tax is applicable only to individuals. Real estate located in rural zones dedicated to agriculture labor, or properties that are worth less than DOP6.6 million, are exempt from payment of this tax.

Business entities pay taxes on real estate properties through the payment of the asset tax, in which all real estate property that the company owns must be included.

On the other hand, the transference of real estate property is subject to a fixed rate of at least 3% of the fiscal value of the property.

TAX ON TRANSFER OF INDUSTRIALIZED GOODS AND SERVICES – VAT TAX

The Tax on transfer of Industrialized Goods and Services *(Impuesto sobre Transferencia de Bienes Industrializados y Servicios, ITBIS*) or valued added tax, is set on:

- The transfer of industrialized goods that have been submitted to some type of transformation process (industrialization), including imports;
- The import of industrialized goods; and
- The provision of services and leases.

Individuals as well as moral entities that perform one of the activities enumerated above are subject to the payment of said tax, which rate is currently 18%.

The payment of this tax should be made within 20 days after the period to declare month by month, and in case of import, at the moment that the duty tax is paid. Late payments will incur surcharges and interest.

TAX TO SELECTIVE CONSUMPTION *(IMPUESTO SELECTIVO AL CONSUMO, ISC)*

In accordance with Title IV of the Tax Code, and its modifications, certain goods of national production, for its fabrication and import are held to a special tax, which falls exclusively on them, denominated Selective Tax to Consumption (ISC). These goods are:

- Alcoholic beverages
- Tobacco products
- Telecommunication services
- Payments made by check by entities of financial intermediation, as well as the payments made by wire transfers
- Insurance in general
- Petroleum products

NATIONAL REGISTRY OF TAXPAYERS

All individuals and corporations doing business in the country must register with the National Registry of Taxpayers.

Resolution of Tax Disputes

The decisions taken by the tax authority can, in most cases, be submitted for a revision process, and then through the different resources available in accordance to the Tax Code, before the Tributary and Administrative Court.

Infractions and Sanctions

The Tax Code defines tax offenses in detail. Misdemeanors include nonfraudulent tax evasion, delay, noncompliance by taxpayers as well as noncompliance by tax officials and other government employees. More serious infractions include tax fraud, clandestine trade of taxable products and falsification of values. Sanctions for these infractions range from revocation of licenses, business closing, impoundment and fines, up to imprisonment.

INCENTIVE LAWS

In order to promote and incentivize the investment, national or foreign, in some sectors of the economy, several laws have granted certain exemptions in the

payment of taxes that derive from the activity that is undertaken, from which we can name, among others, the following:

- Law No. 16-95 of Foreign Investment
- Law No. 158-01 of Encouragement to the Tourism Development for the Poles of Few Resources and New Poles in the Provinces and Localities of Great Potential
- Law No. 28-01 of Special Cross-Border Development
- Law No. 329-07 of Competition and Industrial Innovation
- Law No. 8-90 of Regulation and Encouragement of Free Zones
- Law No. 171-07 of Incentives to Retired and Renter of Foreign Source
- Law No. 57-07 of Renewable Energy
- Law No. 108-10 for the Promotion of the Cinematographic Activity

INTELLECTUAL (INDUSTRIAL) PROPERTY

The Industrial Property Law (Law No. 20-00 of 8 May 2000) represents a considerable legal and institutional advance and complies with the 1995 Marrakesh "TRIPS" Agreement. It promotes the dissemination and transfer of technology, and the socioeconomic and technological benefits for the country.

PATENTS

Every innovative idea that is the creation of human intellect and that can be applied in the industry field can be subject to a patent. Said innovative idea can refer to a product or a new procedure.

Patent applications are submitted with certain documents and information to the National Office of Industrial Property *(Oficina Nacional de la Propiedad Industrial-ONAPI)*.

Once the application is considered and approved, the National Office of Industrial Property proceeds to:

- Record the patent in the appropriate registry
- Provide the applicant with a certificate of the patent document
- Issue a duplicate of the patent registration document upon request by the patent owner

Licenses: The proprietor or applicant of a patent can grant exploitation licenses to third parties, and must deposit the contracts that grant them at the ONAPI.

Said entity can grant in some cases, if it deems it appropriate: mandatory licenses because of a refusal to negotiate; mandatory license for lack of exploitation; and/or mandatory license for anticompetitive practices.

Terms

The maximum duration of a patent registration is 20 years, contingent on the payment of an obligatory annual fee. Payment of the first fee is made before the beginning of the third year. Failure to pay the fee results in expiration of the patent.

TRADEMARKS

In accordance with the Dominican Law of Intellectual Property, a trademark is any sign or combination of signs subject of graphic representation apt to distinguish the products or services of a business entity, of the products or services from another business entity.

In order to obtain a trademark, the following documentation and information must be submitted to the National Office of Industrial Property:

- Name and domicile of the petitioner, or name and domicile of the representative of the petitioner, if the latter does not have a domicile or establishment in the country
- Name of the trademark in question if it is a nominative trademark
- A reproduction of the trademark if it is a styled, figurative, mixed or three-dimensional trademark
- Complete listing of the qualifying trademark categories, according to the International Classification of Products and Services of Nice, identifying the corresponding numbers
- Proof of payment of established fee

Terms

The registration of a trademark expires after a period of 10 years; however, it can be renewed for periods of the same duration. The registration of a trademark can be cancelled at the request of an interested party if said trademark hasn't been utilized in the country for over a period of three years.

LABOR LAW

In compliance with the Dominican Labor Code, all employers must submit records to the Ministry of Labor of each employee, along with work, salary, vacation schedules, inspections and overtime.

SALARIES

The Labor Code authorizes a National Salary Committee to establish the national minimum wage for different sectors. The wage scale is structured according to the size of the company the employee works for and the sector of industry in which they are involved.

HIRING OF FOREIGNERS

The law requires a labor contract to be filed with the Ministry of Labor before hiring foreigners to work in the country in order to determine if the contract is justified, i.e., if local personnel could not perform the work. This is a pre-requisite for residency. As a rule, contracts for technicians or management personnel are routinely approved. At least 80% of the total number of employees in a corporation must be Dominican nationals.

EMPLOYEE RIGHTS

The Dominican Labor Code confers certain rights to workers, including:

- A Christmas bonus (usually one month's salary)
- A profit-sharing bonus
- Paid vacation leave
- Severance and other benefits proportional to job tenure in the event of "unjustified" dismissal (the Code defines "just cause" in detail)
- Three months of paid maternity leave
- Special protection for employees engaged in forming a labor union

These rights are well known to the labor force in general and claims against employers are common. Labor Courts tend to favor the workers. Therefore, employers must be careful to adhere to the detailed provisions of the Code.

While Dominican workers are legally free to form labor unions, few have actually been established in free zone companies.

SOCIAL SECURITY

The Law No. 87-01 establishes the Dominican Social Security System *(Sistema Nacional de Seguridad Social, SDSS)*, through which a regime is destined to

guarantee, through the State and the citizens, that all the population is protected against the risks of aging, incapacity, suspension by advance age, survival, illness, maternity, childbearing and labor risks. Public organizations as well as private organizations participate in it.

In spite of there being three types of financing regimes, we will only comment on the contributing one, in which the employees (regardless of whether they are public or private) together with the employer distribute the cost of the social security. The contribution made in this regime is 9.97% of the employee's total salary, which is financed with an employee contribution of 2.87% and 7.10% contributed by the employer.

LAW NO.173 FOR THE PROTECTION OF THE AGENTS/IMPORTERS OF GOODS AND PRODUCTS

This Law aims to protect those individuals or legal entities that, within the Dominican Republic, are dedicated to the distribution of goods and services produced by foreign companies. The provisions of Law 173 are of public policy and, among other things, prohibit termination of the concession contract without just cause. It also sets out factors to be taken into account when calculating the compensation that corresponds to the concessionaire, in occasion to the damages that the termination of the contract of concession may cause, and these are quite favorable for the latter one.

In order to enjoy the privileges granted by the Law, it is necessary to register before the Central Bank of the Dominican Republic the foreign companies of which the concessionaire acts as agent through a request to that institution, which must include the name of the foreign company and its management, together with documents that prove the relationship between them.

Currently, contracts with the United States companies or individuals are outside the framework of Law 173 unless stipulated otherwise by application of DR-CAFTA rules.

TRUSTS IN THE DOMINICAN REPUBLIC

On 16 July 2011 Law No. 189-11 was enacted for the Development of the Mortgage Market and Trusts in the Dominican Republic, which in addition to other important matters, introduces the much anticipated Trust. In addition to said Law, several rulings have been enacted for the application of the different legal figures established by the Law.

The trust is defined by our Law as the act through which one or more people, individual or legal entity (called grantor(s)) transfer property rights or other real or personal rights, to one or more legal entities (trustee), for the incorporation

of a separate estate or trust estate. The trustee administers the estate in accordance with the instructions of the grantor(s), in favor of one or several people called beneficiaries, with the obligation to reinstate them once the extinction of said act, to the person designated in such, or in accordance with the law. The trustee cannot be designated beneficiary of the trust.

Only the following people can be trustee:

- The legal entities incorporated in accordance with the laws of the Dominican Republic, for the sole purpose of acting as trustee of trusts;
- The administrators of investment funds;
- The intermediary of values;
- The multiple banks;
- The associations of savings and loans; and
- Other entities of financial intermediation previously authorized to those ends by the Monetary Board.

Even though a trust can be created to serve any purpose or legal end that is not contrary to the morals, public order and good manners, the Law has identified and established six kinds of trusts:

- Succession Planning Trust
- Cultural, Philanthropist and Educative Trust
- Investment Trust
- Real Estate Investment Trust
- Public Offering of Securities and Products Trust
- Guarantee Trust

Likewise, it is important to point out that the creation of a trust comes with certain tax exemptions, such as the transfer of assets to the trust by the grantor, which will be exempt from income tax and the tax of capital earning, in the cases that are applicable.

ENVIRONMENT

The hope of achieving the conservation, protection, improvement and restoration of the environment and natural resources while ensuring their sustainable use prompted the enactment of the General Law of Environment and Natural Resources, No. 64-00. Additionally, the Dominican Republic has different regulations for the specific protection of the various natural resources that are part of the environment. The agency responsible for enforcing the rules related to the environment, ecosystems and natural resources is the Ministry of Environment and Natural Resources.

For its part, Law No. 64-00 provides that any project, infrastructure work, industry, or any other activity which by its nature can affect, in one way or another, the environment and natural resources must obtain a permit or an environmental license, depending on the magnitude of the effects that it may cause, for which the payment of a bond is mandatory.

This law also provides tax incentives to investments destined for the protection of the environment or its improvement and the sustainable use of natural resources.

Finally, the Ministry of Environment and Natural Resources is empowered to impose administrative sanctions such as fines and the limitation and restriction of activities that cause harm or risk to the environment, the confiscation of objects used to cause them, and in extreme cases partial or total closure of the premises where the violation takes place. For its part, the court may punish the violations of the law and committing environmental crimes with imprisonment of six days to three years.

PUBLIC PROCUREMENT

The hiring of public works and concessions, as well as purchase and procurement of goods, services, consulting and rent with option to own and leasing, is regulated by Law No. 340-06 of Procurement and Contracting of Goods, Services, Construction and Concessions and its amendments, and its ruling of application, the Decree No. 543-12 of 6 September 2012, enacted by the President Danilo Medina (this decree revokes and replaces the previous Decree No. 490-07, of Procurement and Contracting of Goods, Services, Construction and Concessions).

The contracts are subject to one of the following procedures:

- Competitive bidding
- Restricted tendering
- Draw works
- Direct purchase or contracting
- Price comparison
- Minor purchases
- Reverse auction

On the other hand, concessions can only be granted through public bidding, whether national or international, and they can be made by nationals, foreign or both, but its convocation must always be made by a convocation published in the national press. The duration of the concession can never be greater than 75% of the usefulness of the good, work or service.

No sale, contract or granted concession enjoys automatic exemption of taxes and tributes; for that, the approval of the same by the National Congress is required.

MONETARY AND FINANCIAL SYSTEM

Under the provisions of the Monetary and Financial Law No. 183-02, the Monetary and Financial Administration consists of:

- The Monetary Board
- The Central Bank of the Dominican Republic
- The Superintendence of Banks of the Dominican Republic

The previously mentioned law has two objectives, one relating to the regulation of the monetary system on the stability of currency, and the other directed to the regulation of the financial system, dedicated to ensuring compliance with the liquidity conditions, solvency and management that any financial intermediary institutions must fulfill.

Among the most significant contributions in the law are:

- The free convertibility of national currency against other currencies;
- Allowing the participation of foreign investment and financial intermediation through representative offices;
- Requiring institutions of financial intermediation, for the purpose of protection of the individual, the obligation of banking secrecy about which they receive deposits from the public. In this sense, they must publish the price of the various services they provide to their customers;
- Creating rules to protect users of banking services;
- In order to ensure transparency in the management of financial intermediation entities, documents related to transactions must be retained for a period of 10 years after the transaction. They should also make public their financial statements.

SECURITIES MARKET

In order to promote the development of the Securities Market, produce the increment of the offer and demand for securities that respond to the necessities of the economy, secure and organize an efficient and transparent securities market, Law No. 19-00 of Security Market, and its Ruling for use, were enacted. The organisms in charge of overseeing the law are the Securities Superintendence (*Superintendencia de Valores*) and the National Board of Securities *(Consejo Nacional de Valores)*.

In order to make a public offering of securities, the following steps need to be taken:

- Request to the Securities Superintendence to approve the public offering;
- Register as issuer, and register the securities in the National Registration of Securities, Exchanges and Products;
- Proceed with the negotiation of the securities.

Among the main dispositions of the law are:

- The regulation of the participants that take part in the market
- The obligation to keep all private information secret
- Giving the Superintendence of Securities *(Superintendencia de Valores)* the faculty to impose administrative sanctions that range from DOP50,000 to DOP1 million; if there is recidivism, sanctions can be doubled. In addition to these sanctions, the courts can impose a fine from DOP500,000 to DOP10 million and imprisonment from six months to two years, depending on the severity of the infraction.

On the other hand, Law No. 189-11 for the Development of the Mortgage Market and Trusts in the Dominican Republic states that the financial entities that are authorized to operate in the Dominican Republic by the corresponding organisms, can issue values of public offering for capturing resources destined to the mortgage financing of housing and the construction sector, such as: (i) mortgage letters; (ii) mortgage bonuses; (iii) mortgage bonds; (iv) contracts of mortgage participation; (v) mutual endorsable mortgages; (vi) mutual mortgages non-endorsable; (vii) shares of closed funds of investments and mutual funds or open; (vii) values of trusts; (ix) security mortgage values; and (x) those other values authorized by the Monetary and Financial Authority.

The mortgage loans that are financed through the values and instruments listed above cannot be seized, nor encumbered by creditors of the entity of financial intermediation which originated of the loans list, and issuer of the values backed by same.

MONEY LAUNDERING

In accordance with Law No. 72-02 against the Laundering of Assets from Illicit Traffic of Drugs and Controlled Substances and other serious infringements, a person is involved in money laundering when he or she transfers, acquires, possesses, manages, hides, conceals or prevents the determination of those real property, funds or instruments that are the product of a serious offense, and is aware of it. People who are associated or facilitate the commission of such activities are also guilty of money laundering.

On the other hand, some obligations, designed to prevent money laundering, are imposed to different persons, such as:

- Customer identification and/or third party beneficiaries
- Reporting of cash transactions exceeding USD10,000
- Reporting suspicious transactions
- Retaining documents that support in detail the transaction, for a period of 10 years, among others.

The infractions established in the law are punishable with imprisonment for three to 20 years and fines.

BUSINESS PRACTICES: RIGHTS OF COMPETITION AND CONSUMER

Antitrust

The Dominican Republic's Constitution consecrates the right to free enterprise, trade and industry. Law No. 42-08 on the Protection of Competition for its part, and in order to promote effective fair trade, competition and commercial good faith, forbids monopolies and prohibits those involved in the economic activity of markets (whether individuals or business entities) any action that causes damage to the benefit of consumers and users of goods and services in the country, among which are the following:

- Anticompetitive agreements
- Abuse of dominant position
- Acts of unfair competition

The National Commission for Competition Defense is the entity created to ensure the compliance of said law.

Bribery in Commerce and Investment

Bribery in commerce and investment is sanctioned by Law No. 448-06. Said law sanctions individuals and/or legal entities that offer, promise or grant to a public authority some sort of payment or benefit in return from said functionary not making or making a pertinent act to the exercise of his/her functions that affects the commerce or investment, national or international. The sanction to these actions, for the public functionary as well as the briber, is three to 10 years of imprisonment and the payment of the corresponding fine. Additionally, the briber can be disqualified from the exercise of the commercial activity for a period of two to five years. In the event that the briber is a moral entity, the imprisonment reaches its legal representative and the entity is condemned to its closure or intervention for a period of two to five years. The recidivism of these actions is punished with imprisonment and more severe fines.

CONSUMER RIGHTS

In order to guarantee an equal relationship among providers, consumers of goods and users of services, Law No. 358-05 of Protection of Rights to the Consumer or Users was approved. This law, in addition to creating the National Institute of Protection of the Consumer Rights (Pro-Consumer) *(Instituto Nacional de Protección de los Derechos del Consumidor "Pro-Consumidor")* to guarantee the fulfillment of the dispositions contained on it, recognizes in favor of the consumers or users of services, fundamental rights that the providers must comply with, such as the creation of a mechanism for the consumers or users of services so they can claim the rights that the law grants them. It favors the consumer whenever there is a need interpreting the law or on any contract of sale of products or services.

For the specific case of adhesion contracts, they must be deposited in the Executive Direction of Pro-Consumer, having the faculties to request that the provider modify clauses that generate obligations that are contrary to the rights and interests of the consumers and users. Likewise, the consumers or users can request the review of standard form contracts. In this vein, the following clauses are considered void:

- The ones that limit or reduce the responsibility of the provider in regard to the defects or vices of the products or services;
- Those that cause some sort of limitation or renouncement of the rights that the law recognizes to the consumers and users, or excessively favor the rights of the provider;
- Exclusively imposes the use of alternative conflict resolution;
- Allow the provider the modification without previous notice to the terms and conditions of the contract, among others.

In terms of the rights that the law recognizes to the consumer or user of services, it emphasizes the right of safety, guarantee, education and information for the consumption and use of the goods and services. The exercise of this right forces the providers to provide the consumer or user, on the label or similar support, in the Spanish language, clear form, accurate, suitable and sufficient information to ensure the preservation of health, security and economical interests of the consumer or user of services, so the consumer is able to make an adequate and reasonable choice.

Finally, this law establishes the joint civil liability of manufacturers, importers, distributors, retailers, providers and the other people that intervene in the commercialization of goods and services, in front of the consumers and users of services, with regard to the losses and damages that they might suffer, as a result of the use of the product or service given.

TRADE

With the approval of the Dominican Republic – Central American Free Trade Agreement (DR-CAFTA), the implementation of which began on 1 March 2007, there is a broadening of the commercial perspectives of the Dominican Republic and a strengthening of the commercial relationship with the United States and the other five signatory parties.

Among the objectives and benefits of the DR-CAFTA, we can mention:

- The strengthening of the relationship with the world's largest economy
- The elimination of commercial obstacles and the smoothness of trans-border transactions among the signatory parties
- The promotion of conditions of loyal competition within the free trade zone
- The increase of investment opportunities
- The creation of a trustworthy environment with straightforward commercial and investment rules
- The strengthening of the institutions
- The stimulation of commercial ventures
- The enforcement of transparency in public procurement

The scope of the agreement includes commercial transactions of products and services and it contains provisions that stimulate investment, as well as the protection of intellectual property rights, access to government contracts and respect to labor and environmental laws. It also contains norms that stimulate transparency and the solution of controversies arising out of the commercial exchange among the signatory parties.

Among the other relevant treaties and agreements that the Dominican Republic has signed and that contribute to its commercial development are:

Agreement of Economic Association between the European Union and the Cariforo countries *(Acuerdo de Asociación Económica, AAE)*, which was signed by the Dominican Republic on 15 October 2008. The purpose of this treaty is to help the countries of the Cariforum State to give the necessary steps to achieve the sustainable development of their nations, throughout and also in order to accomplish the increase of investments and the initiative of the private sector, to improve the commercial politics of the states of the Cariforum and the matters relating to commerce, their integration in the global economy, the elimination of poverty, among others.

To these ends, the signing parties of the European Union, from the moment of the subscription of the agreement, agreed that the imported goods that came

from the countries that conform the CARIFORO (CARICOM and Dominican Republic) will be free of tariff, while the CARIFORO nations will be doing it gradually

Additionally and within the objectives of the agreement is the intention of strengthening the relations between the signing parties, which will aid the Dominican Republic to depend less on the United States economy.

Free Trade Agreement Dominican Republic – CARICOM. This agreement was subscribed between the Dominican Republic and 13 countries of the Community of the Caribbean. It was subscribed on 22 August 1998, and put into effect on 1 December 2001.

In terms of the lowering of the tariff duties of the products imported by the signatory parties, and due to the inequality of the economic development of some of the parties, two regimes were established: (a) one that reaches the Dominican Republic and the most developed nations of the CARICOM, in which the relationship is reciprocal, and free of duty tax; and (b) another, with the less developed nations of the CARICOM, where the relationship is asymmetrical and the Dominican Republic is treated as a favored nation.

If there is any discrepancy between the dispositions of the AAE and this agreement, the disposition on either one of them that establishes the most freedom in commerce will be the one that will be applied.

On the other hand, imported products that were manufactured in a Free Zone will be encumbered with the tariff of favorite nation.

Free Trade Agreement between the Dominican Republic and Central America. This agreement was undersigned by the Dominican Republic on 16 April 1998, and was put into effect in 2001. This agreement established the elimination of the duty tax on goods imported by the signing parties. In case a clause of this agreement and the DR-CAFTA are contradictory, the disposition on either one of them that establishes the most commercial freedom will be the one that will be applied.

Agreement of Partial Reach Between the Dominican Republic and the Panama Republic. This agreement was subscribed on 1985; however, it was put in effect in 2003. This agreement has the peculiarity that it contains a list of products that are free from tariff by both parties, a list of products that are free from duty tax only by the Dominican Republic but not by the Panama Republic, and another list of products that are not held to duty tax by the Panama Republic, but not by the Dominican Republic.

RESIDENCY/IMMIGRATION

The process for obtaining a Dominican residency begins with obtaining a temporary residence visa, granted by the Ministry of Exterior Relations of the the country of origin of the individual, followed by the permanent residency and finally naturalization and citizenship. A special regime applies to investments residency requests.

APPLICATION FOR NATIONALITY

Law No. 1683 of 21 April 1948 and its amendments establish the time frame needed, depending on the circumstances of each case, in order to be able to request the Dominican nationality. The time frames required are usually between six months of legal residency in the country to two years. Travel outside the country for less than a year, with the intention to return, does not interrupt the continuity of the period of residency. The application is made via the Ministry of Interior and Police and eventually granted by Presidential Decree. The procedure typically takes 12 to 18 months.

CONFLICT RESOLUTION

The judicial administration of the Dominican Republic is placed in the hands of the Judicial Branch, which is comprised as follows:

- First Instance courts (civil and commercial or criminal)
- Courts of Appeals
- Supreme Court of Justice

Additionally, there are specialized courts that deal only with those matters that the law expressly grants them faculty, such is the case of Labor courts, Family court, District Court of Girls, Boys and Teenagers, Real Estate Jurisdiction, Administrative and Tributary Court, Superior Electoral Court and Constitutional Court.

A foreigner that doesn't have a legal domicile in the country, unless it is a commercial entity duly registered in the Dominican Republic, must present a *judicatum solvi* bond before it is able to introduce a claim, in order to guarantee any damage that the lawsuit could cause to the local party, unless the latter renounces this right. Parties may waive this bond in a contract.

The Dominican courts can rule on any infraction caused by a foreigner in our country, and those conflicts that rise from commercial relationships where the Dominican jurisdiction is chosen as the forum for the resolution of conflicts between the parties.

ALTERNATIVE CONFLICT RESOLUTION

Among the different types of alternative conflict resolution are mediation, conciliation, and arbitration; the most predominant are conciliation and arbitration.

The conciliation is very utilized in our country, mainly due to the fact that some areas, such as labor suits or claims under the Protection to the Consumer Law, for example, require that a conciliatory phase must take place before going to the Dominican justice system.

Additionally, the use of arbitration to settle conflicts that arise in commercial activities keeps growing. Due to this, the Law of Commercial Arbitration, No. 489-08 was enacted. This law overrules the articles of the Civil Procedure Code that previously reigned on the matter.

This law is applied to all arbitration that takes place in the Dominican Republic, whether parties are nationals or internationals.

RECOGNITION OF ARBITRATION AWARD AND APPLICATION OF FOREIGN RULINGS AND AWARDS

If the forced execution of the arbitration award is needed, it will be required to the Court of First Instance of the place it was dictated.

On the other hand, the decisions that come from competent foreign authorities, including those taken by courts or foreign arbitrators, are executable in the Dominican Republic, as long as the party that seeks the execution requests to the Court of First Instance of the Dominican Republic, the corresponding executor.

Situated on the northwest coast of South America, the Republic of Ecuador encompasses an area of approximately 256,549 square kilometers, or 99,438 square miles.

Ecuador is a constitutional, democratic, sovereign and independent state.

The 2008 Constitution mandates that the president stay in his functions up to a four-year term and can be reelected only one time.

The legislative branch of the state is the National Assembly, which is integrated by assemblymen elected for four-year terms. The judiciary is comprised of the National Court of Justice, Provincial Courts, Appeals Courts and the Constitutional Court.

The total population of Ecuador is 14,483,499 (2012 estimate). Spanish is the official language of Ecuador and many people are familiar with English in the main cities. The U.S. dollar was established as Ecuador's official currency in March 2000.

FOREIGN INVESTMENT

The Ecuador State promotes national and foreign investments, giving priority to national investment.

Ecuador has gradually been liberalizing its investment climate by opening free trade zones and promoting assembly (*maquila*) plants. It has also increased incentives for investment in existing domestic industries.

PRINCIPAL REGULATIONS ON FOREIGN INVESTMENT

Decision 291 of the Andean Community (CAN)

In conformity with Decision 291 of the Cartagena Agreement—now the Andean Community—the owners of direct, subregional or neutral foreign investment are entitled to transfer abroad the net benefits of their registered investment; similarly, they have access to all promotional mechanisms under the same conditions as national business companies, and are entitled to transfer abroad, in freely convertible currencies, under the terms stated in Ecuadorian legislation, proven net profits originating from their investment.

Agreements and International Treaties

Similar investment protection treaties have been signed with the United States, Argentina, Bolivia, Canada, Chile, China, Costa Rica, El Salvador, Spain, Honduras, Nicaragua, Netherlands, Peru, Dominican Republic, Romania, Russia, Italy, Switzerland, Uruguay and Venezuela.

Ecuador has signed the Reciprocal Promotion and Protection of Investment Multilateral Treaty with the following: MIGA (Multilateral Investment Guarantee Agency), OPIC (Overseas Private Investment Corporation), CII (Interamerican Investments Corporation) and CAN (Andean Community of Nations).

Juridical Stability Agreements

In the Supplement to Official Gazette No. 351 of 29 December 2010, the Organic Code of Production, Trade and Investment was published, which has the purpose, among others, to ensure and encourage all forms of private investment in productive and environmentally acceptable and desirable services.

This Code's objective is also to regulate and promote foreign trade and direct investment while increasing competition in the local economy. In addition, this law promotes the efficient use of the country's productive resources, to promote sustained development and integrate Ecuador into the international economy, contributing to the welfare of the population.

With this Code, the government stimulates needed coherence between the government's various foreign trade, taxes, customs, monetary, credit and social-economic development policies, and required corresponding norms.

Exports are exonerated of all taxes (except for cocoa, coffee, bananas and hydrocarbons). Imports are subject to customs duties (if applicable), value added tax, special consumption tax, and compensation rights. Additionally, anti-dumping or temporary safeguard measures adopted to prevent disloyal trade practices (framed within the WTO norms) may be applicable as indicated and the rates for services effectively provided.

ACQUISITION OF LAND BY FOREIGNERS

Foreigners have no limitations on the acquisition of lands according to the Ecuadorian Law.

Residency Requirements

Every foreigner who wishes to reside in Ecuador (either on a temporary or permanent basis) must obtain the corresponding visa. Immigrant visas are processed at the Immigration Services Bureau. The Foreign Relations Ministry processes nonimmigrant visas.

The Law of Migration and Foreign Affairs includes two general migratory categories:

- (Resident) Immigrant known as category 9
- (Renewable) Nonimmigrant known as category 12. The Ecuadorian residence card is not granted for this kind of visa.

Migratory Category 9

Immigrant Visa	**Granted to:**
9-I	Retired persons who receive pensions from their native countries.
9-II	Real estate and securities investors who bring certificates, estate bonds or bonds from national credit institutions.
9-III	Those who invest capital in any branch of the industry, agriculture, cattle farming or export commerce in a stable manner different from a shareholder company.
9-IV	People who take on administrative, technical or specialist duties in an indefinite manner in companies, institutions or entities established in the country.
9-V	Professionals with university degrees recognized by a national university.
9-VI	Dependents

Migratory Category 12

Nonimmigrant Visa	**Granted to:**
12-I,II, III	Diplomats accredited by their embassy who possess diplomatic identity cards issued by the Ecuadorian Ministry of Foreign Affairs; or international organization officials or employees. These visas are granted for a fixed duration (usually one year) and can be renewed throughout the diplomat´s assignment in Ecuador.
12-IV	Persons politically persecuted in their country or war refugees. This visa is granted in accordance with valid international treaties. The Ecuadorian Ministry of Foreign Affairs retains complete discretion on whether to grant this visa, and for how long.

12-V	Adult students and close relatives. A student registration certificate must be accompanied by a 12-V visa application.
12-VI	Temporary foreign technicians, managers, special powers of attorney; this visa, granted by either a consulate or the Foreign Relations Ministry, must be renewed yearly.
12-VII	Missionaries and religious volunteers. A letter from the religious institution, duly acknowledged in Ecuador, is required.
12-VIII	Intercultural exchange participants; this visa, granted by either a consulate or the Foreign Relations Ministry, must be renewed yearly.
12-IX	Trade Acts (Business).
12-X	Temporary resident (only one entry).

In addition to a visa, nonresidents wishing to work in Ecuador (for an individual or company) must first obtain a corresponding work permit from the Ministry of Labor and Human Resources.

ENVIRONMENTAL REQUIREMENTS

In order to undertake any activities involving environmental risks, the corresponding license granted by the Ministry of the Environment must be obtained, as well as the corresponding permits issued by municipalities, if applicable. This license must be issued after an environmental risk study has been undertaken.

COMPETITION AND ANTIMONOPOLY REGULATIONS

In general, existing Ecuadorian legislation prohibits monopolies. Ecuador currently has a fairly recent antitrust law called Act Regulation and Control of Market Power, which was published in the Supplement to Official Gazette No. 555 of 13 October 2011, and whose main objective is to prevent, correct, eliminate and punish the abuse of economic operators with market power, prevention, prohibition and punishment of collusive agreements and other restrictive practices, the regulation and control of economic concentrations, and the prevention, prohibition and punishment of unfair practices, seeking efficiency in markets, fair trade and general welfare. Additionally, the Modernization Law (promulgated at the end of 1993) and its regulations (issued in 1994) establish the basis for eliminating monopolies. This law sets forth the

rules and regulations for delegating traditional state-run economic activities to private or mixed companies.

Ecuador currently applies a regulation for the protection of free competition. Decision 608 published in Official Register 558 dated 27 March 2009 of the Andean Community contains several dispositions aiming to protect and promote free competition in the Andean Community and in Ecuador, thereby seeking efficiency in markets and the well-being of consumers.

BUSINESS ENTITIES

Laws governing commerce and companies (as well as the Civil Code) regulate business operations in Ecuador. Ecuadorian law allows for the following business organizations:

- Stock Companies
- Limited Liability Companies
- Branch of a Foreign Corporation
- General Partnership
- Limited Partnership
- Mixed-economy Companies
- Sole Proprietorship

The law also acknowledges temporary companies and joint accounts.

After completing a special domicile application and procedure, foreign corporations may establish branches in Ecuador. Foreign corporations may be shareholders in Ecuadorian limited liability companies provided that their capital is represented only by shares or nominative social parts, meaning, issued in favor or on behalf of their partners or members and under no circumstances to the holder.

The Superintendence of Companies regulates all forms of business organization, receives the annual financial statements and reviews compliance with existing regulations. All financial institutions are regulated by the Superintendence of Banks.

In the Official Register (Supplement) dated 26 June 2009 it is established that in order to qualify as a supplier or possible seller of a juridical entity with the state, all juridical entities, their shareholders, members and associates must not have their domicile registered in a tax haven and if so, this shall lead to immediate disqualification.

CORPORATIONS

Known in Ecuador as a *Sociedad Anónima*, a corporation is a legal entity whose capital is divided into shares, and may be closely held or traded publicly on the Ecuadorian Stock Exchanges (in Quito and Guayaquil). Initial share capital must be divided among at least two shareholders.

Once executed and notarized, a corporation's constitution, bylaws and deeds of incorporation must be submitted to the Superintendence of Companies (or Banks) for approval and recording in the Trade Register. Corporations must maintain a minimum capital (payable in cash or in kind) 100% fully subscribed and at least 25% of this payment must be made upon formation.

The general board is the corporate body that governs and is formed by all partners of the entity. Their resolutions must be approved by the majority of capital present at the meeting. Regulations may also include a board of directors (this is not compulsory) in order to establish powers.

LIMITED LIABILITY COMPANIES

A limited liability company (LLC—*Compañía de Responsabilidad Limitada*) is formed upon the approval of its articles of incorporation by the Superintendence of Companies and the subsequent publication of a corresponding extract in a local newspaper of major circulation.

At start up, LLCs must have at least two and no more than 15 partners. LLCs require a minimum start-up capital. At least 50% of the initial capital must be paid upon formation with the remainder to be paid within one year.

The liability of LLC partners is limited to the amount of their capital contributions. LLC shares cannot be transferred without unanimous approval of all partners. Although foreign individuals may be partners in an LLC, foreign corporations are prohibited from participating in this type of enterprise.

The general assembly (*Junta General*) is the LLC's governing body and is comprised of all the entity's partners. Its resolutions must be approved by a majority of the capital present at a meeting. The general assembly must meet at least once every year and 10% of the members can call for an assembly at any time. The assembly must also appoint one or more administrators to act on its behalf. The administrators must submit financial statements to the partners within 90 days of the end of the fiscal year.

A limited liability company may be set up for any type of commercial or professional operation except for banking, insurance and finances.

FOREIGN CORPORATION BRANCH

In order to establish a branch operation in Ecuador, a foreign company must first comply with the following requirements:

- Provide proof that the company is legally constituted in its country of origin
- Prove that its constitution allows it to conduct operations abroad
- Appoint a permanent legal representative with full power of attorney to represent the company in Ecuador
- Establish the branch with the minimum capital required by law (currently USD2,000).

The foreign company must maintain the minimum capital requirement in an Ecuadorian bank until the Superintendence of Companies has authorized the branch to do business in Ecuador. Branches are generally subject to the same legal regulations and obligations as any other Ecuadorian company. For legal purposes, the holder of the parent company's power of attorney generally manages the branch. Liquidation of a branch will be initiated if its accumulated losses total 50% of the branch's capital unless the parent company supplies additional capital.

TAXATION

Companies doing business in Ecuador are taxed on their transactions and activities. Principal taxes include income, VAT, consumption, currency outflow tax, and other applicable duties.

INCOME TAX

Income tax taxes earnings from an Ecuadorian source obtained as a gift or valuable consideration; and earnings obtained abroad by companies in general. Therefore, national and foreign companies either domiciled or not in the country receiving taxed earnings are obliged to declare and pay income tax.

Annual Income Tax Declaration

The annual income tax declaration is presented in April each year for the previous tax year which runs from January 1 to December 31.

The taxable base for the calculation of income tax includes the sum of all ordinary and extraordinary earnings charged with this tax, minus returns, discounts, costs, expenses and deductions, which are attributable to such earnings.

Income Tax Rate

Companies incorporated in Ecuador, as well as the branches of foreign companies domiciled in the country and the permanent establishments of foreign nondomiciled companies, who obtain taxable income, will be subject to the tax rate of 22% on their tax base.

From fiscal year 2013 onwards, the tax rate will be 22%.

However, the rate of 15% shall apply on the sum of profits reinvested into the country, provided that these are destined to the acquisition of new machinery or new equipment used for production activities, through the increase of capital of said reinvested profits, finalized by the registration in the Mercantile Register by December 31 of the tax year after that in which the reinvested profits were generated. Income tax at 25% incurred by companies shall be considered as attributable to their shareholders, partners or members, when these are foreign company branches, companies established abroad or individuals without residence in Ecuador.

Profits distributed in the country or sent abroad, those accredited in accounts after the payment of income taxes or charged to exempt income are not subject to additional taxation or withholdings at source for income tax purposes, except in the case of shareholders constituted in tax havens.

In this case, the company paying dividends to shareholders resident in a tax haven must make the corresponding income tax withholding at source. The percentage of this withholding shall be equal to the difference between the maximum rate of income tax for individuals and the general rate of income tax provided for companies. Consequently, considering that the maximum rate of income tax for individuals is 35% and the general rate for companies will be 22% for the year 2013 and beyond, so the rate for dividend payments to tax havens will be 13%.

Payments Abroad and Double Taxation Agreements

Payments and funds sent abroad (except dividends) are subject to 25% tax. This transfer rate must be withheld by the issuer and paid to the fiscal authority in Ecuador.

Ecuador recognizes the application of agreements for avoiding double taxation with countries that it has signed such agreements with. In order to benefit from these deductions or exonerations established by each agreement, the Ecuadorian tax legislation requirements must be adhered to.

VALUE ADDED TAX (VAT)

Value added tax is assessed on the total value of transferred goods, imports and services rendered. VAT is to be assessed at all points of exchange (distribution, retail and wholesale).

The VAT rate is 12%; however, some transactions are exempt from VAT and transfers and imports are taxed at 0%.

SPECIAL CONSUMPTION TAX

The Special Consumption Tax (ICE) is on domestic consumption of specific luxury goods. These may be national or imported and are described by law.

Depending on the item the ICE (Special Consumption Tax) rate applies from 5% to 100%.

CURRENCY OUTFLOW TAX

Currency Outflow Tax taxes the transfer, relocation or sending of currencies abroad or when currency withdrawals are made from abroad charged to national accounts, with or without the intervention of institutions forming part of the financial system, at a rate of 5%.

INTELLECTUAL PROPERTY

APPLICABLE REGULATIONS

In the intellectual property area, Ecuadorian legislation is based on several international agreements in order to concur with other developing countries in the region, in particular Decision 486 of the Andean Community of Nations. Since 2006 the country has seen ample and sustained progress in the field of intellectual and industrial property, which has attracted new foreign commercial investors.

Ecuadorian legislation in terms of intellectual property currently includes regulations from the World Trade Organization (WTO) regulations and the Paris Convention that protect registered brands, trademarks, denominations of origin, patents, authorial rights and organic acquisitions.

It also regulates technology transfer and prohibits disloyal competition.

With the implementation of the above-mentioned protections, investors now have safeguards that previously were not included in the country's legislation, such as norms for disloyal competition, preventive civil, penal and customs measures, and the solution of conflicts through national and international arbitration. This new legislation has reduced protection to local distributors,

thus allowing foreign investors to freely negotiate and establish the parameters of their investment in accordance with international legislation.

TRADEMARK APPLICATION REQUIREMENTS FOR PRODUCTS AND SERVICES

Requirements to apply for registration of a trademark before the Ecuadorian Institute of Intellectual Property (IEPI) include:

- According to the client's needs, a prior search of the mark that would be registered.
- Filing of an application form containing this information:
  - Applicant's identification (proprietary company's name, address and nationality)
  - A clear and full description of the trademark and graphic symbols accompanying the denomination, if applicable; and a description of the products or services to be protected by the trademark, i.e., respective international class according to the Nice Agreement.
- Presentation of documents for registration at the Ecuadorian Institute of Intellectual Property (IEPI) after payment of the corresponding administrative rate.
- Publication of application abstract in the Industrial Property Gazette.
- For foreign applicants, a power of attorney for a legal representative in Ecuador.
- If the trademark in question has some logotype, five graphic elements must be enclosed; and if priority is being claimed, a certified copy of the registration application must be enclosed, with the date (priority must be claimed within six months of the application date).

After filing, an abstract of the application is published in the Industrial Property Gazette. Within 30 working days after publication, any third party with legitimate interest may oppose the registration.

Ecuadorian legislation on intellectual property adheres to the principle of priority; therefore the first party to present the denomination or design is the party with the most rights over such.

Once the trademark has been registered, this is protected for a period of 10 years, during which the proprietor may present administrative, civil or penal action against any third party using or fraudulently imitating the trademark.

After this 10-year period is up, trademarks must be renewed in order to continue to be valid for a further 10 years; these renewals are indefinite. The law grants a six-month grace period from the date of expiry of such trademarks in order for these to be renewed.

The renewal process is undertaken via the presentation of a request that must include all information on the registered trademark in question. The renewal procedure may be started from six months before the date that the registration of the registered trademark expires, up to a grace period of six months after its expiry date.

Terms of Effectiveness

Protection is for 10 years after the date trademark registration is issued.

Trademark Registration Application Costs

Administrative rate USD116*

In addition and according to the customer's needs, a prior search can be carried out on the trademark to be registered, the cost of which is:

Administrative rate USD16*

* Rates subject to change by the Industrial Property Office

Industrial Property Office

The competent authority is the Ecuadorian Institute of Intellectual Property (IEPI).

PATENTS

Inventions of products or procedures in all fields may be patented if these are new, inventive, not state-of-the-art and are subject to industrial application.

In 2009 the government declared pharmaceuticals of public interest, thereby permitting administrative authorities to grant obligatory licenses on pharmaceutical patents in order for local laboratories to produce medicines, in spite of being patented, or to import generic versions.

In light of this the resolution issued by the Ecuadorian Institute of Intellectual Property referring to the Guidelines for the Concession of Obligatory Licenses on Pharmaceutical Patents was published in Official Register No. 141 on 2 March 2010.

An application for patent registration in Ecuador requires this information:

- Applicant's and inventor's identification
- Invention's title or designation
- Invention's clear and complete description for an expert to execute it

- One or more claims stating the matter the patent would protect
- A summary of the invention, including its objective and purpose
- A voucher proving payment of governmental fee

If the applicant is not the invention's owner, a concession contract clearly stating the invention author's first and last names is required.

If the patent is registered abroad, registration priority may be claimed within one year of the date of that filing.

Specialists analyze all submitted documents. If they approve, the patent is published in the official gazette to allow oppositions from third parties. If no opposition is filed, the patent undergoes an internal administrative examination related to its eligibility for registration in Ecuador. The protection period is 20 years.

LABOR LAW

The majority of employer/employee relations are regulated by Ecuador's strict Labor Code. Specific work conditions and employment terms are established in individual and collective labor agreements.

Individual labor agreements between employees and employers define the services to be provided and the corresponding remuneration.

The labor law now provides more flexible labor agreements, and permanent partial working day contracts.

Ecuadorian labor laws set the maximum number of hours that an employee can work. In most cases the maximum is 40 hours per week, 8 hours per day. Additionally, the law allows for four overtime hours a day (not to exceed 12 overtime hours in any work week), in which case the authorization of the work inspector must be requested.

BENEFITS AND LABOR RIGHTS

Existing legislation provides numerous protections to individual and collective contracts. In the event of a labor contract breach, several legal recourses are available to all parties involved.

In general the Constitution and labor laws aim to protect the legal and contractual rights of workers, such as the employment term (contractual), the minimum salary (the government fixes the salary annually), the rights of women and children and the maximum and minimum number of working hours, etc.

Current Ecuadorian legislation requires companies to distribute 15% of their profits before income tax to their employees.

After one year of employment, employees have the right to 15 uninterrupted calendar days of paid vacation.

Ecuadorian Social Security (IESS) is a complex system funded by mandatory contributions of employees, employers and self-affiliated persons. All employers and employees are obligated to contribute to IESS. Employees assign 9.35% of their monthly salary and employers contribute 12.15% of each employee's monthly salary.

The employer must pay the worker, when the worker has completed a year under its dependence, 8.33% of the worker's salary on a monthly basis for Reserve Funds.

Pregnant women and mothers of newborns are entitled to extensive benefits under Ecuadorian law and IESS medical insurance regulations.

When a male worker is the new parent, the law grants 10 consecutive paid days of paternity leave in the case of a normal birth and 15 days in the case of a C-section.

MINIMUM WAGE

The minimum salary was raised on 1 January 2012 to USD292,00. Only salaries are subject to taxation and social security deductions. Supplemental benefits are not taxable or subject to social security deductions.

The following income items were not incorporated into the salary unification process and are paid independently:

- The "thirteenth" salary (paid in December). This remittance is equal to one month's salary, averaged between December 1 and the following November 30, payable by December 24 of each year.
- The "fourteenth" salary, equal to a unified basic salary, payable each year until August 15 in the highlands and until March 15 in the coast.

MANDATE NO. 8

Mandate No. 8 was issued in order to clarify labor relations in Ecuador. It aims to prohibit labor intermediation and service outsourcing, thereby enabling companies to directly hire services with employees and not via related companies. However, contracts may be signed with individuals or legal entities as complementary service lenders authorized by the Ministry of Labor and Employment, whose objective it is to undertake complementary activities including vigilance, security, food and drink, courier services, and cleaning aside from the user's own and regular duties as part of its productive process.

DISABLED PERSONNEL

When an employer has 25 or more employees it must hire persons holding a disability card granted by the National Disability Council (CONADIS). The percentage of workers with disabilities should total 4% of the company's total number of workers.

TAXES AFFECTING SALARIES

Ecuador levies an individual income tax on all income generated in the country and abroad. The Ecuadorian Internal Tax Regime Law establishes an income tax on all personal income obtained from remuneration, professional services, capital gains, inheritance, gifts and investment profits/dividends. Taxable income may take the form of monies, goods or services.

An employee's income tax is calculated by adding the taxable base salary to any extraordinary income while subtracting contributions he/she made to the Ecuadorian Institute of Social Security (IESS). However, if the employer made the employee's IESS contributions, the employee may not make further deductions from his/her taxable income.

TERMINATION OF EMPLOYEES; SEVERANCE BENEFITS

Except when a contract is terminated by expiration of its term period or completion of its service requirements, employees are entitled to severance pay in the event their employer wishes to terminate the labor relationship. Severance pay is determined according to the employee's salary and length of employment.

In the event an employer wishes to dismiss an employee for just cause (i.e., excessive absences, tardiness, insubordination, theft or poor performance), the employer shall initiate an administrative process before the Ministry of Labor Relations. In that case, the employee may be suspended from work while a labor inspector evaluates the employer's claims, a process that usually takes approximately 30 days. During this period the employee's salary is held in escrow by the labor inspector. If the labor inspector finds the employer's claims to be unsubstantiated (and the employee returns to work), monies held in escrow will be distributed to the employee. However, if the labor inspector finds just cause for the dismissal, the escrow funds will be returned to the employer.

TRADE

ANDEAN MARKET

As a part of the Andean Pact's economic integration process, Ecuador currently maintains import rates ranging from 5% to 20%, with the exception of automobile imports from non-Andean Pact countries which are subject to a 25% to 40% rate.

Andean Pact countries that have reduced trade rates with Ecuador are Colombia and Bolivia during the years 1992 and 1993. In February 1993, Ecuador was admitted to the G-3 Group (Mexico, Venezuela and Colombia) as an observer. The Cartagena Agreement established a common external rate (in March 1993). These rates fluctuate from 5% for raw materials to 20% for products finished in Ecuador, Colombia and Venezuela, and from 5% to 10% for Bolivia. Peru is currently excluded and will continue to impose 15% to 25% import rates. These common rates were charged starting on January 1994.

EXPORT WINDOW

In order to encourage and diversify the country's exports, the Ecuadorian government has established regulations which eliminate export permits and combine all export requirements into a "single export documentation window." This system is controlled by the Central Bank (which is also responsible for all export documentation).

Companies wishing to export goods from Ecuador must register with the Central Bank. Registration documentation includes all relevant corporate data, Ecuadorian tax identification number, as well as a completed Unified Exportation Form. Once all required documentation has been submitted and evaluated, the Central Bank grants immediate permission to export.

MEDIATION AND ARBITRATION

The Arbitration and Mediation Law has been in force since 1997.

Mediation is a conflict resolution procedure for which the parties, assisted by a neutral third party called a mediator, try to reach a voluntary agreement on agreeable terms, of an extrajudicial and definitive nature, which puts an end to the conflict.

The arbitration system is an alternative conflict resolution system through which, upon mutual agreement, parties can agree to submit current or future transaction-related disputes, in order for these to be resolved by administered arbitration courts or independent juries set up to resolve such disputes.

This system has become increasingly popular over recent years and is currently the best option for conflict resolution, allowing transparency and professionalism throughout the entire process.

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

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

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

FOREIGN INVESTMENT

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

Except for these constitutional limitations, foreign investors have the same rights as local investors. There are no legal requirements or authorizations for foreign investments. Foreign investors are allowed without restriction in most economic activities as well as in the acquisition of shares owned by nationals or other foreign investors. There are no legal requirements to remit abroad the total amount of the foreign investment or the amounts received as dividends.

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

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

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

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

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

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

BUSINESS ENTITIES

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

- Partnerships, which are registered associations of two or more persons, who are jointly and severally liable to the full extent of their personal assets, organized to do business under a commercial name.
- Stock Companies, which are registered associations of two or more persons whose liabilities for acts of the company are limited to their investments and whose participation is represented by shares.

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

Minimum Capital Stock

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

Number of Shareholders

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

General Shareholders' Meeting

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

Board of Directors

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

Management

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

Formal Requirements

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

FOREIGN CORPORATION BRANCHES

A foreign company can conduct its business directly in El Salvador through a branch office or agency. Said branch office requires an authorization of the Registry of Commerce prior to beginning its activities. A minimum amount of assets will be established and the company must appoint a legal representative who is a permanent resident in El Salvador. The branch office is not considered a separate legal entity from the company and the company is fully responsible and liable for the actions and activities of its branch office in El Salvador.

TAXATION

The Salvadoran tax system is based on Income Tax *(Impuesto sobre la Renta)*, Value Added Tax *(Impuesto a la Transferencia de Bienes Muebles y a la Prestación de Servicios)* and Real Estate Transfer Tax. There are also import duties and various minor indirect taxes primarily on the importation and sale of cigarettes, alcoholic beverages, etc. Municipalities also have their own taxes, which vary from one municipality to another, and which are calculated over the company's assets.

Although each of the above mentioned taxes has its own law, the general rules and legal provisions regarding taxation are contained in a general legal body named Taxation Code *(Código Tributario)*. Import duties and municipality taxes are not subject to these general provisions.

INCOME TAX

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

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

VALUE ADDED TAX

The Value Added Tax (VAT) is a general tax which affects virtually every commercial activity involving transfer or sale of movable goods and rendering or

use of services within the national territory. The VAT also affects the import and export of movable goods and services. Real estate transfers are excluded from VAT. The rate of VAT is 13% calculated over the price of the sale or the rendering of service. For exports the rate is 0%. The tax should be declared and paid on a monthly basis and the law provides that the tax paid in a previous stage can be used as a tax credit.

REAL ESTATE TRANSFER TAX

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

IMPORT DUTIES

The legal structure of custom and duties is based largely on International Treaties of Central American scope such as the Custom Central American Code *(Código Aduanero Uniforme Centroamericano)*. Import-duty rates are established in a Central American Custom System and vary depending on the kinds of goods imported.

INTELLECTUAL (INDUSTRIAL) PROPERTY

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

The Salvadoran legal system is based on the registration of trademarks and patents. Once the registration is obtained, the owner of the mark or patent is able to initiate legal actions against infringements by third parties.

APPLICABLE REGULATIONS

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

APPLICATION REQUIREMENTS

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

TERMS OF EFFECTIVENESS

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

APPLICATION COST

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

INDUSTRIAL PROPERTY OFFICE

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

PATENTS

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

LABOR LAW

The current status of labor laws and regulations in El Salvador deserves special consideration in this publication. As a general rule, labor laws and regulations, especially the Labor Code, as well as the specific chapters devoted to fundamental labor rights in the Salvadoran Constitution, are endowed with particular permanency and duration. The primary reason for this is the political and social sensitivity to reforms of such legal instruments. Until very recently, the above-stated laws and constitutional provisions had remained virtually unchanged and without reforms for decades in El Salvador.

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

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

HIRING OF EMPLOYEES; LABOR CONTRACTS

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

BENEFITS AND LABOR RIGHTS

Employees are entitled to a one-day weekly rest, legal holidays, 15 days of paid vacation after a full year of employment, and to a December Christmas bonus equal to a monthly salary. Additional benefits can be granted to employees by employers and these additional benefits will acquire mandatory status for the employer as a custom of the company.

MINIMUM WAGE

A National Board of Minimum Wage fixes from time to time the minimum wage for individual employees. Currently the minimum wage is USD223 and is applicable to any employee working a full eight-hour day.

HIRING OF FOREIGN EMPLOYEES

Foreign employees can be hired subject to certain limitations and restrictions. No more than 10% of the employer's personnel can be foreign and no more than 20% of the total payroll can be used to cover foreign personnel's wages. Labor contracts with foreign employees must be presented to the Migratory Authorities in order to apply for a modification of the migratory status of said employees to temporary residents.

TAXES AFFECTING SALARIES

Salaries are subject to income tax which is withheld by the employer and paid to the Tax Authorities in the name of the employee. In addition, salaries are subject to a withdrawal of 3.25% for the Private Pension System and of 3.5% for the Social Security Institute. Employers must pay, based on the worker's salary, 6.75% for the Private Pension System and 7.5% for the Social Security Institute.

TRADE

IMPORT RESTRICTIONS

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

EXPORT RESTRICTIONS

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

INTERNATIONAL FREE TRADE AGREEMENTS

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

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

Guatemala borders the Pacific and Atlantic Oceans, as well as Mexico, Belize, El Salvador and Honduras. It has a population of approximately 14.7 million people. Its form of government is republican, democratic and constitutional, and it is divided into 22 administrative units called departments. The Guatemalan legal system is based on civil law, where the judicial review of legislative acts is possible; it is administered mainly by a court system, and especially by a specific court that safeguards the supremacy of the Constitution. The legislative branch is a unicameral Congress of the Republic with members elected by popular vote for a period of four years. The executive branch is headed by the president who is also elected by popular vote for a period of four years.

Guatemala is the largest and most populous of the Central American countries with a GDP per capita roughly one-half that of Brazil, Argentina and Chile. The agricultural sector accounts for about one-fourth of GDP, two-thirds of exports, and one-half of the labor force. Coffee, sugar and bananas are the main products.

FOREIGN INVESTMENT

The Guatemalan Constitution recognizes the full right of foreigners to invest within the country's jurisdiction, as well as the use, benefit and ownership of property of said investment, and they are subject to the same obligations as Guatemalan investors, save and except the limitations established by the Constitution, which settles land ownership near Guatemalan borders, rivers, lakes and shores.

The government may not directly or indirectly expropriate the investment of a foreign investor nor adopt measures equivalent to the expropriation of such investment, except in duly proven cases of eminent domain, social benefit, or national interest. Guatemalans are also subject to such expropriation. However, both situations rarely occur.

BUSINESS ENTITIES

Business entities in Guatemala can be divided into two main categories: those which completely limit investor liability and those which do not. Because of the obvious benefits offered by limited liability organizations, other company schemes are rarely used. Moreover, some foreign investors have chosen to invest in Guatemala by means of establishing a branch or local office of a foreign

entity. Usually, this happens only when legislation or government officials require it to be done, since this form of doing business in Guatemala does not limit any liability whatsoever related to its local operations for its main office.

Guatemalan business entities that completely limit liability are Corporation (*Sociedad Anónima*) and Limited Liability Partnership (*Sociedad de Responsabilidad Limitada*), which are described below.

CORPORATION *(SOCIEDAD ANÓNIMA)*

As defined under Guatemalan Law, a corporation is a type of company whose capital stock is divided into and represented by shares. In this type of business entity, the liability of each shareholder is limited to the payment of subscribed shares. This type of business entity is the most common in Guatemala, due primarily to the aforementioned limited liability of its shareholders. It is important to keep in mind that according to the applicable legal regime, bearer shares are no longer permitted in Guatemala. Other important characteristics of this corporation structure are:

- The incorporation procedure is initiated by the agreement upon and signature of the articles of incorporation. Corporate bodies and their shareholders must abide by the articles of incorporation, which establish the corporation's organization, policies, main economic activity, election and decision processes, etc., usually in great detail.
- The governing body of a corporation in Guatemala is the general assembly of shareholders, which is in charge of making the major decisions that relate to corporate policy and electing the corporation's legal representatives and administrators. Decisions are made by the majority of its members.
- In hierarchical order, the administrative body is directly below the general assembly of shareholders. The administration can be comprised of one or more members, as decided by the general assembly. This body is in charge of the day-to-day operations of the corporation, and depending on what the general assembly agrees, each director may be specifically empowered for certain attributions and restricted for others. The administrator or administrators are the legal representatives of the corporation.
- Below the administrative body is the management body, which is elected by the administrative body and responds directly to it. The management body is in charge of carrying out the functions specifically assigned by the administrative body.

LIMITED LIABILITY PARTNERSHIP *(SOCIEDAD DE RESPONSABILIDAD LIMITADA)*

This type of organization is very similar to the corporation structure, its liability limitations and governing bodies. However, the main conceptual difference between them is the role the partners of the corporation play toward the general public. The corporation leans toward the idea that the identity of its shareholders is irrelevant, as long as there is sufficient capital to comply with any liability the corporation might incur. The limited liability partnership, while limiting the liability of its partners to the amount of capital they decide to contribute for the formation of the partnership, tends to give more importance to which individuals or partners make up the partnership. In this sense, contributions may not be incorporated into shares or any other form of physical representations, having to transfer any contribution by means of a public deed.

Some other important differences between the corporation and the limited liability partnership are the following:

- Under the limited liability partnership, there may not be more than 20 partners, while the corporation may have as many shareholders as shares of stock.
- A limited liability partnership is much less regulated in the Guatemalan Code of Commerce, allowing more freedom for its founding partners when deciding some aspects of its articles of incorporation.
- The limited liability partnership may chose a legal name with the complete name of one or more of its partners, or may choose to create an original name taking into account that such name must refer to the main activity of the partnership. Corporation denominations, on the other hand, may be elected freely, with no restrictions whatsoever.

In recent years, some U.S. companies have chosen this type of organization to incorporate their subsidiaries in Guatemala, mostly due to possible tax benefits within their own jurisdiction.

TAXATION

Guatemala's main tax structure that commonly affects business entities is based upon five taxes: 1) Income Tax; 2) Value Added Tax; 3) Single Real Estate Tax; 4) Stamp Tax; and, 5) Solidarity Tax.

INCOME TAX

The taxable event in Guatemalan income tax is any income produced by any natural person, juridical person, entity or patrimony, whether local or foreign, resident or nonresident in the country, obtained through any profitable activity, employment, capital and capital profits.

In this sense, common examples of taxable income are:

- Payment for services rendered within the country or for a company or person operating in Guatemala.
- Income obtained from the export of goods manufactured, transformed or bought in the country.
- Income obtained by corporations or other business entities that act as subsidiaries, purchasing agents or representatives of foreign companies.
- Dividends and interest of profits obtained by individuals or legal entities domiciled in the country.

However, the Income Tax Law establishes some exemptions to this tax, excluding some types of taxable income. Some of these are:

- Income obtained by exempted legal entities or individuals established by law, such as nonprofit organizations.
- Inheritances, legacies and donations *mortis causa* that are taxable by the Inheritances, Legacies and Donations Tax.

CORPORATE INCOME TAX

Business entities in Guatemala may adopt one of two schemes for the payment of income tax, known as Regime of Profits from Lucrative Activities and Simplified Optional Regime for Lucrative Activities.

Regime of Profits from Lucrative Activities

Taxpayers that adopt this Regime of Profits from Lucrative Activities, shall determine their taxable income, deducting from their gross income their exempt income, and the deductible costs and expenses, and must add the costs and expenses to determine exempt income.

In order for the costs and expenses to be deducted, they shall fulfill the following requirements:

- To be useful, necessary, pertinent or essential to produce or generate taxable income or to keep its producing source, and for those who are obliged to have a complete accounting system, they shall be duly entered in the books.
- That the holder of the deduction has complied with the obligation to retain and pay the fix tax in this book whenever it applies.
- In the case of salaries and wages, when the employers are recorded in the list of social security contributions paid to the Guatemalan Institute of Social Security, whenever it applies.
- To have the corresponding documents and support means, which are:
  - Invoice or invoices of small business owner authorized by the Tax Administration Office, in the case of purchases to taxpayers.
  - Invoices or payment vouchers duly authorized by the Tax Administration Office for services rendered by taxpayers.
  - Invoices or documents issued abroad.
  - Certified copy of public deeds authorized by a notary, or a private contract duly registered into a notary file.
  - Cashier receipts or debit notes, in the case of the expenses charged by supervised and inspected entities by the Superintendency of Banks.
  - Payrolls presented to the Guatemalan Institute of Social Security and the receipts issued by it, salary books, payrolls, in the cases of wages, salaries or employment benefits, as it corresponds.
  - Import customs declarations with the authorized evidence of payment, in the case of imports.
  - Specific invoices authorized by the Tax Administration.
  - Others authorized by the Tax Administration.

Simplified Optional Regime for Lucrative Activities

Taxpayers who adopt the Simplified Optional Regime for Lucrative Activities shall determine their taxable income deducting the exempt income from their gross income.

The tax rate for this regimen applicable to the taxable income will be the following:

MONTHLY RANGE OF TAXABLE INCOME	FIXED AMOUNT	TAX RATE
USD0.001 to USD3,841.22	USD0.00	5% on the taxable income
USD3,841.23 to unlimited	USD192.06	7% on the amount over USD3,841.22

In this regime, the payment period is monthly. Taxpayers who subscribe to this regime settle and pay the tax through withholdings made by those who make the payment or accreditation for the acquisition of goods or services. If such taxpayer carries out lucrative activities with individuals who do not have accounting books or that for any reason, they did not retain the corresponding tax, the taxpayer shall apply the tax rate of 7% over the taxable income that was not subject of withholding and shall directly pay the tax.

INCOMES, CAPITAL GAINS AND LOSSES

The Income Tax Law also establishes that taxable events are capital incomes, and the capital gains and losses, in cash or in kind, that come directly or indirectly from patrimonial elements, goods or rights, which ownership correspond to the taxpayer the following:

- Income from fixed assets capital
- Income from movable assets capital
- Capital gains and losses

Capital gains and losses are the ones resultant from the transfer, cession, sale and purchase, exchange or other type of negotiation of goods and rights, made by natural persons, juridical persons, entities or patrimonies whose lines of business is not to trade such goods or rights.

The tax rate applicable to the tax base of the income from fixed and movable capital assets and for capital gains is 10%, and for the distribution of dividends, profits and revenues, regardless of the name or accounting method provided to them, is 5%.

INCOME TAX WITHHOLDINGS

The Income Tax Law also provides that if income is produced in the following situations, then the party which is paying the revenue must perform an Income Tax Withholding to the other party, at tax rates that may differ from scenario to scenario. Some of the most relevant withholdings are:

Nonresident Tax Withholdings

Taxable events for this tax are any taxable income according to the taxable events, by the nonresident taxpayers that act with or without permanent establishment in the national territory.

Taxable events of this tax also are any transfer or crediting into account to its headquarters outside the country, without consideration, made by permanent establishments of nonresident entities in the country.

The following tax rates are applicable to the payments or accreditations of the taxable incomes:

- The 3% tax rate applies to:
  - Provision of international news to companies in the country, in whichever form of payment and for the use in Guatemala of cinematographic movies, cartoons, novels, musical and auditory recordings and any other similar projection, transmission or broadcasting of images or sounds in the Republic, regardless of the used means.
- The 5% tax rate applies to:
  - Activities of international transportation of goods and passengers.
  - Insurance policies, bond premiums, reinsurance, retrocession, and counter-guarantees obtained by nonresidents.
  - Telephony, data transmission and international communications of any nature and by any means, emerged from the service of communications of any nature between Guatemala and other countries.
  - Use of electric power provided from abroad.
  - Dividends, profit distribution, revenues and other benefits, as well as every transfer or crediting into account to its headquarters outside the country, without consideration, made by permanent establishments of nonresident entities.
- The 10% tax rate applies to:
  - Paid or accredited interests to nonresidents, except for the payment to authorized entities in their country by the corresponding entity.
- The 15% tax rate applies to:
  - Wages and salaries, allowances, commissions, bonus and other remunerations that do not imply expenses reimbursement.
  - Payments or accreditation into bank accounts to sportsmen and artists from theater, television and other public shows, or actors.

- Royalties.
- Professional fees.
- Scientific, economic, technical or financial advice.

- The tax rate of 25% applies to:
  - Other taxable income that has not been specified in the previous categories.

VALUE ADDED TAX

In Guatemala, the value added tax or VAT is generally chargeable on the purchase, sale or payment of the following:

- Goods made in Guatemala
- Services rendered in Guatemala
- Import of goods into Guatemala
- Lease of goods
- Donations (except those made to not-for-profit organizations)

However, the Value Added Tax Law also provides several exemptions, which may affect business entities at any given time. Some of them are:

- Exports
- Services provided by banks and financial institutions
- The issue and transfer of credit notes
- The transfer of goods under trust and the return of trusted goods to the settler, etc.
- Assets acquisition in a merger process
- Capital contributions

The VAT standard rate is 12%. The scheme of this tax is based upon a credit/debit scenario, whereas taxpayers are not obliged to pay the total amount of VAT charged to their clients, since they themselves have been forced to pay VAT in order to acquire goods or services to produce their income. Consequently, taxpayers must only pay the difference resulting from the amount of VAT charged with the amount of VAT paid in all operations that were necessary to produce taxable income under Income Tax Law provisions.

SINGLE REAL ESTATE TAX

The Single Real Estate Tax is established as the taxation scheme where the taxable event is the ownership of real estate within the territory of Guatemala. The tax rate varies from 0.2% to 0.9% annually of the registered value of the real estate and is divided into four quarterly payments.

STAMP TAX

Stamp tax is a documentary tax, that is to say, it levies the value of contracts and other documents at a rate of 3%. The stamp tax does not affect contracts or documents related to transactions levied with VAT, as double taxation is prohibited.

The more common transactions of companies who deal with documents that are levied with the 3% are:

- Documents coming from abroad which support charges of related companies or invoices of third parties for services provided abroad (technical advice, royalties, travel expenses, distribution services, commissions of representatives abroad, etc.)

Exemptions

- All contracts and documents related to acts subject to VAT
- Receipts and payment vouchers for salaries, travel expenses, Christmas bonuses, employment benefits or any other payment for personal services rendered in subordinated relation (employer-employee)
- Checks and deposit certificates
- Capital contributions to corporations; and the subscription, issuance, circulation, amortization, transfer, payment and cancellation of shares from any type of business entity

Calculation Method

The tax is determined by applying the rate to the value of the acts and contracts subject to the tax. The value is that reflected on the document, which cannot be lower than the one registered in public records, registrations, cadastres or in the official listing.

SOLIDARITY TAX

This tax levies permanent or temporary entities, branches, agencies and establishments of national or foreign persons that operate in the country. It also levies joint ownership of property, community of goods, undivided hereditary patrimony and other forms of business organizations that have their own patrimony, make commercial or agricultural activities in the national territory and obtain a gross margin higher than 4% of its gross income.

Exemptions

The following are exemptions of Solidarity Tax:

- Persons subject to this tax that begin their business activities during the first four quarters of operation.

- Commercial and agricultural activities made by natural persons or juridical persons that by virtue of specific law or because they operate within the specific regimens established by the Promotion and Development of Exports Activities and Manufacture Law, Decree Number 29-89 and Free Trade Zones Law, Decree Number 65-89, both from the Congress of the Republic and its amendments, are exempt from the payment of the Income Tax, during the term they benefit from the exemption.
- Natural persons, juridical persons, entities or patrimonies subject to the Solidarity Tax, that paid income tax according to the Simplified Optional Regime for Lucrative Activates of this tax.

INTELLECTUAL (INDUSTRIAL) PROPERTY

Guatemala has an intellectual and industrial property scheme that complies with international organizations and treaties such as Paris Convention for the Protection of Industrial Property, Patent Cooperation Treaty (PCT), Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), among others. In the year 2000 new legislation was passed, based on recommendations of entities such as World Intellectual Property Organization (WIPO), which completely modified the existing intellectual property regulation of the time.

The competent authority in the Republic of Guatemala is the Intellectual Property Registry, entrusted with the registration of all items of Intellectual Property that require said formality.

TRADEMARKS

Trademarks that may be registered are all denominative, figurative, tridimensional, olfactory, auditory or mixed signs that are apt to distinguish products, services or similar goods that may be subject to graphical representation.

Even though there is a lot of commercialization of goods and services in Guatemala, trademark registration is not mandatory. Business entities often choose to register their trademarks because the registration grants preferential rights before third parties.

Trademark registration confers on its owner the exclusive right to use said mark, and to defend it and its distinctiveness from third parties who wish to register or use a similar mark.

Trademarks are granted a registration period of 10 years, after which they can be renewed indefinitely for subsequent 10-year periods.

TRADE NAMES AND EMBLEMS

Trade names in Guatemala are conceived as any denominative or mixed sign that is used to identify and distinguish a company, business entity or commercial establishment.

Emblems, on the other hand, are figurative signs used to distinguish and identify a company, business entity, or commercial establishment.

This type of intellectual property does not require formal registration in order for its owner to benefit from the protection rights, since they are acquired from their first public use. Sometimes, they are registered to aid in any process where its use is contested.

Trade names and emblems are registered for indefinite periods of time.

EXPRESSIONS OR SLOGANS

Expressions or slogans are any phrase, advertisement, combination of words, design, engraving or any other similar means, original and characteristic, that is used with the purpose of attracting the attention of consumers or users towards products, services, companies or commercial establishments.

This type of intellectual property has regulation similar to that of trademarks.

Expressions and slogans are also registered for periods of 10 years, and may be renewed for equal periods.

OBJECTION OR OPPOSITION TO THE INITIAL REGISTRY APPLICATION

(Trademarks, Trade Names, Emblems, Expressions and Slogans)

Trademarks, Trade Names, Emblems, Expressions and Slogans are preemptively protected through objection or opposition to new applications of similar or identical signs used to identify goods or services of similar nature, filed before the Intellectual Property Registry. Intellectual Property owners have a period of two months after the publication of new applications to file their opposition based on the existence of a previous trademark of their property.

The opposition is resolved by the Intellectual Property Registrar, whose decisions can be revised by its hierarchical superior in the central government, the Ministry of Economy, whose decisions, in turn, are subject to judicial review by means of a Contentious Administrative Process.

LABOR LAW

Guatemala's labor is heavily regulated through the Guatemalan Code of Labor. Labor legislation and judicial processes are constitutionally forced to favor the worker in case of doubt, as the principle of in *dubio pro operario* is recognized and followed strictly.

Employees are usually hired through an individual labor contract, and it is the employer's obligation to produce a written and signed copy of said contract. If the employer fails to do so, whatever is said by the employee before a Labor Court is considered true until the employer produces evidence to the contrary.

It is because of these reasons that an adequate legal consultancy in labor laws is one of the pivotal aspects to consider when investing in Guatemala.

WORKING WEEK

The Guatemalan working week is calculated based on effective working hours. The ordinary working day in Guatemala (considered from 6:00 am to 6:00 pm) must not exceed eight hours a day or 44 hours a week, which are equivalent to 48 hours when calculating any type of payment. Working night shift (considered from 6:00 pm of one day to 6:00 am of the next day) must not exceed six hours a day or 36 hours a week.

All hours that exceed the ordinary working day limit are considered extraordinary and must be paid with at least 50% more of the value of an ordinary hour.

For some workers, the working hours mentioned above do not apply, as is the case for managers, administrators, etc.; however, their working days must not exceed 12 hours.

MINIMUM WAGE

Monthly Minimum Wage

(+) Incentive Bonus	USD32.01
Monthly Total	USD264.83 (agricultural)
	USD243.41 (manufacture and exportation)

SOCIAL SECURITY

Any company with more than three employees is required to pay social security fees, which are paid by both employees and employers. In the case of the employee's tax, the rate is 4.93% on the salary paid. In the case of employer's, the rate is 12.67% on the salaries paid. It is important to mention that the rates would be different for companies located out of the capital city.

EMPLOYEE BENEFITS

Guatemalan legislation, including the Constitution, regulates a series of employee benefits that cannot be waived. However, said regulation only provides a minimum of benefits; therefore, any employer may exceed said benefits and workers may demand the recognition of such additional benefits.

Some of the basic employee benefits are the following:

- **Vacation**. Every employee has the right to 15 working days of vacation per year.
- **Annual and Christmas Bonuses**. These are two different bonuses, paid in July and December, and consist of the payment of one additional monthly salary.
- **Maternity Leave**. Pregnant employees have the right to maternity leave consisting of 30 days before the estimated date of childbirth and 54 days after the birth.
- **Sickness Allowance**. In case of sickness, if the employee is not protected by social security, the employer must pay as follows.

  If labor relation has been:

  - More than two months and less than six months:
    50% of the salary during a month
  - More than six months and less than nine months:
    50% of the salary during two months
  - Nine months and more:
    50% of the salary during three months

  If the employee is protected by social security, the employer only needs to pay the fees determined by the Guatemalan Institute of Social Security.

INDEMNIFICATION

Workers in Guatemala whose labor contracts are not terminated due to legitimate reasons attributable to them and their behavior are entitled to receive an indemnification for unjust termination of labor contract. The amount of the indemnification is calculated upon a "time served" basis, whereas one month's salary is owed for every year the worker has labored for his/her employer, plus additional payment for some of the benefits received throughout the previous six months.

INTERNATIONAL TRADE AGREEMENTS

Guatemala has an evident policy of being open to enter into international trade agreements. In this sense, Guatemala has subscribed and approved bilateral or multilateral treaties with the European Community, and the following countries: Chile, Colombia, United States, Mexico, Dominican Republic, Taiwan and Panama, and in some cases, has significantly changed previous trade barriers.

However, while all international trade agreements have had impact on the economy, the most representative trade agreement of Guatemala has been the Dominican Republic, Central America and the United States Free Trade Agreement or DR-CAFTA. The signature of said treaty has specific provisions that required significant modifications of existing legislation to comply with the different various stages of the treaties.

ENVIRONMENTAL PROVISIONS

Constitutional Environmental Provisions

Right to a Healthy Environment: *"The State, municipalities, and inhabitants of the national territory are required to contribute to a social, economic, and technologic development that prevents environmental pollution and keeps an ecologic equilibrium. The necessary regulations will be made in order to guarantee that the use and exploitation of fauna, flora, soil, and water are made rationally, avoiding its depredation."* (Article 97). Such article is the most relevant statement regarding environmental policies. It has been used as the cornerstone of the right of citizens to a healthy environment in constitutional procedures called *Amparo*.

Important Environmental Institutions

Ministry of Environment and Natural Resources

By means of Decree 90-2000 issued by the Congress of the Republic, the Ministry of Environment and Natural Resources is created. Such institution became part of the Executive Branch and it is under the direction of the President of the Republic. It is the administrative body specializing in environmental issues as well as natural goods and services of the Public Sector. Likewise, it is charged with protecting the natural systems that develop and strengthen life.

Among its main functions is to formulate, in a participative way, policies related to the conservation, protection and improvement of the environment and natural resources, and to execute them together with other authorities with legal competence in such matters. Likewise, it must respect current national and international laws in the country and incorporate environmental issues in the formulation of economic and social policies of the government, guaranteeing the

inclusion of the environmental variable and striving to achieve a sustainable development.

Public Prosecutor's Office Regarding Crimes Against the Environment and First Instance Courts of Criminal Issues, Drug Trafficking and Crimes Against the Environment

The Public Prosecutor's Office Regarding Crimes Against the Environment is the institution in charge of criminal pursuit; it supervises the investigation of public action crimes. The First Instance Courts of Criminal Issues, Drug Trafficking and Crimes Against the Environment are exclusively in charge of the criminal proceedings related to crimes against the environment.

It is important to point out that the Civil National Police is an institution that supports the Public Prosecutor's Office Regarding Crimes Against the Environment, as it is responsible to control, supervise and keep public order, through the pursuit, capture and arrest of lawbreakers.

Important Environmental Aspects

Protected Forest Areas

These areas consist of forests or other wooded territories with the predominant function, in combination or individually, to protect soil against erosion, to control water flows, to purify the air, to protect from the wind, to bring down the noise, to preserve inhabitants, to protect flora and fauna species, and other biological uses.

Protected Natural Areas

These are areas of the national territory and places where the nation exercises its sovereignty and jurisdiction, in which the original environment has not been significantly altered by human activity or areas that require preservation and restoration.

Evaluation of Environmental Impact

The environmental impact is any alteration of the environmental conditions or creation of a new group of environmental conditions, adverse or beneficial, provoked by human action or natural forces. The study of environmental impact is an instrument of politics, environmental administration, and decision-making formed by a group of procedures capable to guarantee, from the beginning of the planning, the making of a systematic examination of the environmental impacts of a project or activity and its options, as well as the necessary mitigation or environmental protection measures. The results shall be presented to the decision makers for their consideration.

Common Environmental Requests

National Institute of Forests (Spanish acronym, INAB)

- The use of forest concessions of exploitation licenses of forest products, outside protected areas.
- Forest concessions in territories of the State.
- Forest inventories or management plans, that shall be made by a suitable professional registered in such entity.

National Board of Protected Areas (Spanish acronym, CONAP)

- The public or private companies that establish facilities or develop commercial, industrial, touristic, fishing, forest, agricultural, experimental or transportation activities within the perimeter of protected areas shall enter into a contract by mutual agreement with CONAP, in which the conditions and operations rules shall be established and determined by an environmental impact study presented by the interested party to CONAP. Then, CONAP will send it to the Ministry of Environment and Natural Resources for its evaluation, as long as the activity is compatible with the foreseen uses in the master plan of the corresponding conservation unit.
- To have the authorization of CONAP for the exploitation of protected wildlife products.
- CONAP is responsible for the issuance of exploitation, hunting, fishing, sports, transportation, possession, commercial, handling, exportation, and commercialization of wild flora and fauna products.

Ministry of Environment and National Resources (Spanish acronym, MARN)

- Every project, work, industry or activity that because of its characteristics, may deteriorate renewable natural resources or the environment, or may introduce harmful or notorious modifications to the landscape or natural resources of the natural patrimony, must have, prior to its development, an environmental impact evaluation study. Such study shall be made by technicians specialized in such matters and shall be approved by the National Commission of Environment.
- Together with the Guatemalan National Commission of Electric Power, to elaborate studies and rulings regarding electric power generation and transportation projects.

Ministry of Energy and Mines (Spanish acronym, MEM)

- For the issue of geothermic licenses and concessions, and the distribution and transportation of energy.

Honduras, in the north-central part of Central America, has a Caribbean as well as a Pacific coastline. Generally mountainous, fertile plateaus, river valleys and narrow coastal plains mark the country. With 112,090 square kilometers and an estimated population of 8,296,693. Honduras has a GDP per capita of about USD4,400 (2011 est.). The labor force in the country is around 3.461 million (2011 est.), and unemployment is 4.8% (2011 est.). The population below poverty line is 60%. The traditional exports have been coffee and bananas, but diversification over the last 20 years has included nontraditional exports such as shrimp, tilapia, lobster, melons, citrus, corn, African palm, timber, palm oil, lumber, gold and wood. Tourism and generation of clean energy are growing industries. Honduras also has extensive forest, marine and mineral resources.

There are four main ports and terminals, strategically located in the Pacific and Atlantic Ocean, which make Honduras attractive for export/import of products and services. These ports and terminals are: La Ceiba, Puerto Cortés and Tela (Atlantic Ocean) and San Lorenzo (Pacific Ocean). Puerto Cortés is the largest port, handling the majority of the international trade, and is certified with Container Security Initiative (CSI), making it a secure port and one of the three in Latin America that holds this certificate.

Honduras is a Democratic Constitutional Republic. The 1982 constitution provides for a strong executive, a unicameral National Congress, and a judiciary appointed by the National Congress. The president is directly elected to a four-year term by popular vote. The Congress also serves a four-year term with congressional seats assigned to the parties' candidates in proportion to the number of votes each party receives in the various departments.

The Honduran legal system is based on the civil law system. The judiciary includes a Supreme Court of Justice, courts of appeal and several courts of original jurisdiction such as civil, labor, administrative, family and criminal courts. In 2010 a new Civil Procedure Code came into force. This new Code is a great benefit for the country because it expedites civil processes by principles of orality and immediacy. This new process solves controversies and execution of guarantees in a faster way. Special processes have been created to solve conflicts in mortgages, leases, intellectual property and unfair competition, among others, ensuring prompt justice in the field of investment.

The official language is Spanish; however, English is widely spoken in business transactions.

FOREIGN AND NATIONAL INVESTMENT

The Honduran government welcomes foreign investment, which is accorded the same rights as domestic investment (national treatment). The main legal framework that stimulates and guarantees foreign and national investment in Honduras is defined in the Constitution and the recently enacted Law of Promotion and Protection of Investments (2011) and its regulation, as well as other laws and tax incentives in different investment areas.

Under the new investment law, the term "investment" is very broad, covering any company, national or foreign, which purchases or acquires assets in Honduras (tangible or intangible) with the purpose of generating profit by legal means. Investments are covered and afforded protection by this law, which asserts that the government's primary interest is the attraction, promotion and protection of investments, whether national or foreign. This law and its regulation provide investors with protections, guarantees and instruments to foster their growth and development, such as title insurance, a special regimen for conflict resolution for land disputes and a regimen to guarantee recovery of investments in improvements and the continuity in projects in execution. In addition to the guarantees established in the Constitution and laws, some of the main benefits of this law are the following:

- Stability contracts for government and municipal taxes for investments above USD2 million.
- Import of goods and services necessary to operate, payment of royalty fees, rents, annuities and technical assistance. Remittance of dividends and capital repatriation.
- National Treatment Principle (within limitations of the law).
- No restrictions or limitations for access to the market for investments in the country.
- The right to make foreign transfers in money or securities of their profits, capital gains, dividends, royalties and rights derived from the use and transfer of their technology, or of their whole investment.
- Right to obtain credit in our financial system under equal conditions with respect to Honduran companies.
- The free participation of foreign investment in the equity structure of corporations, except the requirements established in the Law for the Promotion of Public-Private partnerships.
- The right to establish without restrictions, subsidiaries, branches, representative offices or joint ventures.
- Tax benefits (partial tax exoneration for eligible projects) and five-year amortization of certain pre-operating expenses.

Some of the most important achievements of this law with respect to dispute resolution are:

- It is legal to choose a foreign law and jurisdiction to govern in contracts entered into in Honduras among national and foreign investors and among these with the government (foreign choice of law was not allowed by our Civil Code).
- Investors are guaranteed full recognition of foreign arbitral awards according to the New York Convention, Panama Convention, ICSID and treaties approved and ratified by Honduras for reciprocal protection of investments.
- Disputes arising from the application of the investment law between investors and the government can be resolved by negotiation, conciliation or mediation. If no agreement is reached, the parties can use international arbitration under ICSID, arbitration in one of the national Centers for Conciliation and Arbitration or the national judicial system.
- Disputes related to conflicts among shareholders, disputes among investors, disputes in intellectual property, representation and distribution contracts, antitrust and real estate, may be subjected to arbitration even if no arbitral clause was agreed among the parties. The parties may waive this right and choose the courts to solve these matters.

SECURED TRANSACTIONS LAW

With the enactment of the Secured Transactions Law—the first of its kind in the region—Honduran businesses, entrepreneurs, farmers and other individuals can increase their economic transactions and access to credit with the use of "movable property," like equipment, shop inventory, future crops, tractors, supply contracts, sewing machines, accounts receivable and other non-real property which can serve as collateral when applying for credit. This law simplifies the constitution, publicity and provides a simpler and expedited process for execution of guarantees.

A registry was created for filing, constituting and giving publicity to secured transactions under this law. This registry began operations in January 2011 and is managed by the Chamber of Commerce and Industry in Tegucigalpa, and recently, San Pedro Sula. Registry users, including retailers, banks and microfinance and other financial institutions, are now able to securitize credit with both tangible and intangible movable property. The low cost to register property—HNL200 or USD10—has encouraged user participation and led to a financially sustainable system.

COMMERCIAL TREATIES

Honduras has in force seven commercial treaties, six bilateral and one multilateral, considered of great importance for its productive and economic growth. Honduras is also a member of the WTO and of the Central American Common Market, which is a Customs Union.

The Trade Agreements are:

- United States of America, Dominican Republic and Central America Free Trade Agreement (DR-CAFTA);
- Chile and Central America Free Trade Agreement;
- Taiwan, El Salvador and Honduras Free Trade Agreement;
- Panama Free and Central America Free Trade Agreement;
- Colombia and Guatemala, El Salvador, Honduras Free (CA-3) Free Trade Agreement;
- Mexico and El Salvador, Guatemala, Honduras Free Trade Agreement;
- Dominican Republic and Central America Free Trade Agreement.

Other negotiated treaties and agreements are:

- Association Agreement between the European Union and Central America (pending approval by the National Congress).
- Canada and Honduras, Guatemala, El Salvador, Nicaragua Free Trade Agreement (pending approval by the National Congress).
- Mexico and Honduras, Guatemala, El Salvador, Costa Rica and Nicaragua Free Trade Agreement (pending the entry into force of the Treaty).
- European Free Trade Association (negotiation in process).
- Free Trade Agreement with Peru (negotiation in process); and,
- Free Trade Agreement Corea (negotiation in process).

For more information in commercial treaties and agreements subscribed by Honduras see http://www.sic.gob.hn/dgiepc/index.html.

ACQUISITION OF LAND BY FOREIGNERS

Foreigners can own land in any part of the country; however, a constitutional restriction (Art. 107) applies in designated tourism zone and in land located within 25 miles (40 kilometers) of Honduras' international borders, shorelines, islands or cays. The general rule is that only Honduran nationals or companies formed entirely by Honduran nationals can own these properties.

In 1990, Decree 90-90 was enacted to create the law and regulations for the acquisition by foreigners of land within the constitutional restricted areas. The

Law for the Acquisition of Urban Land In Restricted Areas Under Article 107 of the Constitution, and its regulations, authorizes foreigners to own land within the restricted zones, but ownership for foreigners is limited in these areas to an area of 3,000 square meters, and the land must be used for housing purposes; however, this Law and Regulation also allows foreigners or foreign companies seeking to purchase land in restricted areas for tourism, economic development, social development or public interest projects exceeding 3,000 square meters in size, to own land, provided that prior to the purchase they file an application before the Honduran Tourism Institute, a government entity.

SPECIAL INVESTMENT AREAS

In recent years, the Honduran government has taken steps to create a more favorable investment climate, especially in key sectors including energy, public-private alliances, concessions and tourism. A high population of young English-speaking students and Central America's best Caribbean port (Puerto Cortés) have also made Honduras increasingly attractive to investors.

CALL CENTERS

In August 2012 the Law for the Promotion of Call Centers and Business Process Outsourcing (BPO), came into force, creating regulations, procedures and benefits to incentivize this sector. The Ministry of Industry and Trade is the entity in charge of the application of the law and of granting authorizations to operate under this modality. Call Centers and BPOs have important tax benefits on income generated from the call center or BPO activities.

PUBLIC-PRIVATE PARTNERSHIPS

The Law for the Promotion of Public-Private Alliances came into force 16 September 2012, by Decree number 143-2010. Its main purpose is to direct and regulate bids for private-public participation in the execution, development and administration under various modalities, of government works and public services. They may be organized as a joint venture, participation agreement, trust agreement or any other form that results in a reliable execution of works and services required. The Commission of Public-Private Partner Promotion (COALIANZA), is the entity in charge of the management and promotion of projects and processes done by Public-Private Partner.

The procedures to apply this law are public national or international tenders, competitive national or international bids or any other procedure that guarantees free competition. Any person or entity, national or international, that is willing to form a Public-Private Partnership, for major projects shall demonstrate their prestige, experience, technical and financial capacity for the development of the project.

Some of the main private-public alliances approved under this law are the construction, expansion and maintenance of 391.8 kilometers of the Goascorán Road to Puerto Cortés, and one of the most important concessions which will take place is the design, construction, improvement, maintenance, financing, equipping and operation of the existing and new infrastructure and the Container Terminal of the Puerto Cortés port.

CLEAN ENERGY

The Promotion and Generation of Electric Power with Renewable Sources was enacted in 2007. Although this law came into force in 2007, it wasn't until 2012 that the government decided to grant special interest and attention to importance of incentivizing the generation of renewable energy. The different types of clean energy that may be produced in Honduras are biomass, wind, geothermal, hydroelectric and solar.

National demand for energy is around 1,392.20 MW according to the national utility energy company (ENEE in Spanish), of which 70% is at present being generated by private thermic plants and only 30% by hydroelectric and other renewable resources such as biomass. Currently with the unstoppable rise of the cost of fuel, the government declared a priority interest the production of clean energy with renewable resources, making it one of the goals of this government to gradually migrate and transform the type of energy used in the country by incentivizing the generation and production of clean energy.

Many hydroelectric projects are currently operating and many others are under construction, as well as big projects such as PATUCA. The biggest Eolic park in Central America is located in Cerro de Hula and is owned by Globeleq Mesoamerica Energy (GME). Currently many other eolic projects are under development.

Amendments have been made to laws in the energy sector to provide various types of incentives (tax, government rate, sovereign guarantees, etc.), to attract investors in this area.

FREE ZONES

Additionally, with the purpose of promoting exports, attracting investment, stimulating production, competition and job creation, Honduras grants benefits to local and foreign companies by means of special regimes (Free Zone Law, Export Processing Zone Law and Temporary Import Law).

Foreign companies exporting from Honduras can take advantage of the following special incentives.

Free Zone Law

A special law has been established for export companies operating in Free Zones and provides the following benefits:

- Companies can be located anywhere in Honduras
- No import or export duties for material, equipment or office supplies required by the manufacturing plant
- Companies are exempt from income, city and county taxes
- 100% repatriation of currency is permitted
- Paperwork required to clear incoming or outgoing shipments is minimal

Export Processing Zone Law

Since its approval in 1987, private Export Processing Zones can be established in any delimited zone of the country; companies within these zones enjoy the same benefits as Free Trade Zones.

Temporary Import Law

This is applicable to companies operating outside the designated Free Zones or Export Processing Zones, which export 100% of the total production to markets outside the Central American region. Qualifying companies can import duty-free all equipment and materials required to manufacture their goods. However, income and city taxes and a customs broker fee must be paid. Special approval must be obtained to operate under the Temporary Import Law.

Tourism Incentives Law

This law was enacted in 1999 and offers tax exemptions for national and international investment in tourism or services related to tourism projects in Honduras. These incentives only apply to new projects and they may not be transferred. There is a requirement that the business must be located in a designated tourism zone in order to qualify for tax exemptions and duty-free status. Hotels, time-shares, air transport, water transport, souvenir shops and stores, tourism agencies, convention centers, car rental companies and other related services are included in the tax incentives and exemptions. Casinos, nightclubs, movie theaters and fast food and restaurants are excluded under this law. One of the greatest benefits of this law is the exemption of payment of income tax for 15 years, exemption for all equipment and goods required to build and equip the project until fully operational, exemption from all taxes for 15 years for the importation of promotional and publicity material for the project, and a tax exemption for 10 years for reposition of deteriorated equipment.

COMPETITION AND ANTIMONOPOLY REGULATIONS

The Law for the Promotion and Defense of Competition contains the legal framework for antitrust and competition in Honduras. This law is applicable to all economic activities performed by companies, whether foreign or national, which will have effect in Honduras. The term economic concentration is very broad under this law; thus, generally, a clearance from the Commission for the Promotion and Defense of Competition must be obtained prior to closing most acquisitions.

BUSINESS ENTITIES

Honduran law recognizes the following forms of business organizations:

- Corporations (*Sociedad Anónima*)
- Limited Liability Companies (*Sociedad de Responsabilidad Limitada*)
- Limited Partnerships (*Sociedad en Comandita Simple*)
- General Partnerships (*Sociedad en Nombre Colectivo*)
- Incorporation of a Foreign Entity (Investment Law)

The most widely used forms of business organization are Corporations and Limited Liability Companies. Individuals or another legal entity, regardless of citizenship and domicile, can form these business entities. There are no nationality or residence requirements for shareholders and boards of directors. All legal entities, except the establishment of a foreign company according to the new Investment Law, must be formed before a notary public, must be registered in the Public Registry of Commerce and must obtain a Tax ID. Additional municipal permits are required.

CORPORATIONS *(SOCIEDAD ANÓNIMA)*

This is one of the most commonly used types of business organization. In this type of business entity, shareholders' liability is limited to their capital contributions. Shareholders hold stock or share certificates and must be registered in the Shareholder Registry Book.

Minimum Capital Stock

The minimum capital stock is HNL25,000 or approximately USD1,256 (at current foreign currency exchange rates).

Number of Shareholders

A minimum of two shareholders is required. Each shareholder must hold at least one share.

General Shareholders' Meeting

This is the corporation's governing body and is formed by all shareholders. Shareholders can meet for an ordinary meeting for the discussion, approval or disapproval of the financial statements of the previous fiscal year, appointment and/or revocation of officers, and any other matters provided for in the articles of incorporation and bylaws. Extraordinary meetings can be held at any time of the year for matters such as the increase or diminution of capital, modification of the company's bylaws and articles of incorporation and any other matter.

Board of Administration

The members of the board of administration are appointed at the foundational shareholders' meeting, or can be named thereafter. Revocation and appointment of new members can be made in general shareholders' meetings.

There is no minimum requirement for the number of members of the board of directors. It has become customary, however, to have three members: president, secretary and treasurer. The president of the board of directors is the legal representative of the company and holds its power of attorney.

Honduran law also allows for a sole administrator, in which case this person is responsible for the decisions of the company. When this type of administration is elected, the sole administrator is the legal representative of the company, with full power of attorney.

Additionally, the audit organ of the company requires for the existence of a controller.

LIMITED LIABILITY COMPANY

This business entity is comprised of partners whose liability is limited to their capital contributions. Small companies or family businesses use this type of company. It is the equivalent to the Limited Liability Company used in the United States.

Minimum Capital Stock

As with corporations, the minimum capital stock is HNL5,000 or approximately USD252 (at current foreign currency exchange rates).

Capital stock is not divided into shares; rather, partners are quotaholders, owners of one social part each, which amounts to the capital contribution made to the company. Social quotas are not as easily transferable as shares. A unanimous consent of the other partners is required in case a partner wishes to sell or transfer the quota to another party. The sale or transfer must be registered in the Public Registry of Commerce.

Number of Quotaholders

A minimum of two quotaholders is required, but the maximum number is limited to 25 quotaholders. Each quotaholder must hold at least one social part.

General Quotaholders' Meeting

This is the entity's governing body and is formed by all quotaholders. Meetings can be ordinary, extraordinary or joint, with the same subjects specified for corporations.

Management

The company can have one or more managers. The company's bylaws and articles of incorporation determine this, or a special appointment can be made by means of a general quotaholders' meeting. Managers can be quotaholders or persons not related to the company.

There is no minimum requirement for the number of members of the board of directors. It has become customary, however, to appoint three members: president, secretary and treasurer. The president of the board of directors is the legal representative of the company and holds its power of attorney.

Honduran law also allows for a sole administrator, in which case this person is responsible for the decisions of the company. When this type of administration is elected, the sole administrator is the legal representative of the company, with full power of attorney.

Additionally, the audit organ of the company requires that there be a controller.

LIMITED PARTNERSHIPS AND GENERAL PARTNERSHIPS

These types of business entities are rarely used because of a series of disadvantages.

ESTABLISHMENT OF FOREIGN CORPORATIONS

Branches, subsidiaries, representation offices and joint ventures of foreign corporations can operate and conduct businesses in Honduras according to the Law of Protection and Promotion of Investment by filing and registering in the Public Registry of Commerce the articles of incorporation and bylaws of the parent company.

The foreign company must provide the following documents:

- Grant a power of attorney.
- Attorney must file in the Public Registry of Commerce for registration:

- A copy of the certificate of registration or articles of incorporation and bylaws of the parent company.
- Minutes of the general shareholders or board meeting where appointment of a permanent representative is made. The permanent representative must reside in Honduras and will have full powers of attorney to act on behalf of the branch.

All documents mentioned above must be translated into Spanish (when applicable) and be formally legalized to have full force and effect in Honduras by the Apostille or authentication by the Honduran Consulate. The Public Registry of Commerce must proceed with the registration without requiring from petitioner any authorization of any other government entity. The domicile of the foreign entity will be the place where the registration of the foreign company was made.

TAXATION

The tax year in Honduras is the calendar year and has a moderate tax rate. Both the top income tax rate and the top corporate tax rate are 35% (a 25% corporate tax rate plus a 10% temporary social contribution tax). Other taxes include a value-added tax (VAT), capital gains tax and dividend tax.

District and municipal governments obtain their revenues from taxes on amusements and livestock consumption, and from permits, licenses, registrations, certifications, storage charges, property taxes and fines.

INCOME TAX

Personal income in Honduras, whether obtained by a Honduran national or a foreigner resident or domiciled in Honduras, is taxed according to a progressive schedule with rates running from 15% to 25% on total net income. Local businesses income is taxed at 25% plus 10% of a Temporary Social Contribution Tax. Income obtained by nonresident or nondomiciled foreign individuals or entities will be taxed at 10%, for every income.

PROFITS AND DIVIDENDS TAX

Income of persons and companies derived from profits or dividends distributions are taxed with a 10% tax rate.

NET ASSET TAX

Asset value included in the financial statements, minus the provisions for accounts receivable, cumulated depreciations allowed by the Income Tax Law, are called net assets, and comprise the taxable base upon which the tax is calculated. This tax equals 1% of annual payment, applicable to companies and

persons domiciled in Honduras and classified as merchants according to Honduran laws. This tax will be applied without taking into account nationality or domicile of the owners of the net asset or the region of the country in which it is located.

EXCISE TAX

Excise taxes are imposed mainly on beer and cigarettes, but also on imported matches, soft drinks, imported sugar, and new and used motor vehicles.

SALES TAX

A general 12% tax is applied to most products. Goods exempted from this tax include staple foods, fuels, medicines, agro-chemicals, books, magazines and educational materials, agricultural machinery and tools, handicrafts and capital goods such as trucks, cranes and computers, among others. Goods and services imported by *maquilas* and other firms protected under the Special Export Development Regimes are exempt from sales tax.

A 15% sales tax is applied to beer, brandy, compound liquors and other alcoholic beverages, cigarettes and other tobacco products. The tax is levied on the distributor price, minus the amount of the production and consumption tax on both imports and national products.

INTELLECTUAL (INDUSTRIAL) PROPERTY

In Honduras, the framework for the protection of intellectual and industrial property rights can be found in these laws:

- Law on Copyrights and Related Rights. Decree 4-99-E
- Industrial Property Law. Decree 12-99-E
- Paris Convention for the Protection of Industrial Property
- Patent Cooperation Treaty (PCT)
- Agreement on Trade-Related Aspects of Intellectual Property (TRIPS)
- Universal Copyright Convention
- Berne Convention for the Protection of Literary and Artistic Work
- Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations
- Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure
- Other WTO and WIPO agreements

- Implementation law of CAFTA-DR related to intellectual and industrial property. Decree 16-2006
- Intellectual Property in CAFTA-DR
- Law for the Promotion and Protection of Investments

APPLICATION REQUIREMENTS

For the protection of contracts and acts that grant rights and obligations with respect to intellectual property rights, the petitioner must file an application with the Administrative Office of Intellectual Property. For foreign companies, an apostilled and translated power of attorney is necessary.

Trademarks

- Power of attorney
- Company bylaws and articles of incorporation
- 20 labels with the design of the trademark (2x4 inch)
- Completed application form

Patents (Invention, Utility Models and Industrial Designs)

- Power of attorney
- Two copies (original and copy) of the patent description and its main uses
- Two copies (original and copy) of the invention description
- Two copies (original and copy) of a summary of the patent description and invention description
- Two photographs, blueprints, etc.
- Completed application form
- For chemical formulas and designs, a 7x7 inch sample must be provided

TERMS OF EFFECTIVENESS

Trademarks: 10 years (renewable indefinitely)

Patents: 20 years (nonrenewable)

Copyrights: during the author's life and 75 years after his death

APPLICATION COST

Legal fees and expenses for registration of trademarks are approximately USD550. For patents, legal fees and expenses are approximately USD800.

INTELLECTUAL AND INDUSTRIAL PROPERTY OFFICE

The Administrative Office of Copyrights and Related Rights is the agency in charge of applying administrative sanctions to those responsible for infringement of copyrights and related rights and industrial property rights. Notwithstanding the administrative sanctions that this agency imposes to infringing parties, civil and criminal actions can be brought against the infringing parties in local courts.

LABOR LAW

HIRING OF EMPLOYEES AND LABOR CONTRACTS

By law, employers and workers must enter into a labor contract that must be signed by the parties. If the employer does not provide a contract, the work relation becomes an implied contract in which the employee maintains all rights under law.

A National Hourly Employment Program (part-time employment) came into force in 2010. This temporary program allows employers to hire part-time employees and pay for work performed on an hourly basis. The employee hired under this program has every right that a permanent employee has, such as payments, Social Security benefits, to be hired in a permanent position, compensation based on worked hours with a surplus percentage, among other benefits.

BENEFITS AND LABOR RIGHTS

Local Labor Requirements

- A 90% Honduran labor force (equivalent to 85% of payroll)

Labor Benefits

- One day wage/week
- Full month pay bonus in December and June
- Social Security
- School Bonus

Work Shifts

- Day: must be between 5:00 am and 7:00 pm
- Night: must be between 7:00 pm and 5:00 am
- Mixed shift
- Day shift must not exceed 44 hours a week
- Night shift must not exceed 36 hours a week

Remuneration

- Night work 25% surcharge
- Overtime 25% (day), 50% (night)

Rest and Holidays

- One day rest for every six days worked; preferably Sundays, although it might be given any other day of the week.
- Paid holiday on: January 1; Thursday, Friday and Saturday of the Holy Week; Easter; April 14; May 1; September 15; October 3, 12, 21; and December 25

Vacations

1 year = 10 days

2 years = 12 days

3 years = 15 days

Over 4 years = 20 days

SOCIAL SECURITY (IHSS) AND PENSION CONTRIBUTIONS (RAP)

The Social Security System (IHSS in Spanish) covers sickness, accidents, handicap, maternity, retirement pension and death of their affiliated members.

Employer pays 7% and employee pays 3.5% levied on a maximum of HNL7,000, approximately USD352 (depending on current exchange rate), of the employee's salary, that is, for each employee approximately USD25 to be paid by employer and USD12.50 by employee.

Additionally, a pension contribution of 1.5% of the gross salary of employees is mandatory under the Private Contribution Regimen (*Regimen de Aportaciones Privadas*).

MINIMUM WAGE

In Honduras payment of the minimum wage is mandatory; thus, no inferior wage can be paid, even if workers agree so. Establishment of minimum wage automatically modifies labor contracts. Minimum wage is mandated by means of an Executive Decree, agreed by the government, worker and employee organizations, and is revised and negotiated on a yearly basis. Currently, minimum wage varies from the type of service to the number of employees an entity has, going from HNL4,600 to HNL7,200 (approx. USD232 – USD362).

Procedures to establish and apply minimum wage are established in the Law on Minimum Wage and are set according to occupation categories, economic activities and other classifications deemed reasonable by the Minimum Wage

Commission. The law empowers the parties to agree on the factors to set minimum wage. Nowadays, the only agreed factor is the Inflation Index, whose main index, as well, is the Consumers Price Index (CPI), reflected in the access to staple foods. The Honduras Central Bank provides this Inflation Index.

The Minimum Wage Commission is comprised of representatives of employees, employers and government. The negotiation must be made by representatives of employer and employee organizations. If no agreement is reached, the president is empowered to determine and approve the new applicable minimum wage.

HIRING OF FOREIGN EMPLOYEES

Foreigners can be hired by Honduran and foreign corporations. As a previous requirement, it is necessary to obtain a working permit (to be renewed every two years) from the Labor and Social Welfare Ministry. In addition, it is necessary that the Office of Foreigners and Migration issue a Special Permanence Permit under a private contract for foreign employees.

TRADE

IMPORT RESTRICTIONS

Honduran law prohibits discriminatory or preferential export and import policies affecting foreign investors.

The import of ground vehicles over seven years old and passenger buses over 10 years old is prohibited, except for vehicles considered to be classic collectible cars. Import of refurbished and right-hand drive vehicles is also prohibited. Import restrictions are also imposed on firearms and ammunition, toxic chemicals, pornographic material and narcotics. Import restrictions are mostly based on phyto-sanitary, public health and national security factors. The implementation of CAFTA-DR is leading toward the elimination of market access barriers for all products other than white corn.

IMPORT DUTIES

The duty assessed by the Honduran government at the time of customs clearance ranges between 0% to 15%, for most items. Honduras is a member of the Central American Common Market (CACM) which also includes Guatemala, El Salvador, Nicaragua and Costa Rica. CACM members apply a common external tariff (CET) for manufactured and imported products from outside the CACM. Honduras' tariffs on most goods outside the CACM are currently within the 0% to 15% range.

There is a value added tax of 12% that is applied on cost, insurance and freight (CIF) value plus duty applied to most products, but many items of necessity and handicraft are exempted.

With CAFTA-DR, more than 80% of U.S. exports of consumer and industrial goods will enter the region duty-free, with the remaining tariffs phased out over 10 years. Duties on remaining U.S. products will be phased out over a period of up to 20 years. Nearly all textile and apparel goods that meet the agreement's rules of origin will be duty-free and quota-free immediately. It is first necessary to obtain the appropriate Harmonized System classification number for determining when a particular product can enter the CAFTA-DR region duty-free.

Honduras maintains a combination price band mechanism and absorption agreement for corn, grain sorghum and corn meal. Under the price band mechanism, duties vary from 5% to 45% depending on the import price. The tariff is calculated every 15 days using international prices plus freight and insurance charges.

TEMPORARY IMPORT LAW

The Temporary Import Law (RIT in Spanish) was enacted in 1984 and allows exporters to introduce raw materials, parts and capital equipment into Honduran territory exempt from surcharges and custom duties as long as the material or part is to be incorporated into a product, which is exported out of the country.

For additional information on exports refer to Special Investment Areas under Foreign Investment.

ENVIRONMENTAL LAW

Honduras is a country where environmental wealth is very important and can be exploited in mining, forestry and agriculture industries. These industries are a great importance to our economy.

General Environmental Law and its Regulation came into force on June 1993 under the decree number 104-93. This law contains the regulations for the protection, monitoring and inspection to the well being of the environment. It also contains penalty provisions for infringing parties. This law promotes a framework to guide the agricultural, forestry and mining companies. Environmental licenses are required for these projects. Currently, a new mining law is still pending approval by Congress.

The Law of Forest Areas, Protected Areas and Wildlife came into force by the Decree Number 98-2007, 19 September 2007. It is one of the most important laws for tourism and environmental development.

With a total landmass of almost two million square kilometers, Mexico is slightly less than three times the size of Texas and has a total population of over 106 million people. Its political organization is a federal republic with 31 states and a federal district. The president is elected by popular vote for a six-year term and cannot be reelected. The Mexican legal system is a mixture of U.S. constitutional theory and a civil law system with a judicial review of legislative acts.

Mexico has a free market economy that recently entered the trillion-dollar class. It contains a mixture of modern and outmoded industry and agriculture, increasingly dominated by the private sector. Recent administrations have expanded competition in seaports, railroads, telecommunications, electricity generation, natural gas distribution and airports.

FOREIGN INVESTMENT

Over the past federal administrations, Mexico has continuously shown openness in areas in which foreign investment is allowed. In fact, current policies encourage and aim to increase direct or indirect foreign participation in the capital stock of Mexican business entities, unless specifically restricted in either the Constitution or the Foreign Investment Law. Consequently, only a few activities remain restricted exclusively to Mexican investors or the Mexican government.

Furthermore, it is important to point out that Mexico's Foreign Investment Law includes a classification called neutral investment. A neutral investment is that contributed into Mexican corporations through shares with limited corporate rights or without voting rights, as well as by means of trusts authorized under the Foreign Investment Law. This type of investment is considered for determining the percentage of foreign participation in the corporate capital of Mexican companies. The investments made by international financial development institutions into the capital stock of corporations may also be considered neutral investment, with the prior authorization of the National Foreign Investment Commission. The aforementioned makes even more flexible the schemes under which foreign investment is allowed.

MAIN RIGHTS

Mexico promotes and protects foreign direct investment (FDI), granting to foreign investors national treatment, i.e., the same rights to which Mexican investors are entitled. Foreign investors are only required to register with the National Foreign Investment Registry, part of the Ministry of Economy, and comply with certain reporting requirements.

RESTRICTIONS

The following economic areas are considered strategic by the Mexican Constitution and the Foreign Investment Law, and are therefore excluded from foreign investment:

- Activities reserved to the Mexican Government. These include petroleum and some basic petrochemicals, radioactive minerals, nuclear energy, electricity, telegraph and satellite communications, the postal system (but not courier services), among others.
- Activities reserved for Mexican Citizens and Corporations. In the following areas no FDI is allowed (except as neutral investment): land transportation of passengers and freight, distribution of gasoline and liquefied petroleum gas, radio and television services (excluding cable and direct satellite TV), credit unions, development banking institutions, and certain professional and technical services, among others.

There are other activities where FDI is restricted to the specific percentages provided by law for some companies, for example, air transport where the maximum limit is 25%. For others, such as insurance companies, certain financial services (except banking, financial multiple purpose companies and financial holding activities where 100% FDI is allowed subject to certain requirements in some cases), certain telecommunication operations (satellite pathways and their frequencies, band of frequencies, and public telecommunication nets), administration of ports, most fishing activities, guns and their supplies, as well as newspapers are subject to a maximum limit of 49% foreign ownership.

Furthermore, an investor must have a special permit issued by the National Foreign Investment Commission to hold more than 49% of the stock in certain enterprises, including, among others: schools, port services, cellular telephony, insurance brokerage, legal services, securities qualifiers, operation of railroads and trains, and drilling of gas and petroleum.

Other legal provisions, such as Free Trade Agreements entered into by Mexico with other countries and some other special laws, set forth specific regulations

that would have to be analyzed to determine if the specific business activity the foreign investor will perform is either prohibited, regulated or allowed under Mexican Law. For such reason, this area must be analyzed on a case-by-case basis.

SPECIAL OBLIGATIONS AND REGISTRATIONS

Foreign investors such as Mexican corporations with foreign capital, Mexican entities with Mexican shareholders or partners which are individually held by foreign capital and foreign individuals doing business in Mexico, must register with the National Foreign Investment Registry (RNIE) and submit the requested economic and statistical information to the Foreign Investment Commission, which is also under the control and supervision of the Ministry of Economy. In addition, foreign investors must provide notice of any variation in corporate capital in order to maintain the validity of their registration and remain in good legal standing before the RNIE.

IMMIGRATION

Any foreign individual who conducts business in Mexico must obtain an appropriate immigration visa from the National Immigration Institute (INAMI) that expressly authorizes the business activities that such foreigner is intending to perform.

Immigration Alternatives

There is a general classification of immigrants under the Mexican Population Law:

- **Nonimmigrant**. Foreign individuals who will temporarily reside in Mexico (FM3 permit).
- **Immigrant**. Foreign individuals who have the intention to reside permanently in Mexico (FM2 permit).
- **Permanent Resident** *(Inmigrado)*. Foreign individuals who have the right to permanently reside in Mexico after five years of holding an immigrant permit.

Foreign individuals conducting business in Mexico usually obtain a nonimmigrant type of immigration permit, under one of the following alternatives:

- **Nonimmigrant executive visitor**. This type of permit is granted to foreigners who will perform management or controlling activities.
- **Nonimmigrant business visitor**. In general terms this permit is granted to foreign individuals who represent foreign entities or who will invest or simply identify alternatives of investment in Mexico. Under NAFTA and trade cooperation treaties with other countries, this type of permit is also granted to citizens from countries such as the U.S., Canada, European Union, under the FMM (Multiple Immigration Form), which is easily granted at

the airport or at the entrance border by following a very simple process.

- **Nonimmigrant economic dependent**. Foreign individuals with an appropriate permit are allowed to apply for immigration permits for their spouses, parents and children.

Most of the Mexican immigration permits are granted with a validity of one year and may be renewed for four additional one-year periods (except for FMM which is issued for a term of 180 days upon arrival in Mexico). Nonetheless, the specific activities the foreign investor will perform must be analyzed to identify the appropriate immigration visa that must be obtained.

Application Process

Immigration permits may be granted by:

- **Mexican consulates**. These are authorized to issue immigration visas only for citizens of certain nationalities aiming to enter the country and then obtain an FMM provided by immigration agents at entry ports. Depending on the type of visa for which the foreigner is applying, the Mexican consulate will require certain documents and information for the issuance of the corresponding visa. The period of time for the final issuance of the immigration visa varies depending on the consulate's workload. It is important to point out that as of year 2010, Mexican Consulates abroad are not entitled to issue stay visas (FM2 or FM3).
- **Immigration authorities located at Mexican airports or border entries**. These are authorized to immediately issue FMM permits. The key characteristic of immigration permits issued at the airport or the border entries is that they are granted for a brief period of time (generally up to 180 days).
- Officers of the National Immigration Institute as explained below.

National Immigration Institute (INAMI)

Foreign individuals that enter the country under a temporary visa (FMM) may indicate their intention to stay in the country more than 180 days, in which case they shall apply within a term of 30 days at the INAMI offices in Mexico for the issuance of a FM3 or FM2 permit. In general terms, working permits are usually applied for directly before INAMI in Mexico by following an administrative procedure in which certain information and documents must be presented such as:

- Job offer letter issued by a Mexican company
- Official application forms
- Payment of applicable governmental fees
- Copy of passport, among other things

In accordance with the Manual of Immigration Procedures and Criteria (MCTM) of the National Institute of Immigration, which entered into force on 30 April 2010, FM3 or FM2 permits shall be issued by INAMI within a term of 30 days. Formerly, these procedures could take a month and a half or two months, but under the new MCTM, the intention is to resolve the issuance of these permits in a more expeditious manner.

Nationalities requiring a visa prior to traveling to Mexico

In certain cases, Mexico requests from citizens of certain countries such as Arabia, Brazil, Colombia, China, Dominican Republic, Ecuador, Grenada, Guatemala, Guyana, Haiti, Honduras, India, Lebanon, Nicaragua, Pakistan, Peru and Taiwan, among several others, to first apply for a visa at the Mexican Consulate in their countries of residence prior to traveling to Mexico. However, foreigners with a current United States visa are exempted from this requirement, if, and only if, they bring said American visa and show it before the Mexican immigration authorities when entering the country. In order to obtain the referenced special visa, a Mexican company or individual must invite the foreigner to come to Mexico.

ENVIRONMENTAL

The Mexican government has enacted several provisions aimed at regulating the business activities performed within Mexican territory that may cause harm to the environment. In addition, environmental government agencies in charge of inspecting the operating activities of individuals or entities have been increasing their efforts to control and penalize activities carried on in breach of the applicable Mexican environmental law.

It is strongly advisable that foreign companies or investors consult with an environmental specialist to verify that the business activities that are to be performed in Mexico would be in compliance with Mexican law, and ensure that they obtain the corresponding environmental permits.

A general premise that must be considered when analyzing the environmental aspects or implications of a business activity is that under Mexican law the individual or entity that directly caused the contamination is liable for all implications and damages arising from such actions.

FEDERAL, STATE AND MUNICIPAL LAWS

In general terms, we note that Mexican environmental legislation is divided in the following three sets of laws:

Federal Laws. These laws are issued by the Mexican Congress and generally regulate the activities, waste or releases deemed hazardous under Mexican law. These laws include the Mexican Official Standards (NOMs) issued by the

Federal Environmental Ministry (SEMARNAT), which contain the technical parameters to comply with the obligations of individuals or entities under the applicable environmental laws, such as the maximum allowable limits of particle emissions by companies whose processes cause air pollutant releases.

State Laws. These laws are issued by each local state congress and generally regulate those activities not included in the federal laws. In this regard, state laws regulate activities such as the generation of nonhazardous waste and air pollution emissions that were not caused by a company under federal jurisdiction, among others.

Municipal Laws. Each of the Mexican states grants specific authorities to the municipal governments to encourage compliance with state laws.

Competent Authorities

In general, the existing Mexican environmental governmental agencies have jurisdiction depending on the particular issue and whether the issue is regulated under federal, state or municipal laws.

Main Federal Environmental Agencies

Environment and Natural Resources Ministry (SEMARNAT). For the purposes of this overview, we may generally state that SEMARNAT is the Ministry in charge of issuing the environmental permits pursuant to federal laws required for a company's operation under Mexican environmental laws.

Office of the Attorney General for Environmental Protection (PROFEPA). PROFEPA is the authority generally responsible for inspecting and determining whether any business activity is in compliance with the environmental laws and NOMs and if the appropriate environmental permits were obtained.

State Environmental Agencies

Each Mexican state has created its own governmental agencies in charge of encouraging compliance with state environmental laws. Such authorities are normally in charge of issuing the applicable state environmental permits and verifying whether the activities carried out by any individual or entity are in compliance with state laws.

Municipal Laws

Municipal governments also create their own divisions to supervise the compliance of the environmental provisions, the inspection of which was passed on to them.

Environmental Permits

Individuals or entities that conduct business activities in Mexico must apply for and obtain certain environmental permits that may vary depending on the specific type of activities to be undertaken. Most environmental permits must be obtained prior to initiating operations, although some state environmental authorities allow companies to initiate operations upon filing the application.

ANTITRUST

The Mexican Antitrust Law *(Ley Federal de Competencia Económica)* sanctions activities that are deemed illegal when intended to prevent the free process of competition and the participation of companies or individuals in the Mexican market. Under such premise, the Mexican antitrust authorities seek to prevent, punish and eliminate the creation of monopolies, the performance of monopoly practices absolute or relative, and other restrictions to the efficient development of goods and services markets.

Monopolies and Monopoly Practices

Monopolies are prohibited under Mexican law. Furthermore, the Mexican Antitrust Law specifies a list of activities that are considered as Absolute Monopoly Practices, defined as the agreements, settlements or combinations between competitors to:

- Fix, increase, concert or manipulate the purchase or sale price of goods or services offered or demanded in the market, as well as to exchange information for the same purpose or effect.
- Impose the obligation to produce, process, distribute or market a limited or restricted amount of goods or the rendering of a limited or restricted number or volume of services.
- Divide, distribute, assign or impose portions of an existing or potential market of goods and services through determined or determinable customers, suppliers, times or spaces.
- Establish, concert or coordinate positions or the abstention in public bids or auctions.

Individuals or entities that perform any of the above listed practices will be penalized and the monopoly practice will be deemed null and void.

In addition to the above Absolute Monopoly Practices, the Mexican Antitrust Law also sets forth certain Relative Monopoly Practices that are defined as the acts, contracts or combinations, which purpose or effect is (or could be) to unduly displace other economic agents, substantially impede their access or to

establish exclusive advantages in favor of one or various individuals or entities in the following main cases:

- Between economic agents that are not competitors among themselves, to fix, impose or establish the exclusive distribution of goods or services, with respect to the subject, geographical situation, periods of time, including the division, distribution or allocation of clients or suppliers; as well as to impose the obligation to not produce or distribute goods or render services for a fixed or determinable period of time.
- Imposition of prices or other conditions that a distributor or supplier must observe when selling or distributing goods or rendering services.
- Sale or transaction contingent on the purchase, acquisition, sale or transfer of another good or service, normally distinguished or distinguishable or on a reciprocal basis.
- Sale or transaction subjected to the condition of not using, acquiring, selling or providing goods or services produced, processed, distributed or marketed by a third party.
- Unilateral action consisting of refusing to sell or provide available goods or services to specific persons, which are normally offered to third parties.
- Any other action that unduly damages or prevents the competition process and free access to production, processing, distribution and marketing of goods and services.

In order for the above Relative Monopoly Practices to be considered a breach of the Mexican Antitrust Law:

- The person presumed liable must have substantial power in the relevant market (as such terms are defined in the Mexican Antitrust Law).
- They must involve goods or services corresponding to the relevant market identified.

Concentrations

For purposes of the Mexican Antitrust Law, concentrations include the merger, acquisition of control or any action aimed to concentrate entities, associations, shares, partnership interests, trusts or assets carried out between competitors, suppliers, clients or any other economic agent.

The Mexican Antitrust Commission will penalize any concentration aimed at or resulting in diminishing or impeding competition or free participation with respect to equal, similar or substantially related goods or services.

The Mexican Antitrust Law provides the parameters to identify concentrations deemed prohibited and those that must be reported to and authorized by the Antitrust Commission before taking place.

BUSINESS ENTITIES

There are various kinds of corporate vehicles regulated by the General Law of Commercial Entities; however, two types are the most commonly used. One is the *Sociedad Anónima*, or S.A., which operates very similarly to a C corporation in the U.S., and the other one is the *Sociedad de Responsabilidad Limitada,* or S. de R.L., which shares some similarities with an LLC or LLP in the U.S.

An entity in Mexico must be created by means of a public deed (either through a notary public or public broker). The entity must also be registered in the Public Registry of Commerce and the Federal Taxpayers Registry.

SOCIEDAD ANÓNIMA

This type of entity offers liability to its shareholders limited to their capital contributions. The shares of an S.A. may be freely transferred provided that the rights of the other shareholder(s) are observed.

Minimum Capital Stock

Based on a recent amendment to the General Law of Commercial Entities, the minimum capital required for an S.A. shall be agreed upon incorporation of the company, and shall be duly subscribed, and consequently, waiving the requirement to have a minimum capital stock of MXN50,000 (approximately USD5,000). However, it is generally advisable that the value of the company's capital stock be consistent with the size of the entity's operation.

Number of Shareholders

The General Law of Commercial Entities requires that an S.A. have at least two shareholders, which may be individuals or business entities of any nationality. In general terms, one shareholder may hold the vast majority of the shares, subject to the limitations stated in the Foreign Investment Law and other laws regulating specific areas of the economy.

Administrative Body

The administrative body of this entity may be composed of either one person (sole administrator) or a board of directors composed of various members. Typically the board is granted the broadest authority. However, the supreme authority of the corporation is the general shareholders' meeting, whose authority supersedes that vested in the board. Board members have authority

only as an administrative body and not individually; however, members may be granted with individual authority by the general shareholders' meeting or by the board itself.

Decisions of the board are usually made by majority vote, with the chairman having a tie-breaking vote when the board is composed of an even number of members. In Mexico, the board is usually composed of a chairman, a vice-chairman and a secretary. Board members may or may not be required to guarantee their performance through a bond and they may or may not be compensated for their position on the board.

The officers of the company are the general manager and other managers of the company, which may be granted general or special powers-of-attorney to represent the company.

Examiners

In the S.A., the examiner is usually a Mexican-licensed accountant whose task is to supervise and oversee the transactions and operations of the corporation on behalf of the shareholders. S.A. corporations with foreign capital often appoint their external auditor as the examiner.

SOCIEDAD DE RESPONSABILIDAD LIMITADA

This entity (S.R.L.) also offers the limited liability of an S.A. Some of its unique characteristics are:

- Its partners' interests may be transferred with a series of restrictions and requirements and cannot be marketable securities, nor may the company increase its equity through a public offering (in contrast to the S.A. de C.V.).
- A U.S. partner's income from an S.R.L. may be considered partnership distributions under U.S. tax law, subject to certain rules and restrictions of such U.S. laws.

Minimum Capital Stock

Based on a recent amendment to the General Law of Commercial Entities, the minimum capital required for an S. de R.L. shall be agreed upon incorporation of the company, and shall be divided into partnership interests than can be of different value and category, but shall not be at any time of a value less than MXN1 and consequently, waiving the requirement to have a minimum capital stock is MXN3,000 (around USD300).

Number of Shareholders

For this type of entity, the same rule applies as in the S.A., as there must be at least two shareholders. However, in this case there is a maximum limit of 50 shareholders.

Administrative Body

A similar structure applies as in the S.A. However, the administrative body of an S.R.L. is called the sole manager, or if collective, the board of managers.

Examiners

An examiner is not required in an S.R.L., although its appointment may represent an effective surveillance mechanism by a third party that is impartial in nature.

OTHER INVESTMENT VEHICLES

In addition to incorporating a Mexican entity, the most commonly used vehicles to distribute and sell in Mexico are the following:

Distribution Agreement. The distributor is an independent contractor who purchases products in order to resell them in a specified territory. There is no employment relationship between the manufacturer and the distributor or the distributor's employees. Generally speaking, the distributor will not represent the manufacturer legally, unless specifically granted a power of attorney, and therefore it cannot assume any obligations on behalf of the manufacturer. A written agreement outlining the above is strongly advisable.

Representation Agreement. This is very similar to a commission agreement. It is not as broad as the distribution and agency agreements, and its purpose is limited to the specific instructions provided by the principal for certain acts. The compensation of the representative is to be negotiated between the parties, and usually consists of a commission based on sales.

Agency Agreement. The agent is a commercial intermediary (broker) between the manufacturer and the final consumer. Its main purpose is to promote and close deals. The income of an agent is normally based on the results or the deals closed. The agent must generally cooperate with the principal for the conclusion of the transaction, and he/she is usually responsible for delivering the goods, collecting the price on behalf of the principal and providing any post-sale service required.

Joint Venture Agreement. The purpose of a JV is generally the creation of a new entity, or to participate in an already existing company. According to Mexican law, this kind of agreement is considered mainly as a preliminary agreement or an agreement between the signing partners, unless it is incorporated into the bylaws of the company where it becomes binding for any existing or future partner.

Branch or Subsidiary. Mexican law recognizes in favor of foreign entities the same legal capacity they have in their countries of origin, as they have an independent existence apart from their shareholders. In order to conduct business activities in Mexico, these foreign entities must either incorporate a

subsidiary or operate directly by registering at the Public Registry of Commerce and comply with certain foreign investment requirements.

TAXATION

The main taxes payable by individuals and corporations operating in Mexico and, in certain cases, by foreign companies, are those levied by the federal government. State and municipal governments have more limited taxing authority and up to now have never had corporate income taxes to comply with locally. However some states do tax employers, such as in the case of salaries and professional fees paid by them. Below is a brief summary of Mexico's tax system.

FEDERAL TAXPAYERS REGISTRY AND FIEL (ELECTRONIC SIGNATURE)

This Registry belongs to the Tax Administration Service (the Mexican equivalent of the U.S. Internal Revenue Service). Every taxpayer (corporation or individual) must register in order to obtain a Taxpayer Identification Number (RFC). This number is necessary for all tax records, tax returns and other payments.

In addition to the aforementioned, it is required to process and obtain an Electronic Signature known as FIEL, which purpose is to serve as an electronic identification to deem the taxpayer as the legitimate person to do so.

The Electronic Signature FIEL is mandatory to be able to issue electronic invoices, being this modality is the proper manner to issue any invoice starting from 2013.

INCOME TAX (ISR)

The Income Tax Law imposes taxes mainly in connection with the income of companies or individuals when:

- These companies or individuals are Mexican residents with respect to all of this income, regardless of the source of wealth this income originates from.
- Foreign residents that have a permanent establishment in Mexico generate income attributable in a direct manner to such permanent establishment.
- Foreign residents have income connected to sources of wealth located in Mexico, even though they don't have a permanent establishment in Mexico, or in the event of having it, such income is not attributable to such permanent establishment.

Taxable income. Taxable income is considered according to the Income Tax Law as any other income that is not expressly excluded in such law. Such income minus allowable deductions and unexpired net operating losses carried forward from prior years shall generate the taxable base over which the income tax rate shall be applied.

Entities Tax. Entities residing in Mexico are taxed on their worldwide income from all sources, including profits earned in cash or credit. Mexican-resident entities are those incorporated under Mexican law or those with a principal place of business or management located in Mexico. Nonresident entities will be taxed in Mexico on their profits earned from its Permanent Establishment in Mexico, or when they don't have one, on the earnings from sources of wealth located in Mexico.

Tax Rate. For the 2012 fiscal year (FY), entities residing in Mexico are subject to federal capital gains tax at a rate of 30%; this rate is scheduled to be reduced to 29% in 2013 until year 2014 in which it will be reduced again to 28%.

Tax Returns. The tax year in general terms must match the calendar year, always ending on December 31 of each year and not exceeding 12 months. An annual tax return for companies must be filed by the end of the third month following the end of the FY. In addition, the law requires that business entities file monthly estimated tax returns.

Dividends. Dividends received from a Mexican entity are not subject to Capital Gains Tax if the earnings were already subject to such tax at the corporate level and the entity distributing the profits pays them from its Net Tax Profit Account (*Cuenta de Utilidad Fiscal Neta* – CUFIN). This is an account of a Mexican company's net after-tax income that can be distributed to shareholders without any further taxation pursuant to income tax provisions.

Individuals' Tax. Individuals residing in Mexico are subject to Mexican capital gains tax on their worldwide income, regardless of their nationality. Non-residents, including Mexican citizens who can demonstrate residence for tax purposes in a foreign country, are taxed only on their Mexican source of wealth income or the income from its permanent establishment in Mexico. Individual income is taxed in accordance with a progressive table of rates from 3% to a maximum marginal rate of 30% for the 2012 fiscal year (FY). Resident individuals receiving taxable income are required to file an annual tax return no later than April 30 of the following year. In the case of salaries, the employer is required to compute the annual tax on behalf of the employee unless the latter notifies the employer of his/her intention to file an annual return.

The Federal Fiscal Code provides that foreign individuals are deemed to have a residence in Mexico for tax purposes when they establish a home in Mexico or,

if they also have a home in another country, when they have in Mexico their "center of vital interests." Under the Code, a center of vital interests is deemed to exist in any of the following cases:

- When more than 50% of the total income of the individual during the year is derived from a Mexican source of income.
- When individuals have their main place of professional activities in Mexico.

SINGLE RATE BUSINESS TAX

The single rate business tax (IETU) is of a direct type and taxes at company level, with a uniform rate, the remaining flow of the company that is used to compensate the factors of the production, deducting the expenditures for the gross formation of the capital, which includes machinery, equipment, land and constructions, and also inventory.

The purpose of the IETU is the effective receipt of the total income by natural persons and companies, residing in Mexico, for the transfer of assets, the rendering of independent services and the granting of the use or temporary enjoyment of assets, with the independence that such activities are performed or not in the national territory.

The current applicable rate for year 2012 and forward is 17.5%.

The IETU will tax the income obtained for the transfer of assets, rendering of services and for granting the temporary use of assets, over a cash basis; that is, IETU will be triggered by accumulating the income upon collection and taking deductions upon payment.

VALUE ADDED TAX

A Value Added Tax (VAT) at the general rate of 16% (11% in the border region) is payable on the sale of goods, rendering of services, rents and importation of goods and services (except temporary imports under Maquila or PITEX programs).

A 0% VAT rate is applicable to some transactions involving certain products such as food (non-processed) and medicines, which in general terms means that no VAT is payable in those cases.

VAT collected by taxpayers from their suppliers must be remitted to the tax authority, and may usually be credited or reduced against the VAT paid by the taxpayers (for instance, in their purchases or importation of goods), thereby reducing the net liability owed to the tax authorities. Excess credits may be reimbursed.

As of fiscal year 2003 the VAT is computed for each calendar month, except where the tax is incurred by reason of occasional activities. The monthly returns must be filed no later than the 17th day of the following month.

EXCISE TAX

In Mexico, there is an excise tax called the Special Production and Services Tax, which is applicable to entities and individuals that sell and import certain goods in a definitive manner or render certain services. The law sets different rates for each product or service. Among the products included in the law are: alcoholic beverages, alcohol and denatured alcohol; tobacco and cigarettes; gasoline and diesel; mineral water, hydrating or re-hydrating beverages; and certain services such as telecommunications.

IMPORT DUTIES OR TARIFFS

The Mexican federal government charges duties on items that are imported into Mexico. To determine the applicable import tariffs one must first look at the General Import Tariff Law. However, depending on the country of origin of the goods, preferential tariffs may be applied as established in some Free Trade Agreements, provided that the origin of the goods is evidenced with a proper certificate. In recent years, Mexico has been negotiating and has signed Free Trade Agreements (FTAs) with a number of countries. Accordingly, numerous import-export duties have been reduced or even eliminated. In order to determine the import duties and taxes, a case-by-case system must be used, depending upon the specific goods to be imported or exported and the applicable FTA.

In addition to the preferential tariffs established in the FTAs, there is a series of reduced tariffs contained in the Decree Establishing the Sector Promotion Programs, through which companies incorporated in Mexico (exporters as well as producers for the domestic market) may enjoy lower tariffs for certain imports (0% or 5% rates), which are below those established in the General Import and Export Tariff Law.

INTELLECTUAL (INDUSTRIAL) PROPERTY

Intellectual property laws in Mexico provide strict protection to intangible assets similar to laws of most developed nations.

The main laws protecting intellectual property in Mexico are:

- The Industrial Property Law, which regulates patents, utility models, industrial designs (patents of design), trademarks, integrated circuit designs, industrial secrets and protected appellations of origin (*denominación de origen*);

- The Federal Copyright Law, which protects the rights of creators of artistic and literary works and software, as well as characters, artistic names plus radio and TV programs; and
- The Federal Law of Vegetable Varieties, which protects the innovators of vegetable variations.

Also, Mexico has executed a number of treaties and conventions regarding intellectual property, including the Paris Convention (involving the essential aspects of intellectual property) and the Patent Cooperation Treaty (PCT).

APPLICATION REQUIREMENTS

A trademark application must:

- Be filed in the format approved by the trademark office
- Include the name, nationality and domicile of the applicant
- Indicate the distinctive sign, and the product and service classes in which protection is sought
- Provide the date of first use (it is recommended to have documents that evidence such use; however, such evidence must not be filed with the application)
- Include documentary proof of the applicant's legal capacity (in case of an entity)
- For logos or combined marks (word + logo), 10 labels must be attached to the application, as required by the Mexican Institute of Industrial Property (IMPI)

In order to obtain the exclusive use of a trademark in Mexico, the mark must be registered before the IMPI. The holder of a trademark may be entitled to civil damages as a remedy to infringement and the intellectual property authorities may seize the infringing products. Trademark infringement is also in some cases punishable criminally through fines and imprisonment.

The fees charged by the government for a trademark application currently run approximately USD250, subject to modifications according to the authority's discretion.

PATENTS, UTILITY MODELS AND INDUSTRIAL DESIGNS

In order to protect patents, utility models and industrial designs, they must generally be new creations, resulting from an inventive activity (except for the case of utility models, which are improvements to existing inventions) and suitable for an industrial application.

The application must:

- Be filed in the application format approved by the authority
- Identify the inventor and the person(s) to whom it has been assigned, if applicable
- Identify the domicile and nationality of the inventor and any assignee
- Provide the name of the creation
- Provide a complete description of the creation
- Include a chapter of the innovations which are being claimed and another chapter of drawings
- Include a summary of the invention (this requirement does not apply to industrial designs)

By means of a patent, the Mexican government grants the exclusive rights to exploit an invention that, due to its novelty, creativity and industrial application, implies the creation of a new product, a new process or both.

If a patent or utility model application is filed under the Patent Cooperation Treaty (PCT), the priority date will be taken into account from the date in which the PCT application is filed, even if filed for the purpose of searching for prior technology.

Industrial designs (patents of design) are also recognized, which protect ornamental changes to products, and are divided among industrial drawings and industrial models.

Government fees of approximately USD750 for patents, and approximately USD220 for utility models and industrial designs, apply. In either case, the fees are subject to modifications at the authority's discretion, and in some cases it is possible to obtain a 50% discount.

COPYRIGHT

Applications must:

- Include the author's name, nationality and domicile (and if applicable, the date of death of the deceased author); this information should be enclosed in a sealed envelope if the work is registered under a pseudonym
- Identify the date the work was released to the public
- Indicate the holder of the patrimonial rights (these rights involve the economic benefits obtained for the use of the work)
- Include a duplicate of the work being registered

Official fees will vary under the Federal Fees Law, according to the type of work to be registered, and may vary within a range of USD20 to USD100.

The Federal Copyright Law protects the patrimonial right of a creation until 75 years after the death of the author. Although copyright registration is not required, it is recommended in order to expedite legal actions and to obtain proof of authorship. A copyright holder may file a civil action for damages to remedy infringement, which is also criminally punishable.

Reservations of rights are protected for renewable periods of one year in the case of periodicals, and five years for all other protected items (artistic and program names).

VEGETABLE VARIATION

Applications must:

- Provide a name of the variation
- Fulfill the requirements established by the authority once the application is filed
- Be in reference to a plant variation that is new, different, steady and homogeneous

The Federal Law of Vegetable Varieties protects plant varieties and has a term of effectiveness of 15 to 18 years, depending on the nature of the variety.

TERMS OF EFFECTIVENESS

The Industrial Property Law protects rights for the following terms:

- **Trademarks**. For renewable periods of 10 years.
- **Patents**. For a nonrenewable period of 20 years.
- **Utility Models**. For a nonrenewable period of 10 years.
- **Industrial Designs**. For a nonrenewable period of 15 years.
- **Design of Integrated Circuits**. For a nonrenewable period of 10 years.

INTELLECTUAL PROPERTY REGISTRATIONS

The procedure for registering trademarks, patents, utility models, industrial designs and designs of integrated circuits is done before the Mexican Institute of Industrial Property (IMPI), which has its main office in Mexico City with regional offices in Guadalajara, Monterrey, Merida and Leon. This institution also prosecutes infringements regarding author's rights.

The procedure of registering copyrights and reservation of rights is done before the National Institute of Author's Rights, which has a head office in Mexico

City, and one representation in each of the Mexican states. Only the Mexico City office is authorized to resolve and make decisions on copyrights and reservations of rights.

Registration of a plant variety must be filed before the registry administered by the Ministry of Agriculture, Fisheries and Stockbreeding.

LABOR LAW

Human resources management is a sensitive area that requires expert legal advice. Mexican laws provide for a series of protective provisions in favor of employees that must be considered by employers in order to avoid unnecessary risks. It is highly advisable to maintain a file of all labor documents that includes labor agreements, receipts and evidence of payments, attendance control documents, working regulations, and important communications with employees. Keeping these documents would be very helpful in preventing and dealing with labor conflicts where the burden of proof is on the employer.

Among the particulars of Mexican labor law that should not be overlooked is the fact that a labor relationship may arise even without the consent of the entity receiving the service, considering that in our system, the existence of a working relationship is presumed whenever a personal service is rendered, subordinately, and triggering the payment of a salary in favor of an entity or individual. There is no employment at-will where only in very limited circumstances an employee may be hired on a provisional basis. In order to dismiss employees, there must be a just cause and certain formalities must be complied with to avoid triggering a severance payment (approximately three months of integrated salary and proportional shares of vacation premium, vacations, Christmas bonus and seniority premium).

HIRING EMPLOYEES AND LABOR CONTRACTS

Employees in Mexico are commonly hired through an individual employment agreement. Although it is not mandatory to sign an agreement to retain an employee, it is highly advisable to do so in order to establish the terms and conditions of the relationship.

In addition to individual agreements it is highly advisable that a company operating in Mexico execute a Collective Bargaining Agreement and record it before the corresponding Labor Board and Union, and issue a set of Internal Regulations in order to establish the working conditions and general duties of the employees and employers for work development within the company. These are preventive measures that provide security and aid in preventing potential labor conflicts for the company.

BENEFITS AND LABOR RIGHTS

The main rights of employees include:

- Salary equal to or above minimum wage
- Compensation for working overtime and holidays
- At least six days of vacation per year (which shall be increased according to seniority)
- Holidays. In Mexico, the following daya are considered to be mandatory holidays: January 1; the first Monday of February as a celebration of February 5; the third Monday of March as a celebration of March 21; May 1; September 16; the third Monday of November as a celebration for November 20; December 1, of every six years, whenever there are Presidential changes; December 25; and any day that is determined by the electoral local and federal authorities, for the performance of ordinary elections.
- Year-end bonus *(aguinaldo)*
- Profit sharing, payable in May

MINIMUM WAGE

A federal commission comprised of representatives of the government, major unions and employers' associations determines the minimum wage standard annually. The country is divided into three zones for which there are different minimum wages. The minimum daily wage is the minimum amount that must be paid to a worker for a full eight-hour day of work.

FOREIGN EMPLOYEES

Hiring foreign employees is a fairly common practice in Mexico, especially for high-level positions. One of the first steps that must be taken in order to hire foreigners is to obtain the applicable immigration permit from the National Immigration Institute. This will usually be an FM3 for Executive Employees.

Mexico's Federal Labor Law governs the relationship of a company operating in Mexico with foreign employees and foreign employees are entitled to the protection provided by the same. Therefore, an Individual Employment Agreement that complies with Mexican labor law should be executed.

PAYROLL TAXES

Salaries are subject to the following taxes:

Income Tax. According to a percentage established by law which is based on the level of income.

Social Security Tax. This is a two-part payroll tax, paid partly by the worker, and partly by the employer. This contribution includes access to benefits such as a retirement pension, insurance against occupational accidents and illnesses, as well as health services provided by the federal government.

Housing Fund. This is a tax that is contributed to a fund operated by the federal government (INFONAVIT) intended to provide workers with special benefits for obtaining loans in order to build, purchase or repair their homes.

State Payroll Tax. This tax is based on the amount received by the worker. It is a source of revenue for state governments.

Nicaragua is the largest republic in Central America with the lowest population density. The country is bordered on the north by Honduras and on the south by Costa Rica. Its western coastline is on the Pacific Ocean, while the east side of the country is on the Caribbean Sea.

Nicaragua occupies a landmass of 129,494 square kilometers. Its population is 5.7 million.

Managua is the capital of the country. Spanish is the official language, although diverse dialects are spoken in the Atlantic Coast.

Nicaragua is a democratic, participative and representative Republic. Its state organs are: legislative branch, executive branch, judicial branch and electoral branch.

The national territory is divided for its administration, into 15 departments, two autonomous regions in the Atlantic Coast and 153 municipalities.

According to the Nicaraguan Central Bank, the GNP in 2011 was USD7.298 billion. Nicaragua's main exports are coffee, meat, shellfish, sugar, tobacco, cattle and gold. Important development in the tourism and free trade zone industry has recently occurred.

FOREIGN INVESTMENT

Nicaragua has gradually become an attractive center for foreign investment. This has been backed up by measures that encourage foreign investment and guarantee investors' rights. The Nicaraguan Constitution states that individuals have equal rights with the exception of political rights which are only granted to Nicaraguan nationals. This constitutional principle sets the basis for equal treatment for foreign investors abolishing any distinction between local and foreign investment.

Furthermore, Nicaraguan laws allow foreign investors to freely convert their revenues into strong currency and send them abroad, allowing a free currency exchange.

ACQUISITION OF LAND BY FOREIGNERS

Nicaraguan laws do not establish any restriction for foreigners to acquire land in any part of the republic. Foreigners may acquire real estate property even next to the national borders.

RESIDENCY REQUIREMENTS

The following types of foreigners can hold visas while in Nicaragua:

- Diplomats and members of international organizations
- Guests
- Permanent residents: foreigners who enter the country with the intention of residing in Nicaragua for an indefinite period of time
- Temporary residents: foreigners who enter the country with the intention of living in the country for the period of time required to conduct the activities that permitted their entry into the country
- Nonresidents: foreigners who enter the country in a merely transitory manner

ENVIRONMENTAL REGULATIONS

Nicaragua's Environment and Natural Resources Law governs issues such as water use, soil researches, minerals exploitation and biodiversity.

Companies that wish to develop projects that could affect the environment require a permit granted by the Ministry of Natural Resources (MARENA). A specific evaluation of the company and the project is required in order to grant this permit.

Some of the issues analyzed by MARENA in order to grant the permit are soil studies, water treatment, and any other that the Ministry may require.

A case-by-case analysis is required to determine if a specific project is subject to this evaluation.

SPECIAL INVESTMENT AREAS (FREE TRADE ZONES)

Any part of the Nicaraguan territory can be used as a free trade zone (FTZ) as long as the licenses have been granted and the zone's perimeter is well marked.

There are public and private FTZs. The first are administered by the National Corporation of Free Trade Zones. Private FTZs are administered by a company that may adopt any form of organization under the mercantile legislation with its sole corporate objective of administrating the zone.

These companies are called Free Trade Zone Operators. The license is awarded by the National Commission of FTZ. Once the status of a Free Trade Zone Operator has been granted, these companies are able to get Tax Free benefits, such as:

- Income tax exemption for all business carried out inside the zone for 15 years from the beginning of operation inside the zone

- Import taxes exemption for all machinery, equipment, tools, supplies and other implements for the business
- Free municipal taxes
- Exemption for all indirect taxes

Under the Free Trade Zone regime there are Free Trade Zone Users. These are companies that are allowed to perform the manufacturing processes or provide the free trade zone services but can't manage the zone. Companies that wish to establish or operate in an FTZ must be granted permission from the National Commission of Free Trade Zones. This commission will verify that the company's activities are in accordance with their objectives as stated in their legal documents. Foreign companies can also become FTZ Users as long as they do it through a branch or subsidiary legally registered in Nicaragua.

The National Commission of FTZ will only admit as Free Trade Zone Users those companies that manufacture goods and services for export purposes.

FTZ Users are also granted the following tax benefits:

- 100% income tax exemption for the first 10 years of operation and 60% exemption of the same tax from the 11th year onward. This tax exemption does not include taxes from personal income or salaries of the workers in the zone. It does include, however, taxes from salaries of foreign workers that aren't residents in Nicaragua.
- Import and duty taxes for any kind of materials that are to be used in the FTZ.
- Import taxes for vehicles that are to be used in the zone or by its owners.
- Municipal taxes.
- Exemption for all indirect taxes.

To have all these benefits, the company must maintain a reasonable work force and keep them with reasonable salaries, which must be in accordance with the ones offered in the application.

Finally, there is a special kind of company under the Free Trade Zone regime which is the Administered Free Trade Zone (ZOFAS). These are Free Trade Zone Users that—due to the nature of their production process, the origin of their raw materials or the nature of the company—the Free Trade Zone National Commission allows to operate outside a determined industrial park.

COMPETITION AND ANTIMONOPOLY REGULATIONS

Nicaragua approved in 2007 a Competition Law which regulates anticompetitive practices between economic agents in the country, such as horizontal and vertical restraints of trade. This law also regulates unfair competition between economic agents and establishes what kind of concentration is allowed, distinguishing between concentrations subject to notifications and concentrations not subject to notification.

In matters of anticompetitive practices, the general rule is that any act or agreement between economic agents that tends to eliminate or limit access to the market to any other agent is forbidden. However, the law identifies horizontal restraints among competitors such as price fixing, allocation of markets or customers and horizontal boycotts, among others, which are prohibited per se, and vertical restraints among suppliers and customers on different distributional levels, such as vertical price fixing, tying arrangements, exclusive selling agreement, refusals to deal, etc., which are subjected to a case-by-case revision taking into account some criteria given by the law.

Unfair competition is every act done in a commercial activity that is contrary to honest practices in commercial business. Therefore any act that causes or threatens to cause any harm to another agent is strictly forbidden. In this sense, certain types of acts such as deceit, denigration, comparison, harmful machination, fraud, inducing employees of a company to betray it or imitations that affect a business are grounds for unfair competition.

Concentration of economic agents appears when two or more economic agents that were independent from one another make agreements that lead to a merger or business integration that ends their independence. Prior notification and approval from *Procompetencia*, the governmental agency, is required if the concentration of parties results in 25% of participation in a relevant market or more, or annual incomes of the merging parties are equivalent to 642,857 average minimum wages. The law details the procedure to obtain the required clearance from *Procompetencia*.

BUSINESS ENTITIES

Corporations are the most common form of organization for business entities. However, the law recognizes other forms of organizations such as Limited Liability Companies and General Partnerships.

CORPORATIONS *(SOCIEDADES ANÓNIMAS)*

These legal entities have their capital divided into shares. Each person owns the determined number of shares according to his participation in the corporation. Corporations may be organized by at least two members. The articles of incorporation must be executed in a public deed and usually the bylaws are executed in this same public deed by the first shareholders' meeting. Corporations are recognized as a juridical person once they are registered in the public registry of the department chosen by the shareholders. The composition of the board of directors of a corporation shall be recorded at the Public Registry.

Under corporate law, corporations must have a comptroller. This person may not be a member of the board of directors. His/her obligation is to oversee management of the corporation. Members of the board of directors, the comptroller and all stockholders may all be non-Nicaraguan nationals.

Minimum Capital Stock

Common corporations do not have a minimum capital requirement. However, some special laws, such as the banking and securities law, provide that financial institutions that must be organized as corporations must also meet certain capital requirements.

Number of Shareholders

Corporations may be organized with at least two persons. However, it is recommended that at least three persons organize the corporation. This avoids the dissolution right conferred by law to any member if the corporation has acted for more than six months with only two members.

General Shareholders' Meetings

Shareholders' meetings constitute the highest authority of the corporation. They decide key issues such as powers of attorney, capital raises, mergers and others. Decisions are taken by the number of votes determined in the articles of incorporation, but certain issues require qualified votes of two-thirds of shareholders.

Ordinary shareholders' meetings must take place at least once a year and extraordinary meetings may take place any time the board of directors decides to do so, or when at least 20% of shareholders request the meeting.

Board of Directors

This is the executive body of the corporation. Its members are elected by the general shareholders' meeting for a specific period set out in the articles of incorporation but which cannot exceed 10 years. Board members must be shareholders of the corporation. Specific laws such as the Banking Law and Capital Markets Law have established that for financial institutions governed by these laws, board members don't have to follow this general rule.

The shareholders' general meeting decides the faculties of the board. Either a general power of attorney is granted to the whole board of directors and limited powers are given to determined members; or a general power of attorney may be granted to specific members of the board, usually its president. Other powers of attorney, either general or limited, may be granted to outside individuals.

Management

Managers are elected by the board of directors and assigned the powers of attorney decided by the board according to the articles of incorporation of the corporation and its statutes. Managers respond directly to the board of directors.

After they have been duly incorporated and registered in the public registry, corporations have one month to register in the General Direction of Revenues (DGI). They must have a Nicaraguan national appointed as representative under the DGI or a foreigner with permanent residence in the country.

GENERAL PARTNERSHIP *(SOCIEDAD DE NOMBRE COLECTIVO)*

This business entity is also constituted by a public deed. The deed must include the names of the partners, the business that the partnership will undertake and the names of the partners that will have the administration of the business.

Any partner can manage the company. Partners will have several and joint responsibility for all obligations of the partnership, but Nicaraguan law provides the alternative of limiting that responsibility if the business entity includes the word "limited."

LIMITED PARTNERSHIP *(SOCIEDAD EN COMANDITA SIMPLE)*

Limited partnerships have two types of partners. There are partners that have full liability of the obligations of the company, and partners that limit their responsibility up to their contribution. The first will assume the administration of the company.

The General Partnership and Limited Partnership business entities are seldom used.

FOREIGN COMPANY BRANCHES

Foreign corporation branches may legally be constituted in Nicaragua, under the following provisions:

- Registration of the articles of incorporation and bylaws of the foreign corporation
- If the foreign company is a corporation, financial statements must be published annually in the official diary with mention of the persons in charge of the administration
- The foreign company must maintain in the country a representative with full power of attorney duly registered

TAXATION

According to Nicaraguan law the following taxes exist:

- Income Tax
- Value Added Tax
- Selective Tax to Consumption (*Impuesto Selectivo al Consumo*)
- Stamp Tax

INCOME TAX

All net revenues originated from goods or assets existing in the country or from services rendered to persons in Nicaraguan territory are subject to income tax.

For all juridical persons the tax is 30% of its taxable rent. For natural persons a table is applied according to the annual revenues of the person. The percentage applicable goes from 0% to 30%.

There are certain incomes that are not taxable. Among the most important, the following stand out:

- Incomes originated in insurance payments; unless the insured good is a product or an income itself, in which case the insurance payment is taxed
- Severance payments
- Interests accrued on loans granted by international lending institutions and development agencies or institutions of foreign governments
- Dividends or profit sharing paid by companies to their shareholders, on which definite withholdings were applied

The law establishes certain expenses that can be deductible. Among those the following stand out:

- Expenses paid and caused during the taxable year and that are considered necessary for the existence and maintenance of any taxable revenue source
- Interests paid and caused during the taxable year from debts of the taxpayer if those debts were used or invested in the production of taxable revenues
- The sale cost of goods and merchandise produced or acquired in any business and the cost of services provided necessary to generate taxable revenues
- Losses originated from bad credits
- Payments done to the social security

There are certain fixed withholdings:

- 10% definite withholding for interests accrued, earned or credited, from deposits in financial institutions legally established in the country
- 10% definite withholding for dividends or profit sharing paid by companies—whether or not they pay Income Tax—to their shareholders
- 20% definite withholding for taxable revenues of Nicaraguan source obtained by natural person nonresidents in the country

Furthermore, Nicaraguan law establishes a fixed minimum income tax for all juridical and natural persons dedicated to entrepreneurial or business activities that are subject to income tax. This fixed minimum income tax is 1% of the annual gross revenues of the fiscal year. The law establishes the mechanisms for calculating such fixed minimum income tax.

VALUE ADDED TAX

This is a 15% tax charged over the sale of goods, the rendering of services and the importation of goods in Nicaragua. There are certain services and sales of goods exempted from the VAT.

SELECTIVE TAX TO CONSUMPTION

(IMPUESTO SELECTIVO AL CONSUMO)

This is a new tax imposed on the sale and importation of certain goods detailed in the same law. The tax percentage varies from 10% to 30% of the sales price or of the Custom Value.

Goods subject to this tax include petroleum, some vegetables and meat, textiles, sugar and vehicles.

STAMP TAX

Certain documents issued in Nicaragua or abroad that will have their effects in Nicaragua are subject to this tax. Among the documents listed for stamp tax are: power of attorney, trademark, copyright and patents registration and public deeds.

MUNICIPAL TAX

All corporations and individuals that customarily or sporadically engage in the sale of goods or to industrial or professional activities, or to the rendering of services are subject to a municipal tax. This tax rate is 1% on the total amount of the perceived gross income. Gross income is understood as the sales and/or credit or any other perceived revenue deriving from its commercial activity.

INTELLECTUAL PROPERTY

Nicaragua has a modern intellectual property legal framework that provides investors a high standard of protection. The laws in this matter provide protection for patents, industrial designs and utility models, trademarks and geographical indications, copyrights, trade secrets, semiconductor layout designs and encryption program-carrying satellite signs and protection of new varieties of plants.

The laws protecting intellectual property in Nicaragua are the following:

- Law 380 on Trademarks and Other Distinctive Signs, its Regulation and reform
- Law 354 on Patents, Utility Models and Industrial Designs, its Regulation and reform
- Law 312 on Copyrights, its Regulation and reform
- Law 318, Protection of Plant Varieties and its Regulation
- Law 322, Protection on program-carrying signals transmitted by satellites

Additionally, Nicaragua is signatory of the following treaties regarding protection of intellectual property:

- Agreement on Trade Related Aspects of Intellectual Property Rights
- UPOV Act of 1978
- Paris Convention for the Protection of Industrial Property
- General Inter-American Convention for Trademarks and Commercial Protection
- Patent Cooperation Treaty

- Universal Copyright Convention
- Berne Convention for the Protection of Literary and Artistic Works
- Geneva Convention for the Protection of Producers of Phonograms

TRADEMARK APPLICATION REQUIREMENTS

The applicant must complete an application with the following information:

- Full name and address of the applicant
- Place of incorporation and domicile of the applicant (apply to juridical persons)
- Name of legal representative
- The description of the trademark to be registered
- A list of the products and services to be covered by the trademark, which are grouped by classes according to the International Classification of Products and Services
- A reproduction of four graphics when it has a special form of letter, shape or color
- The power of attorney or document authorized to represent the person or company in the procedure of registering the trademark
- The receipt of payment

Procedure

Formal Exam

This exam verifies that every aspect of the application form is completely filled and that there are no formal mistakes in it. Once the formal exam has been approved, the registry orders the trademark to be published in the official newspaper *La Gaceta*. Once it has been published, the law grants a two-month period for oppositions by third parties to be filed with the Intellectual Property Registry.

Substantial Exam

In this exam the Registry verifies that the trademark or other similar distinctive signs have not been registered nor are in the process of registration by third parties. Once the period of examination is over, the registry issues a registry certificate which finalizes the process.

Application Cost

The Registry of Intellectual Property charges the following basic fees:

- USD100 for a basic mark and USD50 for every additional class of the Classification of Products and Services

- USD100 for requesting the registration of a commercial name, emblem, expression or signal of commercial publicity or a denomination of origin
- USD20 for the Registration Certificate
- Search costs are: USD15 if it is a denominative brand and USD20 if the brand is figurative

LABOR LAW

Under labor law, the primary factor is reality. If the person is rendering a remunerated service under a subordinated relation, this relation will be considered a labor relation, regardless of the name given by the parties. If it is a labor relation, it will be subject to labor law, and the employee will have the benefits of the labor rights granted by the law.

TYPES OF LABOR CONTRACTS

There are two main types of labor contracts, fixed-term contracts that have a fixed date of termination or a specific term, and indefinite term contracts. Nicaraguan labor law assumes that all contracts have an indefinite term unless the parties expressly state the fixed term of the contract or if the nature of the activity is cyclical.

BENEFITS AND LABOR RIGHTS

The main labor benefits are the following:

- Vacation: Each employee has the right to 15 rested days of vacation every six months.
- Thirteenth salary: All employees that have worked a year have the right to earn an additional monthly salary at the end of each year.

  The above two labor benefits must be paid to the employee proportionally once the labor relation terminates.
- Maternity: Labor law awards a four-week maternity leave before the child's birth and eight weeks after the birth.

MINIMUM WAGE

Every year the minimum wage is reviewed. Different sectors of the economy are included in a chart published by the Ministry of Labor with a specific minimum wage for each of the sectors included. Currently, the minimum wages for some of these sectors are: Construction and financial services–COR5,161.22; mining–COR4,141.97; agricultural–COR2,273.80; micro and small touristic industries–COR2,590.08, among others. (USD1 equivalent to COR23.88).

HIRING OF FOREIGN EMPLOYEES

Labor law determines that employers are required to hire at least 90% Nicaraguans as their employees. Under certain circumstances the labor authority may establish particular exceptions to this general rule based on technical qualifications of the employees.

TAXES AFFECTING SALARIES

Salaries are subject to general income tax. The annual income table of the tax law will be applied to the annual salary of the employee. The tax rate goes from 0% to 30% of the income.

Although social security is not considered a tax, it is a deduction done to the employee. 6.25% percent of the employee's salary is deducted from his salary and paid to the social security, and 16% percent of the employee's salary must also be paid to the social security by the employer. Furthermore, 2% of the total salaries paid by any company must be paid to *Instituto Nacional Teconologico* (INATEC), which is a technical institute that grants qualified instruction and that those companies that pay to INATEC may use for their own employees.

TERMINATION OF EMPLOYEES; SEVERANCE BENEFITS

According to Nicaraguan law, employees are entitled to severance payment when the labor relation ends by any of the following cases:

- Mutual consent of the employer and employee
- Resignation of the employee
- Termination by the employer

In certain circumstances when the labor relation has ended due to serious transgressions, the employee loses his severance payment right. Some of these transgressions are:

- Offenses against the life or physical integrity of the employer or other employees
- Violations to the labor contract or to the internal regulations of the employer that cause serious harm to the company
- Lack of integrity

However, special permission of the Ministry of Labor is needed to use any of these arguments and terminate the contract without severance payment.

Labor law establishes that severance payment includes:

- A month of salary for each of the first three years of labor relations
- 20 days of salary for each year from the fourth year on

Severance payment may never be less than a month or greater than five months. Fractions between worked years will be paid proportionally. Courts have now interpreted that if the employee has worked less than a year, the payment will be done on a pro rata basis.

TRADE

In Nicaragua, the president of the Republic is responsible for directing the international relations of the Republic, and of negotiating and signing treaties. Once the president has signed a treaty, it must be approved by the Nicaraguan legislature to become law.

Nicaragua has signed and ratified Free Trade Agreements with the rest of Central American countries, the United States, Mexico, Taiwan, Panama and recently, with Chile and the European Union. A brief summary of each one follows:

General Treaty on Central American Integration: It was signed in 1960, between El Salvador, Honduras, Guatemala and Nicaragua and acceded by Costa Rica two years later. It gave birth to the Central American Common Market (CACM). The CACM has been successful in establishing a free trade area in Central America. The General Treaty established that all products with certified local origin enjoyed free trade, except for a list of products listed in Annex A. The list of exceptions has decreased over time and currently applies only to coffee, sugar, alcoholic beverages and petroleum products. As a result, intraregional trade has increased in volume and importance, particularly during the 1990s. In fact, in 2002 intraregional exports reached close to USD2.8 billon, which is roughly 28% of total exports of Central America.

Nicaragua–Mexico Free Trade Agreement: It was signed on 16 December 1997 after six years of negotiations, and entered into force on 1 July 1998. Upon implementation, 76% of tariffs on Nicaraguan exports to Mexico and 45% of tariffs on Mexican exports to Nicaragua were eliminated. The remaining tariffs are being phased out in four stages over a 15-year period. Figures from the Ministry of Commerce of Mexico indicate that trade between both countries increased during the first 10 years (500.5%), rising from USD100 million in 1997 to USD600.5 million in 2006.

Nicaragua–Taiwan Free Trade Agreement: It was signed on 16 June 2006 and entered into force18 January 2007. According to the Embassy of Taiwan in Nicaragua, the commercial trade between both countries went from USD20.1 million in the year 2005 to nearly USD31 million in 2008. Among the main products exported from Nicaragua to Taiwan are cattle, scrap metal, seafood, coffee, timber, sugar and more recently, peanuts.

Dominican Republic–Central America Free Trade Agreement (DR-CAFTA): The DR-CAFTA removes barriers to trade with and investment in the region and furthers regional economic integration. CAFTA negotiation was completed on a very short timeline (one calendar year January–December 2003/10 rounds). The Bush administration pursued the CAFTA negotiations based on a bill approved by the U.S. Congress to confer Trade Promotion Authority (or "Fast Track") to the White House; under "Fast Track," Congress is limited to an up or down vote and cannot amend a trade agreement. CAFTA was signed on 28 May 2004 in Washington, D.C. Bilateral negotiations between the United States and Dominican Republic were held on January-July 2004 (4 rounds). The Dominican Republic signed CAFTA on 8 August 2004 becoming then DR - CAFTA. In Nicaragua, the Agreement entered into force in 1 April 2006. According to the United States Agency for International Development (USAID) and the American Chamber of Commerce in Nicaragua (AMCHAM), in the first four years, Nicaraguan exports to the U.S. grew from USD1.181 billion in 2005 to USD1.611 billion in 2009. Additionally, nearly 320 small- and medium-size companies have been able to develop and benefit from the agreement, helping create new jobs, improving their capacity and quality of their products and successfully entering the U.S. market. More information is available at http://www.einnews.com/247pr/150328. In addition to its economic regulations, the DR-CAFTA includes an "Intellectual Property Rights" section (Chapter 15) which includes general provisions governing the whole chapter and specific provisions dealing with trademarks, geographical indications, domain names, copyrights and related rights, patents and regulated products and enforcement.

Nicaragua–Panama Free Trade Agreement: The bilateral free trade agreement protocol was signed on 15 January 2009 and approved by the Nicaraguan legislative body on 1 July 2009. Among the products that both countries exchange tariff-free are plastics, processed chicken products, beef, pork, dairy, grains and processed coffee.

Bilateral Protocol between Nicaragua and Chile: Under the framework of the Free Trade Agreement between Chile and Central America (signed on October 1999), Nicaragua has recently approved the Bilateral Protocol with Chile (August 2011). This Protocol will enter into force in October 2012 and expects to increase by 20% the exportation of Nicaraguan goods to Chile.

European Union – Central America Association Agreement: This bilateral agreement was signed on 29 June 2012. It has attracted attention due to the extension of the European market (population of 500 million) in comparison with the extension of the Central American market (population of 35 million). Its objectives are to strengthen political dialogue and cooperation on issues of common interest, and boost respective trade flows and investments. When fully in force, it will replace the 2003 Political Dialogue and Cooperation Agreement between the EU and Central America and expects to eliminate tariffs of 99% of the goods sold by both regions.

Panama is the southernmost country of Central America. It has a total landmass of 75,517 square kilometers and an estimated population of 3,510,045 as of a July 2011. Its government is a constitutional democracy and the official language is Spanish. Panama's service-based economy is centered on banking, commerce and tourism. Panama is considered an international business center, with one of the largest economies in Central America, as well as the fastest growing economy and the highest "per capita" consumption index in such region.

FOREIGN INVESTMENT

Panama's legal and institutional framework offers many facilities and incentives for the development of international trade and service activities in Panama, with very few requirements about the nationality of investors and with no restrictions on converting currencies or transferring funds. One of the few exceptions is retail trade, which is reserved by the National Constitution exclusively for Panamanian nationals.

As a consequence, foreign investments are allowed by law in the majority of commercial activities. Some relevant aspects of "freedom of investment" in Panama are the following:

- Allows free currency movement with no foreign exchange regulations
- Uses the U.S. dollar as legal tender and its sole paper currency
- Has an international banking centre, comprising 94 banks with an estimated consolidated assets of USD100.3 billion (as of June 2012)
- Has readily available financial services, such as securities, insurance and reinsurance, trust operations, financial leasing activities and money remittances services, among others
- Has worldwide communications, becoming the point of convergence for five submarine fiber-optic cables
- Has few restrictions on foreigners for purchasing real estate
- Has a qualified workforce
- Has readily accessible credit
- Has one of the largest and most efficient maritime hubs
- Has the Panama Canal that serves more than 144 maritime routes worldwide

- Has an international airport serving over 60 destinations, through approximately 31 airlines
- Has political stability and modern legislation that protects the interests of nationals and foreigners equally

MODERNIZATION OF THE PUBLIC SECTOR

As part of the strategy to create a modern public sector, the government of Panama created the National Secretariat of Science, Technology and Innovation to attend to all the needs for the promotion and good use of information technologies and communications in the governmental sector as well as to promote governmental innovation projects.

ELECTRONIC COMMERCE

Law 51 of 2008 defines and regulates electronic documents and electronic signatures as well as the provision of storage of technological documentation and certification of electronic signatures. Law 51 also takes other provisions for the development of electronic commerce in the Republic o Panama.

MARITIME REGISTRY

Since its creation, the Panamanian Maritime Registry has had a remarkable growth. This registry adopts the "open registry system," where restrictions concerning nationality and residence were eliminated. As a consequence, Panama Maritime Registry accepts the registration of vessels belonging to nationals and foreigners alike, provided that all legal requirements are duly fulfilled, mainly those related to the administration of the ship, safety and pollution control, technical as well as fiscal matters.

NATIONAL SAVINGS FUND

The Panamanian government, through Law 38 of 2012, recently created the national savings fund as a forward-looking initiative aimed at safeguarding the country against future negative shocks (e.g., natural disasters, tail risk events, economic recessions, etc.). Law 38 provides the government with a sophisticated and transparent investment vehicle to manage the country's financial surplus.

PANAMA'S INVESTMENT GRADES BOND RATINGS

In 2010, international rating agencies Moody's, Standard & Poor's and Fitch Ratings gave Panama investment grade. Recently, Standard & Poor's upgraded the investment grade rating of Panama (BBB), while Fitch Ratings reaffirmed it (BBB).

SPECIAL REGIMES

Panama has established special regimes that promote and spur foreign investment in the country, such as the following:

Stabilization Regime

On 22 July 1998, Law 54 was enacted. This statute promotes and protects all kinds of investments in Panama; moreover, Law 54 establishes that foreign investors have the same rights and obligations as national investors.

The main benefit rendered by Law 54 is that it allows investors registered with the Ministry of Commerce and Industry to continue being regulated for a period of 10 years by the same legal, fiscal (national and municipal), custom and labor regulations they were subject to at the time of registration.

Free Zones

Free Zones created under Law 32 of 2011, are zones of free enterprise, specifically delimited for the establishment of enterprises from all over the world whose activities are the production of goods and services, high technology, scientific research, logistics services, higher education, environmental services, health services and general services. These zones can be established anywhere in the country.

Companies involved in manufacturing activities, assembly, processing of finished or semi-finished products, logistical services, higher education, scientific research, high technology, environmental services, health services and general services may be located within a Free Zone.

Regarding fiscal incentives, we may indicate, among others, the following:

- Raw materials, semi-finished products, purchase and import of equipment and construction materials, machinery, spare parts, tools, accessories, consumables, packing materials and any property or service required for their operations, will be exempt from taxes and costumes duties.
- Income tax exemption in the lease and sublease for free zone promoters.
- Service Companies, Business Logistics, Business of High Technology, Scientific Research Centre, Higher Education Centres, General Services Enterprise, Specialized Centres for the Provision of Health and Environmental Service Companies, are one hundred percent (100%) exempt from income tax for its foreign operations.

These fiscal incentives will be modified starting on 1 January 2016.

In addition, it is important to point out that special labor provisions enacted for Free Zones make them more flexible than companies operating in the rest of the territory.

Call Centers

Pursuant to Law 54 of 2001, any person exploiting call center activities duly authorized by the Authority of Public Services, may benefit from the tax incentives granted to companies operating within a Free Zone, in accordance with Law 32 of 2011.

Oil Free Zones

Pursuant to Law 8 of 1987 a special regime was established for the Oil Free Zones, which were considered as petroleum tax-free zones, where companies are granted tax benefits.

Tourism

Law 8 of 1994 regulates tourism activities in Panama, providing for incentives and benefits granted to projects including hotels, restaurants, nightclubs, convention centers, condominiums, airports, ecological tourism, among others.

Those investing in special tourism zones will have the following incentives:

- 20-year exemption on real estate tax;
- 15-year exemption on income tax;
- 20-year exemption for import duties, contributions and value added tax;
- 20-year exemption on taxes and duties levied on the use of ports and airports built by the company;

  20-year exemption tax for interest derived from credits.

There are also legal incentives for the construction, equipment and rehabilitation of public touristic accommodations.

The City of Knowledge

Law Decree 6 of 1998 approved the contract for the City of Knowledge, which promotes educational and scientific research within a specific area.

The area comprising the City of Knowledge has the following tax exemptions:

- Import taxes
- Tax on the transfer of tangible personal goods and rendering of services (ITBMS)
- Real estate tax
- Taxes on equipment related to innovative enterprises with high technology standard

The Colon Free Zone

Law 18 of 1948 created the Colon Free Zone as a segregated free trade area for wholesale operations at the Atlantic entrance to the Panama Canal.

Nowadays, the Colon Free Zone has become one the leading Free Zones in the Western Hemisphere and one of the largest global logistics centers.

The furthermost benefits of the Colon Free Zone for investors are, among others, the following:

- Goods may be imported, stored, modified, repackaged and re-exported without being subject to any customs regulations
- An exceptional tax-free system on imports, re-exportations, manufacture and other activities
- Low costs for land and storage space
- A "Lease Back System" or recognition of investment in infrastructure
- Protection and guardianship of intellectual property rights

Companies located in the Colon Free Zone shall be required to pay the following taxes:

- 1% per annum on the capital of the company, with a minimum of USD100 and a maximum of USD50,000
- Dividend tax in the amount of 5%

Panama-Pacific Special Economic Area

Law 41 of 2004 created the Panama-Pacific Special Economic Area located on the Pacific coast of Panama as a tax-free zone with a special legal, tax, customs, labor and immigration regime.

Panama-Pacific Special Economic Area is a tax-free zone where companies are exempt from income tax, income tax on dividends, withholding tax, import tax and tax on transfer of tangible personal goods and rendering of services (ITBMS) that may arise from the following:

- Services provided to individuals or juridical entities outside Panama
- Transfer of stock from companies in the Panama-Pacific Special Economic Area
- Transfer, by any means, of goods and merchandise and services that may be provided to other parties within the Panama-Pacific Special Economic Area or to companies in other special economic zones

- Transfer of goods and merchandise, and also services provided to ships crossing the Panama Canal with foreign ports as their destinations, or to ships sailing between any Panamanian port and a foreign port, unless the transfer is made by the manufacturer or a member of the manufacturer's economic group
- Transfer of all kinds of chattel and/or provision of services to aircraft that use airports in Panama, with destination to foreign airports, unless the transfer is made by the manufacturer or a member of the manufacturer's economic group
- Transport, handling and storage of air cargo in general, and also the repair of aircraft or aircraft components to be imported, exported or transferred by any means to other companies in the Panama-Pacific Special Economic Area or in other special economic zones
- Manufacture of high-tech products, components or spare parts
- Multimodal and logistic services
- Call Center services
- Reception, processing, storage and broadcasting of digital data and information; uplink of radio, television, audio, video and/or data signals, and also research and development of digital resources and applications to use in Intranet networks or Internet

The Panama-Pacific Special Economic Area has a special customs regime that allows companies located in this area to introduce all kinds of merchandise and goods without limitations and are exempt from paying taxes, import duties and other fiscal contributions, except for those established in the Law.

The Panama-Pacific Special Economic Area has special labor regulations, and although it is based on the Panamanian Labor Code, it is more flexible; also the Panama-Pacific Special Economic Area has special immigration regulations.

Multinational Enterprises Headquarters

The special regime for the establishment and operation of Multinational Enterprises Headquarters was created by Law 41 of 2007; its primary objective is to promote investments, employment and technology transfer, by attracting multinational enterprises for purposes of providing intra-group services.

In accordance with the law, Multinational Enterprises Headquarters have to provide the following services (or a combination thereof) to companies of the

same economic group of the holder of the corresponding Multinational Enterprises Headquarters authorization:

- Direction and/or management for geographical operations
- Logistic and/or storage of components or parts of manufacturing products
- Technical assistance
- Financial management, including treasury
- Accounting
- Preparation of blueprints
- Processing electronic data of any activity including consolidations of operations and network operations
- Advisory and coordination of goods and services rendered, as well as marketing and advertising
- Support of operations and research for goods and services development

A Multinational Enterprises Headquarters will have the following tax exemptions:

- Tax on the transfer of tangible goods and services provided to persons located abroad who do not generate taxable income in Panama.
- Income tax associated with services provided in Panama to entities abroad that do not generate taxable income within Panama.

It is important to mention that Law 41 provides for special immigration regulations.

Promotion of Industrial Activities.

Law 76 of 2009 promotes the establishment and development of industrial activities in the Republic of Panama, through the emission of an Industrial Promotion Certificate by the government.

The main benefit granted by said law is the issue of Industrial Promotion Certificates recognizing a percentage, ranging between 25% and 35%, of the disbursements made by companies with respect to the following activities: a) research and development; b) activities directed to the implementation of environmental management and quality; c) new investments or reinvestment of profits; d) training of human resources; and, e) increase in employment associated with production.

Industrial Promotion Certificates can be used for the payment of taxes and contributions.

Law 76 of 2009 applies to industrial companies that render the following activities:

- Manufacture activities
- Agro-industrial activities
- Marine resources transformation

BUSINESS ENTITIES

In Panama there are several business entities that an investor may use for rendering commercial activities in the country; among them, we can mention the following:

CORPORATIONS

Law 32 of 26 February 1927 regulates the incorporation and operation of companies in Panama, and since then, such a statute has endorsed an agile, stable and versatile vehicle for the administration of business by foreigners and nationals.

According to Law 32, two or more persons of legal age, who need not be citizens or residents of Panama, may form a corporation for any lawful purposes by signing an Incorporation Chart or Articles of Incorporation. The standard procedure is for two attorneys or employees of a law firm to incorporate and then assign their subscription rights to the clients.

The Articles of Incorporation may be executed in any place and in any language.

The Articles of Incorporation must be in the form of a public deed, or in any other form, provided that said articles are acknowledged before a notary public or before any other official authorized to take acknowledgements at the place of their execution. If the Articles of Incorporation are not in the form of a public deed, they must be "protocolized" in a Notary's Office in Panama.

If said document should have been executed outside of Panama, it must, before it is protocolized, be authenticated by a Panamanian Consul (if there should be none, by the Consul of a country friendly to Panama) or pursuant to the 1961 Hague Convention on the Apostille. Articles of Incorporation drafted in a language other than Spanish must be protocolized with an authorized translation executed by an official or public interpreter licensed in Panama.

The public deed or the protocolized document containing the Articles of Incorporation must be presented for registration in the Public Registry of Panama, and it shall, at least, include the following information:

- The name and domicile of the incorporators.
- The name of the corporation, which must include the words "*sociedad anónima*," corporation, incorporation, or incorporated or their abbreviation, and cannot be similar to other previously organized corporations.
- The main purposes of the corporation, which may engage in any lawful business.
- The amount of authorized capital stock and the number and par value of the shares into which it is to be divided or, if the corporation is to issue shares without par value, the total number of shares that may be issued by the corporation along with a statement that such shares are to have no par value. The corporation may have common or preferred stock.
- Shares may be of different classes, values and rights. They may be issued to bearer or to a registered owner, or both at the same time.
- The number of shares of stock that each subscriber to the articles of incorporation agrees to take.
- The domicile of the corporation, and the name and domicile of its resident agent, who must be a lawyer or a law firm in Panama.
- The term during which the corporation is to exist, although it is normally (and legally) indicated that it shall have perpetual existence.
- The names and addresses of the directors, of whom there may not be fewer than three, and the names of the president, treasurer and secretary. One person may hold more than one office at the same time. Directors and/or officers may be of any nationality.
- Any other special provision desired.

The following are among the basic features of a Panamanian corporation:

- There are no legal requirements regarding a minimum of capital. According to the law, there is no need to state that the capital subscribed has been paid in.
- The corporation is not deemed to have legal existence with respect to third parties until the date it is registered in the Public Registry.

- The corporation may execute in favor of one or more individuals a broad power of attorney to operate the company.
- Panamanian law allows 100% foreign ownership of a Panamanian corporation.
- There is no obligation to hold shareholders' or directors' meetings annually or at any other interval.
- There is no need to have a corporate seal, but one may be adopted if so desired.
- A Panamanian corporation may merge with another Panama corporation or with a foreign corporation. In the latter case, either the foreign corporation or the Panamanian corporation may be the surviving corporation.
- A Panamanian corporation may be dissolved by resolution of the holders of a majority of the outstanding shares entitled to vote at a duly called meeting, or by written consent of all outstanding shares of the corporation entitled to vote without the necessity of a meeting.
- There are no minimums or maximums with respect to the authorized capital, which can be integrated by contributions of the members in cash, goods or services.
- The economic liability of each member for obligations acquired by the company shall be limited to the amount of their respective participation made or promised.

On the topic of the corporate bodies, we can mention the following:

- **Stockholders**: With the exceptions of corporations engaged in the retail business in Panama, stockholders need not be nationals or residents of Panama. Also, stockholders do not need to be registered in a public office in Panama. Meetings of stockholders may be held outside of Panama, if so provided in the charter. Stockholders may be represented by proxy.
- **Board of Directors**: There must be at least three directors, but unless otherwise provided in the Articles of Incorporation, directors need not be stockholders, or nationals or residents of Panama (with the exceptions of corporations engaged in the retail business in Panama). Meetings of directors may be held outside of Panama and directors may be represented at meetings of the board of directors by proxy; a proxyholder need not be a director. The board of directors is elected by the stockholders, but vacancies, whether resulting from an increase in the authorized number of directors or otherwise, may be filled by the vote of a majority of the directors then in office.

- **Officers**: There must be at least a president, a secretary and a treasurer, who shall be chosen by the board of directors. Any person may hold two or more offices, if so provided by the Articles of Incorporation or by the bylaws.

LIMITED LIABILITIES COMPANIES

In accordance with Law 4 of 2009, the main particulars of a Limited Liabilities Companies are the following:

- Any limited liability company shall have a name agreed by its incorporators, which must be followed by the words "*Sociedad de Responsabilidad Limitada*" or its abbreviation "S. de R.L."
- These are corporations of commercial nature and, as such, subject to the laws and commercial uses, may engage in any type of lawful civil or commercial transactions not legally reserved to any other type of corporation.
- They can be constituted by two or more natural persons or corporate bodies. The minimum number of members is also two and they can be natural persons or corporate bodies, regardless of their nationality.
- There are no minimums or maximums with respect to the authorized capital, which can be integrated by contributions of the members in cash, goods or services. The number of quotas or participations in which the capital is divided must be expressed, as well as the value for each one of them. The authorized capital can be increased or decreased through amendments to the charter of incorporation. Nevertheless, no decreases can be made if the resulting assets are inferior to the passives of the corporation.
- The economic liability of each member for obligations acquired by the company shall be limited to the amount of their respective participation made or promised.
- The corporation must be organized by Public Deed and registered in the Public Registry.
- The corporation might adopt statutes which make registration in the Public Registry optional.
- Every member has the right to receive a certificate of participation subscribed by any of the administrators.
- Members in a limited liability company, as long as they have totally paid their participation in the capital of the company, will have, among others, the following rights:
  - To vote in the deliberations of the company in proportion to the value of their participation in the capital.

  - To participate in the earnings and losses in proportion to their participation in the capital.
  - To subscribe a proportional part to their participation in case of an increase of the capital.
- Each member will be able to assign his participation quotas by means of a private document, but such transfer must be registered in the Public Registry.
- Notice of Members' Assembly must be sent to all members at least 10 working days prior to the scheduled date for the Assembly. The notice must be in writing or in electronic format and it must include the date, place and time of the Assembly. Extraordinary Members' Assemblies may be held when the administrators consider it to be convenient or at any time it is requested, in writing, by members representing at least 5% of the paid capital of the company.
- The administrative functions shall correspond to the natural or juridical person or persons who are appointed to such office in the charter of incorporation or by a subsequent agreement. The appointment of the administrator shall take effect with respect to third parties from the moment of registration in the Public Registry.
- The members can agree to the removal of the administrators at any time and name their replacement.
- If there are several administrators, decisions will be adopted by a majority of votes. Powers can also be awarded so that administrators may act independently from one another.

SOCIEDADES EN COMANDITA

Our Commercial Code provides for a special form of a Limited Liability Company known as *Sociedad en Comandita*. There are two types of *Sociedad en Comandita*:

- ***Sociedad en Comandita Simple***. This company is organized by two or more partners at least one of whom has unlimited liability (called *socio comanditado*), whereas, the other partner or partners are only liable up to the amount of their contributions (called *socio comanditario*). Neither the *socio comanditario* nor the *socio comanditado* can transfer their quotas to the partnership or introduce a new partner without the unanimous consent of the other partners. The administration of the partnership is limited exclusively to the *socio comanditado*. An unlimited partner may not be an unlimited liability partner in another partnership, unless he obtains approval from all his present partners.

- ***Sociedad en Comandita por Acciones***. This company is substantially similar to the *Sociedad en Comandita Simple*. The main difference is that the capital is divided into shares, while in the *Sociedad en Comandita Simple* the capital is divided into quotas. Only the unlimited liability partner can participate in the management of the partnership. The person must be appointed as administrator in the partnership agreement.

PRIVATE FOUNDATIONS

Private interest foundations are regulated in Panama by Law 25 of 1995. One or more natural persons or entities, by themselves or through third parties, may create a private interest foundation. For this purpose, the constitution of a patrimony exclusively for the objectives or endeavors expressly established in the organizational document is required. The initial patrimony may be increased by the creator of the foundation, or by any other person.

Private interest foundations are governed by their Foundation Charter and their Regulations.

The following must be observed for the constitution of a private interest foundation:

- Granting of the foundation charter. Law 25 of 1995 establishes that the foundation charter may be granted in any language with Latin alphabet characters, and either:
  - By means of a private document signed by the founder, whose signature shall be authenticated by a notary public at the place of execution, or
  - Directly before a notary public at the place of constitution.
- Contents of the foundation charter. The foundation charter shall contain the following:
  - The name of the foundation, in any language using the Latin alphabet, which name shall not be the same or similar to that of a pre-existing foundation of Panama. The name shall include the word "foundation."
  - The foundation's initial patrimony, expressed in any currency being legal tender, which in no case shall be less than a sum equivalent to USD10,000.
  - A complete and clear designation of the member or members of the Foundation Council, to which the founder may belong, including their addresses.
  - The foundation's domicile.
  - The name and address of the foundation's resident agent in Panama.

- The purposes of the foundation.
- The manner in which the beneficiaries of the foundation, who may include the founder, are designated.
- The duration of the foundation.
- The use to be made of the foundation's assets and the manner in which its estate is to be liquidated in the event of dissolution.
- Any other lawful clauses deemed expedient by the founder.

- "Protocolization." The foundation charter, once granted, must be protocolized before a notary's office in Panama. It is important to note that if the foundation charter has not been drafted in Spanish, it must be protocolized together with its translation into Spanish.
- Registration. Lastly, the Foundation charter must be filed at the Panamanian Public Registry. The registration of the foundation charter at the Public Registry grants to the foundation the status of juridical person, without requiring any other legal or administrative authorization.
- Regulations. The names of the beneficiaries of a private interest foundation are contained in the Regulations, which is a private document established either by the founder or subsequently by the Foundation Council that does not need to be filed in the Public Registry and, therefore, is not a matter of public record. The timing and amount of the distribution to the respective beneficiaries are also set forth in the Regulations.
- Miscellaneous Provisions:
  - Any amendments to the Foundation Charter shall be made and signed in accordance with the provisions of the charter.
  - The assets of a foundation constitute an estate separate from the founder's personal assets, and therefore they may not be seized, attached or subjected to any lawsuits or attachments.
  - Foundations shall be irrevocable unless the Foundation Charter expressly provides otherwise.
  - Whenever a foundation has been created to take effect upon the founder's death, he shall have the unlimited right to revoke it.
  - The existence of any legal provisions concerning inheritance matters at the founder's or the beneficiaries' domicile shall not be opposable to the foundation.

- The creditors of the founder shall only have the right to contest the contribution or transfer of assets to a foundation where such transfer constitutes an act to defraud creditors. This right shall lapse three years from the date of the contribution or transfer of assets to the foundation.
- The Foundation Council may consist either of one or more corporate members or of at least three individuals.
- Unless otherwise provided in the Foundation Charter, the Foundation Council shall have the obligation to manage the assets of the Foundation, to inform the beneficiaries about its economic situation and to hand over to the beneficiaries the assets or resources settled in their favor.
- The Foundation Charter or its Regulations may provide that the members of the Foundation Council may only exercise their powers after obtaining prior authorization from a Protector.
- The founder may reserve for himself or for other persons the right to remove the members of the Foundation Council as well as to appoint or add new members.
- Foundations constituted in accordance with a foreign law may continue their existence as a Panama foundation.
- Foundations constituted in Panama as well as the assets that constitute their patrimony may be transferred to the laws of another country as may be provided in the Foundation Charter or its Regulations.

REGISTRATION OF FOREIGN CORPORATIONS

A foreign corporation can render commercial activities within Panama after presenting the following documents to the Public Registry for its registration:

- Notarized document of registration of the foreign corporation's articles of incorporation duly translated.
- Copy of the foreign corporation's last balance sheet together with a declaration of the portion of the corporate capital utilized or to be utilized in business in Panama.
- A certificate that the foreign corporation is organized in accordance with the laws of the respective country, authenticated by the Panamanian consul in said country, or in the absence of a Panamanian consul in the foreign corporation's country of origin, by that of a friendly nation.

JOINT VENTURES

This partnership type is utilized for temporary association for commercial purposes without incorporation; joint ventures are widely accepted in Panama although they have no separate juridical registry, up to the point that fiscal authorities may assign a tax number to the joint ventures to pay taxes. Joint ventures are commonly used for purposes of contracting with government agencies.

TAXATION

INCOME TAX

Taxable income is the difference or balance resulting from gross revenues after subtracting foreign income, nontaxable income, as well as deductible costs and expenditures.

The following forms of income are not subject to income tax because they are not considered to be produced in Panama:

- Billing the sales of merchandise or goods from an office established in Panama for an amount higher than they were billed to the office established in Panama, provided the merchandise or goods move exclusively abroad.
- Transactions conducted from an office in Panama, but perfected, consummated or having effect abroad.
- Distributing dividends or partners' participation in companies that do not require an Operation Notice or that do not produce taxable income in Panama, as long as such dividends or partners' participations do not come from income produced locally.

In addition, special formulas and procedures have been established to determine the net taxable income and the tax payable for certain activities, such as the transfer of real estate, and certain industries, such as film producing and distributing companies, international transport companies and communications companies.

CORPORATIONS' INCOME TAX RATE

Corporations pay income tax over the net taxable income obtained during a fiscal year, at the following rates:

- As of 1 January 2011, 25%
- Energy generation and distribution companies, insurance companies, telecommunication companies, financial companies, concrete companies, casinos, mining and banks: From 1 January

2010 up to 31 December 2013, 27.5%; and from 1 January 2014, 25%

- Companies on which the State has a stock participation of more than 40%: 30%

Companies with taxable income of more than USD1.5 million annually will calculate their income tax at the rate that corresponds to the greater of:

- The amount of the net taxable income (calculated under normal principles); or
- The net taxable income that arises after applying 4.67% to the total taxable income.

If by virtue of payment of income tax the company incurs a loss, it could ask the fiscal regulator not to apply the "4.67% rule," in which case the taxpayer will have to demonstrate to the regulator such alleged loss.

TAX TREATMENT OF DIVIDENDS

In the event that a company has a notice of operation, operates in or from Panama and generates both Panamanian and foreign income, dividend taxes will be applied at a rate of 10% of the profits of Panamanian source and a rate of 5% of the profits of foreign sources.

In the event that the corporation does not distribute any profits, or that the total amount distributed is less than 40% of the amount of the net income for the corresponding fiscal year, less the income tax caused by the same, the corporation must withhold and pay the tax authorities, as complementary tax, 10% of the difference. In addition, in cases of the 5% withholding and no dividends were distributed, or that the total amount distributed is less than 20% of the amount of the net income for the corresponding fiscal year, the corporation must withhold and pay the tax authorities, as complementary tax, 10% of the difference.

Income tax over dividends paid to shareholders of bearer shares is at a rate of 20%.

Content of Double Taxation Treaties must be taken into account for the distribution of dividends or partners' participation.

NATURAL PERSONS' INCOME TAX RATE

Personal income is taxable at the following annual rates:

TAXABLE NET INCOME	PERCENTAGE
Up to USD11,000	0%
More than USD11,000 and up to USD50,000	15% over the excess of USD11,000 up to USD50,000
More than USD50,000	USD5,850 for the first USD50,000 and 25% over the excess of USD50,000

Every employer is obliged to withhold income taxes from the salaries and other remunerations paid to its employees, according to charts prepared by the income tax authorities.

Employees who receive salaries from more than one employer at the same time or obtain taxable income from other sources must file a personal income tax return. Amounts withheld must be paid to the National Treasury, through the Social Security monthly payroll, within the first 15 days of every month.

REAL ESTATE TAX

All land and real estate improvements thereon located in Panama are subject to real estate taxes. The taxable base depends on the total value of the land plus improvements.

Certain properties and improvements thereon are exempt or can obtain exemption from real estate taxes according to special incentive tax laws. Real estate properties with assessed values of less than USD30,000 are exempted from taxes, excluding properties subject to the "horizontal property regime," which have to pay real estate tax at a 1% rate.

Real estate tax rates are progressive, as follows:

TAXABLE VALUE	RATE
USD10,001 to USD20,000	1.40%
USD20,001 to USD50,000	1.75%
USD50,001 to USD75,000	1.95%
Over USD75,000	2.10%

In addition, there is a combined alternative progressive rate of the real estate tax, as follows:

TAXABLE VALUE	RATE
USD30,001 to USD100,000	0.75%
Over USD100,000	1.00%

Real estate taxes can be paid in three installments, by April 30, August 31 and December 31, and a tax clearance certificate must be obtained before any real estate transaction can be completed.

MOVABLE PROPERTY TRANSFER AND RENDERING OF SERVICES TAX (ITBMS)

In general, all transactions involving tangible personal property (consumer goods and products) as well as the rendering of services are subject to a transfer tax at a rate of 7%.

Sellers and those rendering services are liable for the collection and payment of this tax, which must be paid either monthly or quarterly, depending on the gross monthly income of the seller or the service provider.

Exemptions from the ITBMS include food, medical and pharmaceutical products, as well as various other items and transactions. This tax is a major source of income for the government, along with the income tax and import taxes.

OPERATION NOTICE TAX

All individuals or firms engaging in commercial or manufacturing activities are required to have an Operation Notice from the government and pay an annual tax based on the total of owners' equity or corresponding net assets.

The tax is 2% of the total capital and retained earnings and ranges from a minimum tax of USD100 up to a maximum tax of USD60,000.

It is not mandatory for entities located within a special-trade regime to obtain an Operation Notice; however, such entities will have to pay 1% annually over the company's capital and retained earnings, with a minimum tax of USD100 and a maximum tax of USD50,000.

STAMP TAX

There is a stamp tax of USD8 per page in Panama that must be paid for certain administrative petitions, certificates and notarial documents.

The contracts relating to business transactions subjected to the jurisdiction of the Republic of Panama must be stamped at a rate of USD0.10 per USD100 of the declared value stated in the document.

EDUCATIONAL TAX

Both employees and employers must pay a tax assigned for educational purposes. Employers must deduct 1.25% from their employees' salaries, and pay for their own account an additional 1.50%. Self-employed individuals must pay the total 2.75% of their annual income subject to income tax.

This tax is deductible from income taxes for both employees and employers.

MUNICIPAL TAXES

Municipalities may assess taxes on streets, sidewalks, automobile licenses, buildings and on its improvements, municipal land as well as most commercial and industrial activities. In Panama City, monthly municipal taxes range between USD0.50 up to USD1,000.

INTERNATIONAL TAXATION

Double Taxation Agreements

Furthermore, Panama has initiated a stout process for negotiating and approving Double Taxation Agreements with several countries, in order to avoid double or multiple taxations by foreign investors, when both Panama and any other country consider that it has the right to impose taxes.

Since June 2010, Panama has signed Double Taxation Agreements with Mexico, Italy, Barbados, Qatar, Portugal, Netherlands, Luxembourg, Spain, South Korea, Singapore, France, Ireland and Czech Republic. It has concluded negotiations for Double Taxation Agreements with Belgium, Israel, Bahrain and United Arab Emirates.

Lastly, the following countries have demonstrated their interest in negotiating Double Taxation Agreements with Panama: Germany, Canada, Russia, Hungary, Georgia, Great Britain, Switzerland, India, Bulgaria and Malta.

The most important advantages for investors from a Double Taxation Agreement are the following:

- Creates a favorable investment environment
- Bilaterally consolidates a predictable and secure legal structure
- Establishes methods for reducing or eliminating double taxation
- Includes an alternative method for resolving controversies
- Strengthens the control activity of the fiscal regulator

Tax Residence

Due to the enactment of several tax rules with an international application, Panama, through Law 52 of 2012, approved the standards that define the concept of tax residence.

Tax residents of the Republic of Panama are those individuals who remain in the country for over 183 days in a fiscal year or in the previous one, or that have established their permanent residence in the territory of the Republic of Panama.

Also, companies will be considered tax residents of the Republic of Panama which were incorporated under the laws of Panama or that are registered as foreign entities in Panama, and that have an address and management means within the Panamanian territory.

INTELLECTUAL PROPERTY

TRADEMARKS

Law 35 of 1996 protects not only inventions and trademarks, but also utility models, industrial models and drawings, industrial and commercial secrets, products and services trademarks, collective and security trademarks, geographic indications, indications of origin, names of origin, commercial names as well as advertising expressions and signs.

COPYRIGHT

Law 64 of 2012 protects the rights of authors and "rights holders" in their literary, artistic or scientific works, whatever their genre, form of expression, merit or purpose, including "related rights" (*derechos conexos*); it also provides that copyright is independent and compatible with industrial property rights over the work.

This protection is recognized independently of the physical medium containing the work and is not subject to compliance with any formality.

LABOR LAW

Panama labor law is thoroughly regulated by the Labor Code of Panama, containing the specific regulations and laws applicable to employment relationships.

Except for certain economic activities, such as farming, domestic service casual work of low value and work of low value in unpopulated areas, Panamanian labor law, as a general rule, requires an employment agreement to be in writing.

The Labor Code establishes a list of necessary elements that employment agreements shall contain, as follows:

- Personal Data
- Dependents of Employee
- Work and Work Methods
- Workplace
- Term
- Division of Workday
- Wages and Certain Related Information
- Incidents of Signing
- Signatures

New employees are subject to a three-month probationary term (if so stipulated in the contract), meaning that they could be dismissed without cause within such term with no responsibility for the employer.

Labor Agreements by law can be definite, indefinite or for a specific task. The maximum term for contracts that are for a definitive period is one year (and up to three years for services that require special technical skills), and may turn into an indefinite employment relationship if the employee continues to render services beyond the term (even if under multiple/succeeding contracts for a definitive period).

Employees' rights under the labor code (specifically with regard to benefits) cannot be waived or diminished, and such contractual provisions are rendered null and void.

EMPLOYEES RIGHTS UNDER PANAMA LABOR LAW

In general, we can mention the following:

- Workers are protected by the Labor Law, since the "*in dubio pro operario*" premise applies, which means that in case of doubt, the employee shall be benefited.

- Presumption in favor of the employees, due to which the employers have to prove otherwise (the burden of proof is shifted).
- Employees have a right to earn a minimum wage, as fixed by decree of the Executive Branch.
- Women employees are protected; they cannot be dismissed while pregnant nor for a year after giving childbirth, unless there is a justified cause approved by a labor court.
- Employees have the right to form unions.
- Employees have the right to strike.

TERMINATION OF EMPLOYMENT

Under article 210 of the Labor Code, there are six ways an employment relationship may be terminated:

- By mutual consent (if it is in writing and does not involve the waiver of rights)
- By expiration of the term of employment
- By death
- Dismissal for just cause (as defined in the Labor Code)
- By resignation
- Unilaterally by the employer as allowed by the Labor Code

The Panamanian Labor Code provides certain protection to both Panamanian and non-Panamanian employees, whereby an employer may not terminate an indefinite term labor relationship with an employee without having a fair justified cause as provided by the law and pursuant to its formalities.

However, the following cases are exempt from this labor protection:

- Employees having less than two years of continuous services
- Domestic employees
- Permanent or regular employees, from small agricultural, farming, agro-industrial or manufacturing companies, namely, farms and ranches with 10 or fewer employees; and agro-industrial companies with 20 or fewer employees and manufacturing companies with 15 or fewer employees
- Employees aboard vessels engaged in international services
- Apprentices
- Employees of retail sale establishments and companies having fewer than five employees, except for financial, insurance and real estate establishments

In the aforementioned cases in the event of dismissal, the employer shall notify the employee of the dismissal 30 days in advance (Forewarning Benefit) or might pay the employee the amount that corresponds to such period of prior notice; additionally, the employer shall pay the employee the corresponding indemnification.

Additionally, the Labor Code provides certain protection to employees who have been employed for a period of more than two years. Such protection is provided to Panamanian and non-Panamanian employees alike. These protection formalities include the following:

- The employer must notify the employee in advance and in writing, the date and the specific cause or causes for the dismissal or termination of the labor relation based upon what is established by the Labor Code. Subsequently, the employer may not be able to allege as valid causes any that are different from those contained in the notice.
- The dismissal is a unilateral act of the employer, since it manifests the will deriving from only one of the parties in the labor relation. Therefore, the employee may not presume that he has been dismissed, since the express manifestation of the employer is required to produce such dismissal.
- Panamanian legislation requires as a formality prior to the dismissal that the employer communicate to the employee its decision to dismiss him/her by a letter in writing, in which the causes in which the dismissal is based are explained in detail. The dismissal letter is intended to notify the employee of the causes for the dismissal, in order not to leave him defenseless.
- The Labor Code provides the restricted justified causes for dismissal that may be invoked by the employer in accordance with the situation and the reasons that gave grounds to the dismissal. These causes may be of a disciplinary, non-imputable and economic nature.

In the event of a dismissal based on a justified or unjustified cause the employer shall pay the employee the following in concept of acquired rights:

- Salary up to the last day worked
- Proportional vacations
- Proportional thirteenth month
- Seniority premium in case of indefinite term contracts
- Indemnity in conformity with the Labor Code
- Benefit for those workers with less than two years, in the event that such benefit has not been complied with

In the event of resignation or justified cause, the employer shall pay the respective sums corresponding to the previously listed concepts, with the exception of the indemnity and the Forewarning Benefit which does apply in certain cases.

The Labor Code requires that all enterprises located within Panama have at least 90% of its "ordinary" employees (employees with no technical expertise or knowledge) to be Panamanian citizens or aliens married to Panamanian nationals.

The Labor Code further provides that all enterprises are permitted to appoint non-Panamanians up to 15% of its staff, provided that such employees possess the technical knowledge or qualities or will dedicate to managerial activities.

WORK PERMITS

Our legislation requires that foreign individuals employed be granted a work permit by the Ministry of Labor and Employment Development if they are to be employed in Panama.

The Ministry of Labor will authorize the following labor permits for foreign employees:

- Foreign employees with a Panamanian spouse
- Foreign employees with 10 or more years of legal residence in Panama
- Foreign employees within the permitted 10% of regular personnel
- Foreign employees as expert or technician within the permitted 15% of specialized personnel
- Temporary foreign employees as expert or technician within the 15% of specialized personnel
- Foreign employees who act as executive of companies in the Colon Free Zone
- Foreign employees in companies that have fewer than 10 employees, pursuant to the Marrakesh Agreement (Law 23 of 15 July 1997)
- Foreign employees of a trust employed with foreign operations
- Foreign citizens who are refugees
- Permission to foreign employees in the capacity of employee in a position of trust in companies with off-shore activities

VISAS AND RESIDENCE PERMITS / IMMIGRATION

In addition to work permits, the applicant must obtain a visa, for which the employee will need a previously issued work permit.

Immigration Categories

Nonresident: For purposes of Panamanian immigration laws, a nonresident is a citizen of any other country, who enters the Republic of Panama without the intention of establishing a permanent residence or of renouncing his own citizenship. Nonresidents seeking a visa must show proof of economic resources and must leave the country within the period established by law.

The most common visas requested by nonresidents are the following:

- ***Tourist Visa***. This visa has a 90-day maximum term, which may be extended.
- ***Housekeeper Visa.***
- ***Short Term Visa***. This visa will be granted for a nine-month term only and will not be extended.
- ***Passers Visa or Short Term Employees***. Any company may hire foreigners that temporarily enter the country for rendering technical, cultural, artistic, musical, sports, professional, educational or scientific services, for a particular project and for a renewable term of three months.

Permanent Resident: For purposes of Panamanian immigration laws, a permanent resident is a foreigner who enters the country with the intention of establishing his residence in Panama, based on economic and investment purposes in accordance with the specific policies adopted by the Panamanian government. In general, after the term of two years, the applicant may opt for permanent residence.

The most common visas requested by permanent residents are the following:

- ***Married to a National Visa***
- ***Retired Visa***
- ***Self Solvency Visa***
- ***Married to a Panamanian Visa***
- ***Investment Visa***
- ***Friendly Countries Visa***. The nationals from the following countries may request this special immigration category: Germany, Argentina, Australia, Austria, Brazil, Belgium, Ireland, Japan, Spain, United States, Chile, Canada, Czech Republic, Slovakia, France, Finland, the Netherlands, Ireland, United Kingdom of Great Britain and Northern Ireland, Norway, Switzerland, Singapore, Uruguay, South Korea and Sweden.

Temporary Resident: For purposes of Panamanian immigration laws, a temporary resident is a foreigner who enters the country with the intention of establishing a temporary residence in Panama. This visa is valid for a maximum of six years.

The most common visas requested by temporary residents are the following:

- ***10% Visa***. This type of visa is granted to those foreign employees hired by a Panamanian company.
- ***15% Visa***. This type of visa is granted to those foreign employees hired by a Panamanian company as experts or technicians.
- ***Marrakesh Visa***. This type of visa is granted to companies with fewer than 10 and not fewer than three Panamanian employees.

Special Policies Resident (Temporary): These visas are the following:

- ***International Executive Visa***. This type of visa is granted to those foreign employees that enter the country on a temporary basis as executives of international companies.
- ***Retired Bondholder/Retired Investor***.
- ***City of Knowledge***. This type of visa is granted to foreign employees that enter Panama as investigators, professors, students, among others, with the purpose of aiding the project of the foundation known as City of Knowledge.
- ***Headquarters of Multinational Corporations***. These types of visas are granted to employees of companies established in Panama as headquarters of regional or multinational companies.

THE SOCIAL SECURITY SYSTEM

The Social Security system in Panama replaces many of the employees' benefits usually provided by insurance companies in other countries. It not only provides retirement benefits, but also health, dental, maternity, disability and death benefits.

All employees working for the government, individuals or enterprises operating in Panama are subject to the mandatory system of social security. There is also a voluntary system for independent workers.

Every company organized to carry out activities in Panama must request an employer's inscription number from the Social Security Administration and is required to remit, as employer, 12% of wages paid to workers. This percentage is expected to increase in 2013 to 12.25%.

Similarly, the employer shall deduct from the source, and submit to Social Security on behalf of workers, 9% of wages paid to these until 31 December 2012; then this percentage will be 9.75%.

The definition of salaries includes amounts paid to employees for services rendered in Panama and for all amounts paid for such items as representation allowances, housing allowances, tuition allowances for the children of the employee, use of certain vehicles, among others.

INTERNATIONAL TRADE

Treaties and International Trade Agreements

Panama has proactively prompted its insertion in the international market, procuring the maximum development of its competitive advantages. In this context, Panama completed its insertion to the World Trade Organization (WTO) in 1997.

Since then, Panama has modernized its bilateral trade relationships with other countries, through negotiations and the implementation of treaties and international trade agreements, which embrace the establishment of a clear and comprehensible legal framework for the rendering of services and investments among Panama and many others of its strategic worldwide partners.

FINAL COMMENT

Panama welcomes foreign and local investments through a variety of government and tax incentives discussed herein succinctly; hence, this information is of general nature and comprehensive counsel should be obtained before investing in Panama. ALEMAN CORDERO GALINDO & LEE would be delighted to assist you in this regard.

With an area of 406,752 square kilometers, Paraguay occupies the central plain of South America. It has the world's largest fresh water reserve known as "*Acuífero Guaraní*." The country's fertile soil is one of the major resources for agriculture and cattle raising.

Paraguay is located at the confluence of an important river system and two oceans, providing easy access to the major ports and markets in the region.

Paraguay has approximately 6.5 million inhabitants of whom about 600,000 live in Asunción, the capital of the country. Its population is young and homogeneous. About 70 % of the population is less than 30 years of age.

The present constitution was enacted in 1992. It establishes a presidential government system, with three independent branches: executive, legislative and judicial.

Spanish and Guaraní are official languages. Guaraní is an Indian language also used by the ancient Jesuit priests, spoken by 90% of the population.

The legal system is unified within the country as Paraguay is a nonfederal country.

FOREIGN INVESTMENT

The Paraguayan constitution proclaims that all people have the right to choose the economic activity that they wish, under an equal opportunity regime, provided that the activity is legal. Paraguay actively promotes foreign investment in the industrial and service sector. Paraguay has a Foreign Investment Law 117/91 which grants foreigners the same guarantees, rights and obligations enjoyed by Paraguayan investors. Another important investment law is Law 60/90 which grants tax incentives for investments in areas that the country wishes to develop.

Paraguay offers one of the world's most comprehensive legal systems regarding foreign investments, since, unless an application is filed for incentives granted under Law 60/90 or the Maquila or Free Trade Zone Laws, investors need no governmental approval to invest. Besides the Border Security Law, which will be explained further, there are no restricted areas, no discrimination and no limitations.

MAIN RIGHTS

Law 60/90 for the Promotion of Investments

The provisions of Law 60/90 stimulate the investment and reinvestment of capital directed towards the following objectives:

- Increase the use of domestic raw materials and energy resources;
- Create jobs;
- Increase production of goods and services;
- Increase exports;
- Substitute imports;
- Incorporate modern technology; and,
- Improve productive efficiency.

Types of Investments under Law 60/90

Investments may be made using any of the following:

- Money, suppliers' credit, or financing;
- Capital goods such as transportation or industrial equipment, office electrical and electronic machinery, equipment, etc.;
- Trademarks and other forms of technology transfer; and
- Leasing of capital goods, especially applicable to river shipping and air transportation.

Fiscal Incentives

Fiscal incentives granted under Law 60/90 are the following:

- Total exemption from all taxes applicable to formation, recording and registration of corporations and companies;
- Total exemption from all taxes and charges applicable to foreign exchange transactions arising out of capital contributions or operations contemplated in investment project;
- Total exemption from customs duties and similar taxes, including specific Internal Revenue levies on imports of capital goods;
- Total exemption from all taxes and other levies on remittance of interests and fees related to foreign loans, during the entire term of loan, provided that loans are at least USD5 million and lenders are well-known financial institutions;
- Total exemption from all taxes applicable to dividends and profits generated by investment project for a maximum term of 10 years, provided that the investment is more than USD5 million and taxes paid in Paraguay cannot be considered tax credit in country origin of investment;

- The incorporation of capital goods through leasing allows the introduction of such goods into the country under the rules of temporary admission for the term of the lease agreement, with suspension of import duties and VAT. Payments made abroad under lease contracts are subject to withholding taxes (6% corporate income tax and 10% VAT).

Tax Incentives Granted by Maquila

The Maquila Regime is regulated by Law 1064/97, inspired by the Mexican Maquiladora System. Under this regime, a local company/subsidiary/branch (*maquiladora*) signs a contract with a foreign entity (*matriz*) to produce goods and/or provide services for export only. The *maquiladora* operates "for account and risk of" the foreign entity, who can supply all the raw materials and other inputs to the *maquiladora* from any local or foreign supplier.

Any person/company, national or foreign with domicile in Paraguay may be licensed for a *Maquila* export program. Such companies may be incorporated under any form: corporations, limited liability companies, foreign branches or individual limited liability enterprises, without any ownership restrictions, having total or partial foreign, national or joint venture participation. Investment Law 117/91 provides equal guarantees and standing for national and foreign investments. There are no restrictions on minimum capital or production quotas.

Raw materials and other inputs required for the performance of the Maquila Program can enter Paraguayan territory with suspension of all the applicable taxes and duties; a guarantee for a value equal to the suspended taxes is required by customs authorities (insurance policies, warrants, or bank guaranties are accepted).

Production under this regime is subject to a 1% tax on the value added in Paraguayan territory, with no other applicable taxes.

Fiscal exemptions extend to following taxes: Income tax; value added tax; customs duties; customs valuation tax; consular duties; port and airport taxes and duties; any type of tax, rate or charge that pertains to guarantees issued to companies using the *Maquiladora* System; any type of tax, rate or charge applied to loans financing *Maquiladora* operations; any taxes that might be placed on remittances of funds related to *Maquiladora* System.

Maquiladoras can perform production themselves or can subcontract with other local companies. Tax benefits might be extended to subcontractors under certain conditions, in such cases subcontractors will be called *SubMaquiladoras*.

Paraguay is also party to international agreements and treaties for the promotion and protection of investment. The most important are: Multilateral

Investment Guarantee Agency (MIGA); Overseas Private Investment Corporation (OPIC); and International Center for the Settlement of Investment Disputes (ICSID). Paraguay has also signed agreements with several countries regarding reciprocal protection for investments.

RESIDENCY REQUIREMENTS

Immigration and residence of foreign nationals is governed by Law N° 978/96.

Precarious Residency

This is a special residency permit in Paraguay. It's given to foreign people who, due to work issues, must stay in the country for short periods of time, less than the period allowed by a temporary residency and more than the period established for tourists (90 days).

Validity: Six months, renewable for another period.

Documents required:

- Simple copy of identification document (passport or any other);
- Four ID photographs in color 2.5 x 2.5 inches;
- Proof of legal entrance to the country (visa or sealed passport), issued by the immigration authorities at the control posts (airports and border);
- Authenticated copies of passport vital data pages.

Permanent Residency

A foreigner can become an immigrant or apply for residence subjected to demonstration of economic standing with personal resources, or under employment by another person, enterprise or company, and evidence of good morals and capacity for work.

All applications must have the following documents:

- Passport from the country of origin, with photograph;
- Birth certificate;
- Marriage certificate (if married) or a divorce decree or a death certificate (if a widower/widow) in order to justify marital status;
- A certificate from a medical doctor or institution evidencing good health;
- Criminal history record from the applicant's country of origin no older than three months when presented in Paraguay (issued by the FBI for American citizens);
- Economic solvency statement, that may be proven with a deposit in a bank in Paraguay in the amount of at least USD5,000 in a

savings or current account in the name of the applicant or its equivalent in local currency or any other currency at the date of the proceedings.

All these documents must be original, current and legalized at the Paraguayan consulate in the country of origin and translated into Spanish. Immigrants investing in agricultural, cattle raising and industry are considered privileged.

After having all the documents above mentioned and obtaining documents required by the government, applicant must present in person all the documents to the immigration office.

Immigrants are given a Certificate of Residence while in Paraguay and must obtain a return entry permit if it is necessary for them to leave the country.

Residence

Foreigners may reside in Paraguay, provided they provide the requirements established by law (indicated above). Foreigners enjoy the same rights and have the same obligations as nationals, with the limitations and exceptions established by the Constitution and laws. Only citizens have the obligation to perform military service, the right to vote in national elections and to hold judicial and political office.

There are no restrictions concerning ownership of property by foreigners, because property is guaranteed and regulated by law, with the exception of the Border Security Law (*Ley de Seguridad Fronteriza*). Foreigners may engage in commerce or industries without limitations. Foreigners may practice any liberal profession in Paraguay. Those who study at a Paraguayan university are on equal terms with nationals. Foreigners holding degrees from foreign universities should have their degrees revalidated by the National University in accordance with international agreements.

Once resident status is granted, the police department issues an identity card (*Cédula de Identidad*).

ENVIRONMENTAL REGULATIONS

Environmental issues are governed in Paraguay by Law 294/96 and Law 1561/01. The Secretary of Environment (*Secretaria del Medio Ambiente*, SEAM), was created as an independent regulatory institution by Law 1561/00. This law also originated the National System of the Environment (*Sistema Nacional del Medio Ambiente*) which is integrated by representatives of different public sectors (administrative, municipal, etc.) and private sector. The National System of the Environment has the role of supporting the SEAM in its politics, agenda, plans, etc.

According to the Environmental Law, any natural or juridical person that performs industrial or agricultural activities must file at the SEAM an Environmental Impact Assessment (EIA) to obtain an Environmental License. Said permits are required for any kind of activity that may affect the environment in any way.

This EIA must ensure that all environmental implications are taken into account before performing the desired activity.

Paraguay also has in force the Zero Deforestation Law, promulgated as Law 2524/04 in December 2004. This law promotes the conservation, preservation and management of native forests in the Eastern Region of Paraguay (*Región Oriental*) by prohibiting activities such as transforming and converting surfaces covered with forest for activities such as agriculture, livestock, etc. This prohibition is in force until 13 December 2013. This law prohibits the issuance of permits, licenses, authorizations and/or any other legal document authorizing the transformation or conversion of native forest areas to areas for agriculture, livestock activities or for the so called "landless *campesinos*."

In Paraguay, the violation of legal environmental dispositions may imply civil, administrative and criminal sanctions. The directors, managers and other legal representatives are responsible for the environmental crimes that are carried out in the case of juridical persons.

COMPETITION AND ANTIMONOPOLY REGULATIONS

There is no competition and antimonopoly regulation in place yet. However, there is a bill in Congress.

BUSINESS ENTITIES

CORPORATIONS

The Paraguayan Civil Code sets forth the procedures to be followed in the formation of a corporation (*Sociedad Anónima*), wherein the participation of incorporators is represented by shares. The guidelines below outline this procedure and should be followed when forming a corporation in Paraguay.

General Characteristics

Corporate Name

The corporate name must include the denomination "S.A." (*Sociedad Anónima*).

Organization

The following conditions are indispensable when organizing an S.A:

- There must be a minimum of two shareholders who may be represented by proxy;

- Capital stock must be completely subscribed; and,
- Authorization from the courts must be recorded at Public Records. Authorization will be granted if the corporate organization and bylaws comply with the provisions of the Civil Code and its purpose is not contrary to public policy.

Corporate Bylaws

The following must be included in the bylaws:

- Full name, nationality, profession, civil status, domicile of shareholders, and number of shares subscribed and paid up by each one;
- Name of the corporation and its domicile within the country or abroad;
- Nature of the business of the corporation;
- Specified duration of the corporation;
- Amount of subscribed and paid-in capital;
- Nominal value of the shares, and indication of whether these are bearer or nominal;
- Value of assets contributed in kind, if any;
- Basis on which distribution of profits will be made;
- Special privileges and rights, if any, conferred on founders or shares;
- Dispositions regarding management and supervision, their respective powers and duties, and the number of administrators;
- Powers conferred on stockholders' meetings, provisions regulating exercise of stockholders' right to vote, and the procedure for decisions taken at such meetings; and,
- Basis on which the corporation is to be liquidated.

Formalities Required to Establish a Corporation

Shareholders must enter into a corporate contract in the form of a public instrument, with intervention of a notary public. Corporations acquire separate legal status from that of their shareholders upon registration at the Registry of Juridical Persons and Associations and the Public Registry of Commerce.

Lack of registration will not make the corporate contract void, but it may not be opposed to third parties. Shareholders, directors and any person who have authorized acts, transactions and operations in the corporate name prior to registration of the corporation are jointly and severally liable for these.

The legal fee of the notary public amounts to 0.75% of the corporate capital, plus publication expenses.

Management and Administration

Management and administration of the corporation is exercised by one or more directors elected by the shareholders' ordinary meeting or designated in the incorporation documents. Their number is decided by the general meeting if not specified in the bylaws.

Directors can be shareholders or not. They may be reelected, but appointment is revocable by a shareholders' meeting. Term of directors shall be of one fiscal year unless the bylaws establish otherwise. Directors must be Paraguayans or foreigners with legal residence in the country.

Directors may only engage in business transactions with the corporation under special circumstances. They are forbidden to execute any business on behalf of the corporation not related to the purpose for which it was incorporated.

Corporate administrators are responsible before creditors for negligence in their duty to safeguard the integrity of corporation's assets.

Supervision

To supervise management of the corporation, one or more trustees must also be appointed by the ordinary shareholders' meeting. They must be capable of undertaking duties assigned by the bylaws, and domiciled in Paraguay. Bylaws shall determine duration of their terms, which may not exceed three fiscal years and they may be reelected.

Trustees have the following powers and duties:

- Supervise administration and management of the corporation, and participate without vote in the shareholders' and board of directors' meetings;
- Examine books and papers whenever they deem advisable, at least once every three months;
- Call extraordinary shareholders' meetings when they consider necessary and ordinary meetings when the board of directors fails to do so; and,
- Ensure that the corporation complies with all obligations under the law, as well as with the decisions of shareholders' meetings.

Responsibility of Administrators

Administrators are not liable for obligations of the company except in case of nonperformance of their duties, mismanagement and personal breach of law or corporate bylaws. In such instances administrators are jointly and severally liable before the corporation and third parties for their acts, but directors who

opposed, voted against or were not present when unlawful acts were approved, are exonerated.

Minimum Capital Stock

The law does not establish a minimum capital stock.

General Shareholders' Meeting

Called "*Asambleas Generales,*" it may be ordinary or extraordinary, and must take place at the corporate domicile.

Ordinary meetings must be called at least once a year by directors or trustees, to consider and resolve the following:

- Annual report of directors, statement of accounts, balance sheet, distribution of dividends, trustee's report, and any other issue within its competence according to the law and the bylaws;
- Election of directors and trustees, and determination of their compensation;
- Responsibilities of directors and trustees, and their removal; and,
- Issue of shares.

Extraordinary shareholders' meetings may be called by the board of directors at any time or by trustees when deemed necessary or convenient or at request of shareholders representing at least 5% of the corporate capital, unless the bylaws set other limits, to resolve any of the following:

- Modification of bylaws;
- Increase or reduction of corporate capital;
- Redemption, reimbursement or amortization of shares;
- Merger, transformation or dissolution of the corporation including all matters related to liquidation and liquidators;
- Issue of debentures or exchange of these for shares; and,
- Issue of participation bonds.

Notice of meetings, including full agenda and any special requirements set forth in the bylaws for participation, shall be published for five days, at least 10 days before meeting. Should the meeting not take place, a second meeting must be called within 30 days. Decisions on matters not listed in the agenda are null and void.

To participate in meetings, shareholders must, three days before the meeting, deposit their shares or share certificates with the corporation secretary or present a certificate from the local or foreign bank that holds them. Shareholders may be represented in meetings by proxy, but not by directors, trustees, managers or other employees of the corporation.

Ordinary meetings on first call require a quorum of shareholders representing a majority of shares with voting rights; any number of shareholders form quorum for the second call. In either case, resolutions require absolute majority of votes present unless bylaws call for different majority.

Extraordinary meetings on first call require the presence of shareholders representing 60% of shares with voting rights; on the second call, quorum is 30%. Bylaws may establish higher percentages.

BRANCHES

Companies incorporated in foreign countries which will conduct regular business in Paraguay may establish a branch office in the country. These are subject, like Paraguayan companies, to the provisions of the Paraguayan Civil Code regarding publication of corporate documents and registration at the Public Registry of Commerce (*Registro Público de Comercio*) and the Registry of Legal Entities and Associations (*Registro de Personas Jurídicas y Asociaciones*).

Foreign companies are deemed to be domiciled where their principal place of business is located, but branch offices established in Paraguay are considered domiciled in the country for the purpose of transactions and business carried out within its territory, and, therefore, must comply with all formalities and obligations established by Paraguayan law for similar entities.

Representatives of foreign companies are authorized to engage in all transactions and acts of which the company is capable in its own country. Any limitations to such capacity are null and void. Representatives are subject to the same responsibilities set forth in the Civil Code for administrators in general.

To register a branch office, the following documents must be prepared by the company, certified by a notary public, and legalized by a Paraguayan consulate:

- The Articles of Incorporation and bylaws of the company;
- Certification that the company validly exists and is registered in the country of origin;
- A board of directors resolution which resolves to establish a branch office in the Republic of Paraguay; assigns capital to the branch office, adequate for its purposes, not less than USD10,000; establishes the domicile of the branch office in Asunción, Paraguay; designates the person or persons who will manage the branch office and grants powers of attorney as required by Paraguayan law; grants powers of attorney to attorneys for the purpose of performing the registration of the branch office.
- The powers of attorney granted to branch office managers and attorneys.

After the branch office has been registered and accounting forms have been filed with tax authorities and other public offices, it is ready to commence operation and carry out business transactions. Authorization from the government is not required. The process requires approximately 45 days.

A branch office must comply with the taxation and disclosure requirements of local companies. Publication and registration of balance sheets, reports and statements are also controlled by the Ministry of Finance, although, as branches of foreign companies, they do not hold annual shareholders' meetings; therefore, control is less severe.

TAXATION

Administration and application of Tax Law 125/91 and its amendments by Law 2421/2004 corresponds to Undersecretary of Taxes (*Sub-Secretaria de Estado de Tributación*), from the Secretary of Finance (*Ministerio de Hacienda*).

INCOME TAX

Taxable Income

This includes all income from Paraguayan sources derived or earned from commercial, manufacturing or service activities other than personal services: sale-purchase of real estate when activity is carried out as permanent business; use of assets, and other income shown on commercial balance sheets; commercial partnerships, as well as foreign corporations or their branches, agencies or business establishments in Paraguay; extractive industries such as mining and forestry, and certain farming activities (flower growing, forestry, bee keeping, poultry farming and others); consignment of merchandise; supply of certain services listed in law, which are subject to amendment and regulations. Excluded is income from farming which is governed by specific rules applicable to sector, income from small taxpayers (those whose annual income is less than approx. USD20,000 per year) and income subject to personal income tax.

Taxpayers

These include individual businesses, partnerships, associations, corporations and other private businesses; government-owned enterprises, decentralized government corporations, and mixed capital corporations; branches, agencies or businesses owned by foreign corporations. Corporations incorporated overseas shall pay tax on income paid or accredited to them. Also included are individuals applying capital resources and personal labor jointly, for purpose of obtaining economic gain, except those involving strictly personal services or those engaged in farming, and corporative corporations, when performing the same activities as other commercial/industrial companies.

Paraguayan Sources

These include business carried out, income obtained from goods located in or from entitlements used for gainful purposes in Paraguay; interest on securities and movable properties; technical assistance provided within the country when utilized or applied in it; assignment of goods or rights when used even partially during agreed period, such as use of trademark or patent; international freight on goods carried to bordering countries (Argentina, Brazil, Bolivia) or Uruguay which is considered 50% from Paraguayan sources, other freight is considered to be 30% from Paraguayan sources; interests, fees and capital gains obtained abroad, provided that the investor or beneficiary is established in Paraguay.

Gross Income

This is defined as the difference between total earnings and cost thereof. In sales, it is the difference resulting from deducting from gross sales any returned goods, gratuities and price discounts as applied in local business usage or custom. In the sale of fixed assets, it is the difference between the sale price and the cost or revalued cost of assets, minus amortizations or depreciations allowed by law. It also includes proceeds from the sale of movable property or real estate received in payment, proceeds from payments to partners or shareholders; any exchange rate differences resulting from transactions in foreign currencies; net benefits resulting from collection of insurance or indemnities; proceeds from any transfer of enterprise or business firms; interest on loans or investments (advances paid to partners or employees are excluded as well as deposits placed in financial entities); any increase in net worth occurring during the fiscal year other than that arising from revaluation of fixed assets, capital contributions or from exempt or nontaxable businesses.

Net Income

This is calculated by deducting from gross income all expenses incurred to obtain such income and to maintain source of income, provided they are real expenditures, duly documented, and at market price, as follows: Taxes and social benefits excluding business income tax; operating expenses of business; personnel compensation provided that they (i) contribute to social security, and/or (ii) are taxpayers of personal income tax, organization or incorporation expenses; interest and rentals or sums paid for assignment of assets and rights; losses suffered through casualties not covered by insurance; reserves or write-offs for bad debts; losses incurred as a result of criminal acts; depreciation; amortization of incorporeal rights such as trademarks and patents; expenses and payments incurred overseas associated to taxable income from export and import operations; travel expenses, per diem, and other similar payments in cash or kind; gifts to state, municipalities and religious entities or to entities dedicated to social welfare or education, recognized by Tax Administration;

professional fees and other compensation for personal services not subject to taxation; expenses and contributions paid to staff for health care, education, cultural development or training. Losses incurred in any fiscal year may be set off.

Nondeductible Expenses

These include interest on loans or advances from owners of businesses, partners or shareholders if they are not taxpayers of personal income tax; if interest rates are higher than average for Paraguayan banking system, this restriction is not applicable to owners/shareholders of banks and other financial institutions regulated by 861/96. Penalties for tax offenses are not deductible, nor are earnings in any fiscal period retained in business as capital increases or reserve accounts, excluding those retained by financial institutions in order to comply with minimum capital level according to regulations, and 50% of earnings applied to legal reserve by same institutions. Also included: Amortization of payments for goodwill; personal expenses of owners, partners or shareholders, and moneys drawn on account of future earnings; direct expenses involved in earning nontaxable income; and losses incurred in the previous fiscal year. Indirect expenses are proportionally deductible.

Beneficiaries Not Domiciled in Paraguay

Beneficiaries of Paraguayan-sourced income domiciled abroad are subject to withholding tax, separately from their local branch or agency. The law establishes imputed profit margin to which rate is applied. Imputed profit margin varies as follows:

- 10%: Insurance or reinsurance premiums; sales of travel tickets, international freight, radio message services, telephone calls, Internet services and other similar services sent overseas from Paraguay; freight on international shipments (export freight is exempted).
- 15%: Gross income earned by international news agencies; gross income earned by leasing of shipping containers.
- 40%: Rentals on motion picture films or television programs or those of any other projection medium.
- 50%: Income earned from any other source not indicated before.
- 100%: Gross income paid or credited abroad, arising from branches, agencies or subsidiaries located in the country. Taxpayers may in such cases choose to pay taxes according to general rules governing tax by keeping adequate books of account for verification of expenses and income.

Presumptive Income

Taxpayers who do not keep regular books of account run the risk that the tax administration may establish presumptive income on which to apply net income, which in turn shall be subject to a tax rate established by law. Taxpayers engaged in businesses the character of which makes it difficult to apply generally accepted accounting principles may request that the tax administration apply a tax regime based on presumptive income.

Tax Exempted Income

Local companies that, due to their status as shareholders, receive dividends or distributions from other local companies are taxed at a rate of 10% on that income, provided the amount of that income does not exceed 30% of annual gross income of taxpayer's parent company. Once said income exceeds 30% of the parent company's annual gross income, all profits obtained from other local companies would be taxed.

Please note that only the 10% general tax rate could be exempted. The 5% additional tax on profits distribution and the 15% withholding tax on profits credited or submitted abroad (with exception of entities granted with 60/90 Law Investment Promotion Law) would still apply. In addition, contributions to government and other social security funds, provided they are created or approved by Law (health, retirement or pension funds) would also be required. Financial revenues obtained by such funds; interests and/or profits obtained from sales of bonds through stock market; and export freight are tax exempt.

Revaluation of Fixed Assets

Annual revaluation of fixed assets is mandatory and the updated value shall result from applying to book value shown in previous fiscal year at percentage variation based on consumer price index as determined by competent government body.

Value of Inventories

Merchandise in stock is carried on books either at cost of production, cost of acquisition, or at market cost at close of the fiscal year, at taxpayer's option. The tax administration may accept other systems of inventory valuation. Negotiable securities and valuables shall be booked at their market value at close of the fiscal year. If not quoted on market, purchase price is used. Fixed assets and intangible assets are carried at purchase cost without prejudice of annual revaluation.

Reinvestment Exemption

This exemption was replaced in fiscal year 2005 with a reduction on general tax (from 30% to 10%), but distribution of profits is taxed from fiscal year 2006

with an additional 5% rate. A 15% withholding tax is also applicable when owners/quotaholders/shareholders are nonresident entities.

Branches or agencies of companies incorporated overseas shall keep accounts separate from those of their head office. Payments of interest, royalties and for technical assistance made by branches or agencies to their head office are deductible items for payers but taxable for payees.

Tax Rates

The current rate is 10%. Distribution of net profits to owners, shareholders or partners is subject to 5% additional tax. Sums paid or credited to head offices, partners or shareholders by branches, agencies or businesses located in Paraguay are subject to 15% tax. Income of individuals and/or entities not domiciled in the country, earned independently from that paid or credited on activities conducted by branches, agencies or businesses are subject to the sum of tax rates above as follows: 10% + 5% + 15% = 30%.

TAX ON FARM INCOME

Farming is defined as business conducted for the purpose of obtaining primary products, either vegetable or animal, by utilization of land, excluding (i) business of handling, processing or treating farm products unless carried out by same producer; (ii) activities subject to other income taxes are as business income tax, personal income tax and small income tax.

Taxpayers

These are defined as individuals; partnerships, whether incorporated or otherwise; associations, corporations and other private entities; government enterprises, self-governing agencies, decentralized entities; individuals or corporations conducting taxable businesses, including corporations incorporated overseas and their branches and agencies who own or lease rural land.

Usable land (SAU) is considered for application of this tax,

SAU = total surface of real estates

minus:

- areas occupied by natural or planted forests, permanent ponds, lakes, everglades;
- other nonusable areas (as rocky and salty areas);
- protected areas under environmental legislation; and
- roads and highways.

For surfaces with SAU in excess of 300 hectares in Eastern Region and 1,500 hectares in Western Region, annual gross income equals total income rendered.

In order to determine net income, all expenses and investments related to tax activities are considered deductible, provided that they are duly documented according to law. For cattle raising, 8% per annum of female cattle in stock is considered deductible, and a maximum of 3% of mortality is admitted as a deductible expense, unless proven before authorities. There are other deductible expenses according to specific activities and subject to previous approval by the Secretary of Agriculture and Livestock. If net income is negative, losses could be compensated in a maximum of five successive fiscal years.

The tax rate is 10% on net income for surfaces with SAU less than 300 hectares in Eastern Region and 1,500 hectares in Western Region. Annual taxable income is determined based on presumptive income, according to specific zoning as follows:

- Zone 1, with productivity coefficient (COPNA) from 0.555 to 1.000, equivalent to 1,500 kilograms of soybean per hectare area per year;
- Zone 2, COPNAs from 0.31 to 0.54, equivalent to 600 kilograms of cotton fiber per hectare per year;
- Zone 3, COPNAs from 0.20 to 0.30, equivalent to 50 kilograms of live weight gain (for cattle) per year.

A productivity coefficient is applied to average (annual) prices for each product to determine annual taxable income. Tax rate is 2.5% applicable to taxed income. VAT paid on purchase of inputs required by exploitation is considered tax credit.

Surfaces less than 20 hectares in Eastern Region and 100 hectares in Western Region are tax exempt.

SMALL BUSINESSES TAX

This tax applies to commercial, manufacturing and service businesses other than personal services, conducted by individuals using their personal labor and capital to pursue economic gain, provided their total income in the previous year did not exceed PYG100 million (equivalent to approx. USD20,000), adjustable by price index. Individuals performing import/export activities are excluded.

Tax base will be the lesser amount between 30% of annual gross income (presumptive) and gross income less documented expenses.

VALUE ADDED TAX

This applies to transfer of ownership of goods from one person or company to another, and rendering of personal services and importation of goods. Excluded are personal services performed under employment.

Taxpayers

These are individuals providing personal services when their gross income in the previous year exceeded the average of one minimum monthly wage (approx. USD400/month); cooperatives; individual businesses engaged in commercial, manufacturing or services businesses; partnerships and private entities in general; independent government entities, government enterprises and decentralized agencies engaged in businesses; importers of goods; and nonprofit organizations (NGO) when performing commercial/industrial/services activities, subject to Business Income Tax.

Origin of Tax Liability

For sales of goods, the tax obligation arises upon delivery, issue of invoice or equivalent act, whichever happens first. For public services, it is on the due date of invoice. For services, upon issuance of invoice or collection of full or partial payment for service, upon expiration of term for payment or upon termination of service. For items of personal consumption, at moment of purchase. For imports, at time register of entry of goods into Customs is opened.

Territoriality

All sales of goods and services in Paraguay are taxable. In case of technical assistance when used or profited from in country; in case of assignment of rights or lease of goods, when used within national territory. In case of insurance and reinsurance when they cover risks within country or when goods or persons covered are situated in or residents of country.

Tax Base

In transactions for consideration tax base is billed net price for goods or services. To establish net price and in determining price of goods used or consumed privately, the same rules apply as income tax, in addition to any special provisions. In the case of imports, base is customs value plus customs duties in addition to other taxes applicable to delivery of goods (customs and dock fees) and internal revenue taxes, but excluding value added tax. For loans, the tax base is interest, commissions and other charges accrued monthly. For real estate leases, the monthly accrued lease payment constitutes the base. For transfer of real estate, it is 30% of the transfer price. For transfer of stock (quotas and/or shares), the excess of transfer value over book value creates the tax base.

Exemptions

Sale of Goods. Farm products in their natural state; foreign currencies, government or private bonds, securities; petroleum-based fuels; goods received through inheritance; assignment of credits, capital goods manufactured locally provided they are applied to industrial/agriculture projects granted with benefits

of the 60/90 Investment Promotion law. (See Foreign Trade and Commerce, under Foreign Investment.)

Services. Interest on government or private bonds; services rendered by personnel of embassies, consulates and multilateral agencies accredited before government; fee of charge, services rendered by NGOs, political parties and other nonprofit organizations, deposits in financial institutions authorized by Central Bank of Paraguay, and in cooperatives, home savings and loan system, and public financial institutions.

Imports. Travelers baggage; diplomatic service imports; capital goods to be applied directly to productive cycle in manufacturing or farming in projects benefitted by incentives offered under Law 60/90. Goods imported to render services are not exempted even if benefited by Law 60/90.

Payment of Tax

Fiscal debit is the sum of taxes accrued (invoiced as opposed to collected) by taxable transactions in each month. Fiscal credit is the sum of taxes included in purchases of goods and services on the local market during the month, or on imports. Tax shall be appraised on the sum representing the difference between fiscal debits and fiscal credits. Deduction of any fiscal credit is conditional on such credit arising from goods or services devoted directly or indirectly to transactions subject to taxation. Taxpayers rendering personal services may not deduct any fiscal credits arising from the purchase of motor vehicles. When fiscal credit exceeds fiscal debits, surplus may be carried over to future liquidations.

Tax Rates

- 5% for assignment of rights of use of goods;
- 5% for transfer of real estate;
- Maximum of 5% for sales of basis alimentary goods;
- 5% on interests, commissions and charges for loans;
- 5% for sales of pharmaceutical products;
- 10% for rest (general tax rate is 10%).

TAX ON BUSINESS INCOME

The tax rate is 10% applicable on tax base.

Employment Taxes

Incidence of contribution on salary is 16.5% to employer and 9% to worker. The minimum base over which day laborers and workmen doing piecework must contribute, is the amount corresponding to 18 days wages. In no case will contributions be calculated over amounts smaller than the minimum legal wage.

PERSONAL INCOME TAX

Taxable Income

This includes all income from Paraguayan sources derived from personal services or generating personal income: practice of professional activities, performances of personal services; 50% of income obtained as partners and/or shareholders of entities which are taxpayers of tax on business income; capital gains earned occasionally through transfer of real estate, stock (quotas, shares) when not subject to tax on business income (presumptive profit margin is 30%); interest and commissions; any other income not subject to tax on business income and small business tax.

Exempted Income

Exempted are retirement pensions granted for extraordinary services; pensions for old age, employee death benefits, compensation for accident injuries, indemnification for maternity, indemnification for unjustified firing of employee; interests and commissions from deposits on investments in financial institutions or cooperatives, revenues from debt instruments issued by public companies regulated by Stock Exchange Commission.

The personal income tax became effective 1 August 2012. Individuals who will not be subject to personal income tax are as follows:

- 1st year: individuals with annual gross income (AGI) of less than 120 minimum monthly wages (MMW);
- 2nd year: those with AGI of less than 108 MMW;
- 3rd year: individuals with AGI of less than 96 MMW;
- 4th year: individuals with AGI of less that 84 MMW;
- 5th year: individuals with AGI of less than 72 MMW;
- 6th year: individuals with AGI of less than 60 MMW;
- 7th year: individuals with AGI of less than 48 MMW; and
- 8th year and after: individuals with AGI of less than 36 MMW.

Taxpayers

Individuals, noncommercial partnerships or professional firms (law firms, accounting firms, etc.).

Deductible Expenses

These include compulsory contributions (eg., social security contributions); donations (limited by regulations yet to be issued); expenses made abroad when related to taxed income, local expenses related to taxed income when they are duly documented; personal and family documented expenses including education, housing, health, clothing, recreation and alimentary expenses; up to a maximum of 15% of gross annual income for (i) deposits in financial

institutions, cooperatives, (ii) investments on shares of public corporations, (iii) contributions to private retirement funds. Deductions are limited to amount of gross income (losses are not admitted).

Tax Rate

10% is the general tax rate on personal income.

INTELLECTUAL (INDUSTRIAL) PROPERTY

COPYRIGHTS

(Related Rights Law No. 1.328/98)

Protection of copyrights covers works of talent, of creative character, within literary or artistic area, whatever its form, expression, merit or goal, nationality or address of author or holder of relevant rights, or place of publication of work.

Patrimonial rights is the exclusive right to perform, authorize or forbid reproduction of work by any form or procedure; public communication of work by any means; public distribution of issues of work; introduction of copies of work into the country; translation, adaptation, arrangement or other transformation of work.

Public Domain

Expiration of terms set forth in law implies expiration of patrimonial rights and determines passage of work to public domain.

Computer programs shall be protected in the same terms as literary works. Protection shall extend to all forms of expression as well as operating programs and applications, either as source codes or object codes. The protection established by present law extends to any successive versions of the program as well as to programs derived therefrom.

The producer of a computer program is the natural or legal person who assumes initiative and responsibility for the work. It is presumed that authors of computer programs have assigned to the producer, in unlimited and exclusive manner, patrimonial rights recognized by present law.

Aforesaid lawful use, shall not extend to utilization by various persons, through installation of networks, workstations or similar procedure, unless by express consent of holder of rights.

Architectural Works

Acquisition of architectural plan or project implies the right to execute work planned, but the consent of author is required to use same in construction of another work. Use of architectural plan in building constructed by a third party

failing to remunerate creative work of author shall grant the latter the right to collect indemnity.

Works of Plastic Arts

Contract of sale of material contained in work of art grants acquirer the right to publicly exhibit work, for lucrative or onerous title.

News Articles

Except as otherwise agreed, authorization for use of newspaper, magazines or other means of social communication, granted by author not having a dependency relationship with news enterprise, shall grant editor or owner of publication the right to use it only once.

An editorial contract is one in which the author or his rights holders, assign to an editor the right to reproduce and distribute the author's work at their own expense and risk.

Contract for Edition of Musical Works

Author assigns to editor the exclusive right of edition and empowers him to record and reproduce the work, create audiovisual adaptations, translations and further editions and any other form of utilization of the work set forth in the contract.

Theater Shows and Musical Performance

Author, his rights holders or relevant managing institution, may assign or license to natural or legal person the right to represent or perform literary, dramatic, musical, musical show, pantomimic, choreographic or any other performance publicly, for economic compensation.

Phonographic Inclusion Contract

Pursuant to phonographic inclusion contract, owner of musical work, or his representative, authorizes producer of phonograms, on basis of remuneration, to record or fix work in order to reproduce same on phonograph record, magnetic tape, digital support or any other like device or mechanism, with object of reproduction and sale of copies.

Radio Broadcast Contract

Author, his representative or rights holder authorizes radio broadcasting enterprise to transmit his work. Provisions of present chapter also apply to transmission by wire, cable, optic fiber or other like procedure.

Performing or executing artists enjoy the moral right to recognition of their names in their performances and to oppose all deformations, mutilation or any other transgression on their performance, which may prejudice their prestige or reputation.

Producers of phonograms have exclusive right to execute, authorize and forbid the following:

- Direct or indirect reproduction;
- Public distribution, including export, lease, public loan and any other transfer of possession for profit of copies;
- Import of copies when not authorized for territory of destination;
- Digital communication by optic fiber, wave, satellite or any other form created or to be created, when such communication shall be equivalent to act of distribution, by allowing user to perform digital selection of work or production;
- Inclusion of their phonograms in audiovisual shows; and
- Modification of their phonograms by technical means.

Protection is for 50 years.

Radio broadcast organizations have the exclusive right to execute, authorize and forbid retransmission of their broadcast by any means or procedure, now known or to become known; recording in any form, sound or audiovisual, of their broadcasts, including that of any single image made public in broadcast or transmission; and reproduction of their performances.

Other Intellectual Rights

Present law recognizes the right of exploitation over recording of motion images, with or without sound, which shall not be creations subject to be qualified as audiovisual works.

Collective Management

Institutions incorporated or to defend patrimonial rights recognized by present law, require authorization from the government and are subject to its control.

Legal Actions and Proceedings: Administrative Protection

Holders of any rights recognized by present law may request cessation of unlawful activity of infringement, and demand indemnification for material and moral damages caused by infringement.

Customs has the obligation to seize all copies constituting violation of copyrights and suspend free circulation of goods, whenever same may be intended for import into Republic.

Copyright holders may exercise all rights referring to civil actions and proceedings provided by law against whoever possesses, uses, designs, manufactures, imports, exports or distributes, either for sale, lease, loan or like of any device, computer programs or against whoever makes and offers to

perform service, objective or effect of which, shall be allowing or facilitating escape of coding technology.

Criminal Penalties

Penalties shall be applied to whoever, being authorized to publish work, does so criminally in any of ways stated by law.

Customs Control

Holder of right having reasons to presume that preparations are being made to import or export products that infringe this right may request customs authority to suspend import or export at time of clearance. Conditions and guarantees applicable to precautionary measures are applicable to that request and order that such authority may issue.

PATENTS
(Law 1630/2001, amended by Law 2593/2005)

Accreditation of Ownership

Ownership of invention is granted with industrial property titles issued by Industrial Property Department as invention patent or utility model patent.

Matter Subject to Patent

New inventions of products and procedures implying inventive activity and having industrial application are eligible for patent protection.

Matters Excluded as Inventions

The following shall not be considered inventions:

- Simple discoveries, scientific theories and mathematic methods;
- Purely esthetic creations;
- Economic, business, advertising or publicity schemes, plans, principles or methods, and those referring to purely mental or intellectual activities or playing matters;
- Computer programs considered separately;
- Diagnostic, therapeutic, surgical methods for treatment of persons or animals; and,
- Various forms of reproducing information.

Matters Excluded From Patent Protection

The following matters are excluded from patent protection: (1) inventions that, if applied commercially, would threaten public order, morality or health; human, animal or plant life or environment; and, (2) plants and animals, except microorganisms, and purely biological procedures for production of plants or animals which are not nonbiologic or nonmicrobiologic procedures.

Patent Rights

The right to obtain a patent belongs to the inventor or its rights holders; that right may be assigned by acts *inter vivos* or by succession. If two or more persons have made the invention jointly, right to obtain patent shall belong in common to all. If several persons produce the same invention independently of each other, patent shall be granted to the person or his rights holder who first presents patent application or invokes first date priority for invention.

Inventions Made in Execution of Contract

When the invention has been made during fulfillment or execution of work or service contract, or of labor contract, person contracting for work or service shall have right to obtain patent, or employer, as may correspond, unless otherwise set forth in contract.

Inventions Made By Non-Inventor Employee

If an employee who is not obliged by labor contract to perform inventive activity makes an invention in a field of activity of his employer, or through use of data or means to which he may have access by reason of employment, he shall be obligated to communicate this fact to employer in writing.

Duration of Patent

Invention patent shall have unextendable duration of 20 years from date of presentation of application in country.

Publication

Patent will be published for five consecutive days in two newspapers 18 months after presentation of application. Patent-granting resolution shall be published for five consecutive days in two newspapers.

Conventional License Patents

Patent holder or applicant may grant license for exploitation of invention. Invention exploitation license shall have legal effect upon third parties as from its registration in Industrial Property Department.

Basic License Conditions

In absence of contrary stipulations, the following rules apply to exploitation licenses of invention:

- License shall extend to all exploitation acts of license, during full validity of patent, in all national territory and in regard to any application of invention;
- License holder may neither assign license nor grant sublicenses;

- License shall not be exclusive, grantor retaining right to grant other licenses for exploitation of patent in country, as well as to exploit patent in country on his own; and,
- When patent has been granted as exclusive, licensor may not, on his own, exploit license in country.

Nullity of Patent

Patent shall be null and void if:

- Object of patent fails to constitute invention;
- Patent has been granted for matter that fails to satisfy patentability requirements;
- Patent fails to make known invention in sufficient and complete manner for it to be understood and for person trained in relevant technical matter to execute same;
- Patent granted comprises more extensive divulgence than that contained in original application; and
- Patent is granted infringing proceedings previously stated for its granting.

COMPULSORY LICENSES OR OTHER USES DUE TO LACK OF EXPLOITATION

Any interested party may apply to Industrial Property Department for compulsory license after three years from concession of patent or four years after presentation of application, and where grant of compulsory license would advance public interest or prevent anticompetitive practices. Compulsory license must not be granted with exclusive rights and it cannot be assigned or sublicensed by license holder. Precautionary measures can only be granted by judge when requested by the patent owner who must prove infringement of his right.

PRECAUTIONARY MEASURES

One who requests precautionary measures must prove his legal standing to act and existence of infringed right through presentation of industrial property titles issued as invention patent or utility model patent and must give proof that allows presumption that infringement has been committed. Judge may require caution or enough guarantee to grant measure. Judge must always give intervention to affected party before granting precautionary measure, unless delay in granting measure causes nonrepairable damage and there is risk that proof of infringement may be destroyed.

UTILITY MODEL INTRODUCED IN NEW PATENT LAW

Definition of Utility Model

It is defined as an invention comprised by form, configuration or disposition of elements of device, tool, instrument, mechanism or other object, or of part thereof, that allows better or different operation, use or fabrication of object comprising same, or that offers any use or technical effect that it did not have before. Utility model shall be protected by granting of patents.

Pharmaceutical Products

To obtain a patent for pharmaceutical products, the opinion of the Health Department over product or procedure shall be required.

Precautionary Measures

Besides requirements for precautionary measures mentioned above, if patents are for pharmaceutical products, the following conditions must be fulfilled:

a) Reasonable probability that patent shall be declared valid if it were to be objected by defendant;

b) Reasonable probability that patent shall be infringed;

c) Damage that can be caused to requestor if precautionary measure is not granted shall be greater than damage that causes granting of measure;

d) Expert shall grant his expert opinion over points (a) and (b) in 15 days at most; and

e) Health Department shall grant its opinion over point (c) in maximum of five days.

Validity

Pursuant to Art. 65 of Transitory Provisions of Agreement on Aspects of Intellectual Property Rights Related to Commerce (ADPIC), Patent Law 1630/2001 amended by Law 2047/2002 for pharmaceutical products became effective on 1 January 2005.

Filing of Applications

Applications for pharmaceutical products invention patents, when they fulfill the requirement of being a new product, process or proceeding pursuant to state of art and possess inventive level for their use in industry, shall be transacted according to requirements and provisions of Patent Law 1630/2001. Duration of patents so granted shall arise from application of terms established pursuant to duration of patent.

TRADEMARKS AND TRADENAMES
(Law No. 1294/98 and Regulating Decree No. 22,365/98)

Classification

By Decree No. 16.939/2002 Paraguay adopts 8th Edition of Nice Agreement by which classes are expanded to 45.

Use of Trademark

Obligation of trademark use (Art. 27) which reads: "Use of the trademark is mandatory." Otherwise, at request of interested parties, registration of trademark shall be canceled:

- When use of trademark shall not have occurred within five years immediately following registration;
- When use of trademark shall have been interrupted for more than five consecutive years;
- When its use, within term stated in two previous items shall have occurred with substantial alteration of its original distinctive character as shown on relevant registration certificate.

However, it is clear that the Department of Industrial Property shall not demand use of trademark in order to authorize renewal of registration already granted.

Registration of trademark shall be canceled only upon request of interested party and only pursuant to judgment of competent judge, passed with authority of *res judicata*.

In practice, only if a third party interested in a trademark which is not in use applies for the same trademark and opposition is brought by the holder of the trademark, may that third party claim lack of use, in which case the matter automatically ceases to be an administrative case and records are passed on to Court in Term which shall render a definitive judgment on the case.

Furthermore, interested party may resort directly to civil and commercial jurisdiction in order to bring suit for cancellation for lack of use.

Trademark holder bears the burden to prove use. Ordinarily, plaintiff bears burden of proof. Any means of proof is admitted, as long as products or services distinguished by trademark shall have been used in commerce or are available in market under such denomination. Even publicity of introduction of products or services is admissible as proof of use, as long as such use shall occur within four months following start of advertising campaign.

Use of trademark shall be made as it appears in registration certificate, that is, with same label. However, if use differs in slight details or secondary elements, that different use shall not constitute reason for cancellation of registration.

Finally, if trademark is registered for all products included in class, which are generally diverse, use in one of such products shall be sufficient to prevent cancellation of registration, or to bring relevant opposition.

Grace Period to Apply for Renewal

Art. 19 of Trademarks Law establishes validity of trademark for term of 10 years, which may be extended indefinitely for periods of like duration, as long as extension is applied for within last year prior to its expiration. Term of validity shall be computed from date of expiration of previous registration.

However, in order to adapt trademark legislation to that of countries of Mercosur and to Paris Convention ratified by Law 300/94, final provision was introduced in Art. 19 of Law 1294/98 which reads: "Application for extension may be applied for within a grace period of six months following the date of expiration, requiring, in that case, payment of an established surcharge besides the corresponding extension fee." Thereby in practice, this extends the term of validity of registration to 10 years and six months.

LABOR LAW

The terms of the Labor Code (Law No. 213/93) govern the relationship between employers and dependent workers which concern subordinated and remunerated services rendered, and affect all intellectual or manual workers and those with whom the employer may have entered a labor contract. The Code defines labor as all conscious and voluntary human activity, rendered in a dependent and remunerated manner, for the production of goods or services. An Employer is any natural or juridical person who utilizes the services of one or more workers by virtue of a labor contract. A Worker is any person executing work or rendering other services by virtue of a labor contract.

HIRING OF EMPLOYEES; LABOR CONTRACTS

The existence of a labor contract between a person providing work or using a service and a person rendering the same is presumed. The law acknowledges guarantees, benefits and rights of the workers which cannot be subject to waiver, accommodation or limitation pursuant to agreement. Any covenant to the contrary shall be null and void and shall not obligate the contracting parties.

The Labor Code does not govern:

- Directors, managers and other officials of the firm who because of the status of representative of the firm, the importance of their remuneration, the nature of the work performed and their technical capacity enjoy notorious freedom in their work, and in general all persons who perform management or administrative functions by express delegation of the employer;

- Services rendered sporadically;
- Public officials and employees of the Central Administration of the State;
- Personnel enjoying expatriation or the protection of diplomatic privileges.

Work capability is achieved at 18 years of age.

BENEFITS AND LABOR RIGHTS

Vacations

Workers have a right to paid vacations after each year of continuous work.

The vacations will depend on the seniority of the worker:

- 1 year to 5 years relationship = 12 days
- 5 to 10 years relationship = 18 days
- More than 10 years relationship = 30 days

Leave Days

Paraguayan law grants different kinds of leave days for each case. During this period, the contract is suspended which means that employees do not loose seniority or any other right. The employee can request family or medical leave in the following cases:

- Family Leaves
- Marriage
- Three leave days to get married
- Childbirth
- Family members are entitled to three leave days of maternity in case of childbirth
- Deaths
- Three leave days for the death of a direct relative (spouse, child, parents, grandparents, brothers and sisters)

Medical Leaves

The case must go through the National Social Security System (IPS – *Instituto de Previsión Social*) in order for the employee to receive a medical certificate and a subsidiary amount during leave days.

- ***Maternity Leave***. In the case of pregnancy, the working woman shall have the right to a maternity leave six weeks before and six weeks after the estimated date of childbirth.
- ***Sickness***. An employee is entitled to a medical leave for any illness incurred, but IPS establishes that it won't provide subsidiary payment for more than 30 days per year.

Minimum Wage

Salaries shall be stipulated freely but they cannot be under the minimum wage established pursuant to the terms of the law. As of 1 April 2011, the legal minimum wage is PYG1,658,232 per month (approx. USD400). It may be paid by time units (month, fortnight, day or hour), by work units (either piecework, assignment or jobbing), by sales commissions or collections, or percentage of future profits.

The Labor Administrative Authority regulates the minimum wages for workers of the Republic pursuant to the activity performed, on the basis of prior cost-of-living studies carried out by the National Economic Coordination Council.

Annual Bonus

The law establishes an additional annual remuneration equal to one-twelfth of the total earnings for the calendar year.

TAXES AFFECTING SALARIES

The employer assumes no responsibility for accidents sustained by employees even if it results in their death, since its liability is covered by the Social Security Institute which shall assume the cost of injuries, disability and indemnity in case of death.

The employer shall contribute, on his own account, to the Social Security Institute 14% of all salaries and wages paid during each month, and shall retain the workers' contributions, which amount to 9%. An additional contribution of 2.5%, at the employer's account, shall be added (for the Ministry of Health, SENEPA and SNPP) bringing the total contributions to 16.5% from the employer and 9% from the worker.

TERMINATION OF EMPLOYEES; SEVERANCE BENEFITS

In the case of terminating an employee for a justified cause (stipulated by the Labor Code) but that cannot be duly judicially proved, the worker can choose to be restored to his former employment, in which case the employer shall pay all salaries, compensation and fines levied during the suspension of the contract, or terminate the labor contract, in which case he is entitled to the indemnification for unfair dismissal.

If the worker has achieved labor stability (10 years or more seniority), he shall not be subject to dismissal except by reason of just cause approved by decision of a judge in labor matters.

Neither party to a labor contract may terminate the contract without prior notice. The prior notice must be given according to the following rules, depending on seniority:

- Up to one year, 30 days
- Up to five years, 45 days
- Over ten years, 90 days

An employee may terminate without just cause the labor relationship by serving a written notice to the employer in accordance to worker's seniority.

Employees failing to provide sufficient notification will be liable for a payment of indemnification which consists in the half of the amount of wages that would have been paid during the remainder of the notification period.

Employers who fail to provide sufficient notification will be liable for the payment of an indemnification which consists in the amount of the worker's salary corresponding to the notice period that should have been given.

An unfair dismissal (without justified cause) which occurs before the expiry of the contract either with or without prior notice will give the employee the right to receive compensation for seniority which is: 15 days' wages per year of service or fraction of six months taking as a basis for the calculation an average remuneration regularly received during the last six months or a shorter period of the currency of the labor contract.

TRADE

All importers and exporters must register as such and keep certain books of account. Most importations are subject to a system of import duties and charges both specific and ad valorem, unless expressly exempted therefrom. Special tariff concessions are granted to some products originated in member countries of Mercosur and Latin American Integration Association. Import duties and charges are subject to constant revisions, and importations may at times be temporarily prohibited.

Exports are duty free but also are subject to a system of charges for services rendered, both specific and *ad valorem*, unless exempt therefrom, pursuant to specific incentives and rebate programs.

DISTRIBUTION PROTECTIONS

Law No. 194/93 governs the relationship between foreign companies and firms (collectively, Principal) and local representatives, agents and distributors (collectively, Dealer) in Paraguay.

Definitions

Representation is authority granted by contract to Dealer to negotiate and carry out commercial transactions for promotion, sale or distribution of products or services provided by Principal. Agency is contractual relationship whereby Principal grants Dealer authority to act as intermediary in negotiations or contracts with clients for the promotion, sale or distribution of products and services, contemplating payment of commission. Distributorship is contractual relationship between Principal and Dealer for purchase or consignment of products, with objective of reselling same.

Parties may freely regulate their rights by contracts governed by Civil Code, but waiver of rights recognized by Law 194/93 is not allowed.

Termination without Cause

Principal may cancel, revoke, amend or refuse to renew representation, agency or distributorship, without statement of cause, but with obligation in such case to pay dealer a minimum compensation pursuant to following criteria: a) duration of relationship; b) average gross benefits derived from relationship during last three years of activity.

Termination with Cause

Representation, agency or distributor relationship may be cancelled, revoked, amended or not renewed for just cause, without obligation to pay compensation for the following reasons:

- Noncompliance of contract clauses;
- Fraud or breach of trust on part of dealer;
- Inability or negligence of dealer in sale of products or services;
- Continued reduction of sales or distribution of products or services for reasons attributable to dealer, except if caused by quotas or restrictions on imports and sales, fortuitous events or *force majeure*;
- Any act attributable to dealer that affects or prejudices marketing, sale or distribution of products or services;
- Conflict of interest due to the representation, agency or distribution of products or services that may be in competition with the products or services contemplated by relationship.

Prior to termination, principal shall require dealer to cure the cause invoked within a term of 120 days. Noncompliance by dealer allows principal to exercise its rights immediately. Curing period is not required if termination is related to fraud or breach.

Stated causes shall be proved before Paraguayan courts or by arbitration if thus agreed; otherwise, cancellation, revocation, amendment or refusal to renew shall be deemed to be unjustified.

Peru is located on the central western coast of South America. Peru's population is around 26 million people, with 52% of them living in the coastal region, 37% in the Andes and 11% in the Amazon region.

Peru has a single, representative, decentralized government. It is divided politically into regions, departments, provinces and districts.

The president of the republic is the chief of state and is elected for a five-year term. Legislative power is centered in a unicameral congress with 120 congressmen elected every five years at the same time as the president. Power over the administration of justice is held by the courts.

Peru's Gross National Product has increased constantly during the last years. In 2010, it increased by 6.92%, reaching USD176 billion by December of that year. As of 2012 third quarter, GNP increased by 6.15%, with a 7% to 9% growth expected for 2013.

FOREIGN INVESTMENT

The Peruvian state promotes and guarantees foreign investments in any kind of activity and entity. Foreign investors have the same rights as local investors, with the exception set forth in the Peruvian Constitution regarding the prohibition to directly or indirectly acquire and/or possess real property within 50 kilometers of the country's boundaries. No authority, regardless of its government level, may apply different treatment to investors based on their nationality, sector, the economic activity in which they participate, or the geographic location of their investments. Currency exchange, price, rates or non-tariff rights, type of business, or investors' condition of individual or corporate body, shall not be subject to discrimination.

There are no requirements for prior authorization of foreign investments. Foreign investments are allowed without restrictions in most economic activities, as well as the acquisition of shares owned by national investors. Investors are entitled to organize and develop their activities under any business entity or scheme approved by law.

MAIN RIGHTS

Foreign investors can remit abroad in foreign currency and with no previous authorization of any governmental agency whatsoever:

- The total amount of their investments
- The total amount received as dividends

JURIDICAL STABILITY AGREEMENTS

Juridical stability agreements are executed between PROINVERSION (on behalf of the Peruvian state) and foreign investors 12 months before or 12 months after the investment is made, provided that the investment exceeds USD10 million in the case of mining and hydrocarbons and USD5 million for any other kind of activity. They have a 10-year term and provide investors stability of the following rights in force on the date the agreements are executed:

- To freeze the Income Tax regime. Dividends and profits are subject to a withholding income tax of 4.1%.
- To remit abroad the total amount of the capitals and dividends as described above.
- To have free disposal of foreign currency and to use the more favorable exchange rate.
- Nondiscrimination against domestic investors.

Companies receiving the investment may execute juridical stability agreements to enjoy income tax stability provided that the foreign investments they receive:

- Exceed 50% of their capital and reserves
- Increase their production capacity or improve their technology

The income tax regime frozen is the one in effect at the time of signing the agreement.

Further Characteristics

Juridical stability agreements:

- Are amended by mutual agreement
- Have the force of a law
- Need PROINVERSION's previous consent to be assigned by the investor
- May be waived by the investor
- Will be terminated if the investments are not made in the stipulated term, which cannot exceed two years; if no evidence of the investment is provided; and if PROINVERSION's consent is not obtained before assigning the agreement to a third party, if applicable.

SETTLEMENT OF DISPUTES

Peruvian legislation provides for several procedures with the courts for settlement of disputes available to foreigners as well as to local individuals, corporate bodies or the state. In addition, it also provides non-judiciary mechanisms for the settlement of disputes, such as conciliation, mediation and arbitration procedures.

Disputes with the state can also be submitted to arbitration tribunals established by the treaties to which Peru is party. Peru is a signatory to the ICSID Convention and has ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the Inter-American Convention of Panama. Peru is also member to the Multilateral Investment Guarantee Agency.

BUSINESS ENTITIES

The General Corporations Law No. 26887 provides for three forms of stock corporations (known as *sociedades anónimas*): simple corporations (*sociedades anónimas*), open corporations (*sociedad anónimas abiertas*) and closed corporations (*sociedades anónimas cerradas*). Since Law No. 26887 was enacted, the simple and the closed corporations have become the ones most frequently incorporated in Peru.

SIMPLE CORPORATIONS

Its corporate name shall include *Sociedad Anónima* or the acronym S.A. Its capital stock is represented by registered shares. The property of shares and any transfer, pledge or similar agreement upon shares shall be recorded in the Company Shares Registry (*Matrícula de Acciones*). Additionally, pledges over shares must also be registered in the Registry of Morable Agreements. Shareholders are not personally liable for the obligations of the stock company.

Minimum Capital Stock

There is no requirement on minimum capital stock, except for banks, financial and insurance companies and other specific companies such as stockbrokers.

Number of Shareholders

A simple corporation shall be incorporated and maintain at least two and no more than 750 shareholders, whether individuals or legal entities, foreigners or Peruvians. Corporations with more than 750 shareholders are known as open corporations and need to be listed with the Lima Stock Exchange. Corporations with fewer than 750 shareholders can also be open corporations if the shareholders so decide.

General Shareholders' Meeting

It is the highest level body of the corporation and is formed by its shareholders. A general shareholders' meeting decides on any business within its authority. All shareholders must comply with any resolution adopted by the shareholders' meeting. At least one shareholders' meeting must be held each year to approve the financial statements and to appoint the board of directors when its term finishes.

Board of Directors

The board of directors is elected by the general shareholders' meeting. Its duties involve the administration and conduct of the company, except for those duties corresponding to the general shareholders' meeting. Members of the board must be individuals; they do not have to be shareholders of the company and may be Peruvian or foreigners, unless otherwise provided in the bylaws of the company.

Management

The company shall have one or more managers appointed by the board of directors. The manager is liable to the company, shareholders and third parties for damages caused by nonfulfillment of obligations, fraud, abuse of authority and gross negligence.

Formal Requirements

A company is incorporated by means of a public deed containing the articles of incorporation and the bylaws. Said public deed must be recorded in the Public Registry. Upon registration, corporate existence begins. Any amendment to the bylaws, including capital increases, shall be made through a public deed and recorded in the Public Registry as well.

CLOSED CORPORATIONS

It has the same characteristics as a simple corporation, except for the provisions described below. Its corporate name shall include *Sociedad Anónima Cerrada* or the acronym S.A.C. Their shares cannot be listed in the stock market for public trading. The articles of incorporation or the bylaws may provide grounds for excluding stockholders, for which purpose a resolution of the general meeting will be required. The articles of incorporation may also provide that the transfer of shares or of some type of shares shall be submitted to the prior consent of the general stockholders' meeting.

Minimum Capital

There are no minimum capital requirements.

Number of Shareholders

It cannot have fewer than two nor more than 20 shareholders.

General Shareholders' Meeting

As has been stated for simple corporations, it is the corporation's governing body and is made up of shareholders. At the shareholders' meetings, a shareholder may be represented by another shareholder, by his/her spouse or first line relative in the ascending line or descending line, and the bylaws may extend the representation to other persons.

Board of Directors

The board of directors is optional, and the nonexistence of the same shall be provided for under the articles of incorporation. Should there be no board of directors, its duties shall fall on the general manager.

Management

The company may have one or more managers.

FOREIGN CORPORATION BRANCHES

The law defines a branch as any division of business at a different location from its main office, created to perform activities as part of the corporation's purpose. It is not considered a separate legal entity of the principal office, but for tax purposes it is considered an independent taxpayer. The principal office is liable for the branch's obligations. It must have permanent legal representation in Peru and management autonomy to the extent granted by the principal office and according to the powers granted to its representatives.

TAXATION

The Peruvian Tax System includes mainly the income tax (*Impuesto a la Renta*), the value added tax (*Impuesto General a las Ventas*), the municipal improvement tax (*Impuesto de Promoción Municipal*), the excise tax (*Impuesto Selectivo al Consumo*), the import duties (*Aranceles*) and other various minor taxes.

INCOME TAX

An annual tax applicable to individuals and corporations. The individual's incomes are divided into categories depending on the source and are subject to the following rates:

- 15% of the net income up to approximately USD48,000
- 21% of the net income up to approximately USD76,000
- 30% for the excess of the net income

Corporations are subject to a rate of 30% of their net income.

Dividends distribution is subject to a withholding rate of 4.1%. Corporations who agree to the distribution or distribute dividends and other kinds of profits to individuals and/or nondomiciled corporations are responsible before the Tax Authority for this payment.

VALUE ADDED TAX

This is a general consumer tax which is applicable to all sales of movable goods and services rendered or used in the country, construction contracts, the first

sale of real estate made by the builder, and the importation of goods. Its rate is 16%, which added to the 2% of the municipal improvement tax results in an applicable rate of 18% affecting the price of all sales. The system permits taxpayers to use this tax paid in a previous stage as a tax credit. This tax is paid on a monthly basis.

EXCISE TAX

This tax is applicable to certain specific luxury goods. The rates vary from 0% to 50%. Fuel is subject to a fixed amount of excise tax.

IMPORT DUTIES

These are applicable to the CIF value of goods imported to Peru. The rate is 6% for most of the goods. Certain goods are subject to a rate of 11%. Some specific goods are temporarily subject to a surtax of 5%.

INTELLECTUAL (INDUSTRIAL) PROPERTY

APPLICABLE REGULATIONS

Industrial property rights in Peru are regulated by Decision No. 486 of the Andean Community of Nations, a supranational law applicable in Andean Pact countries (Bolivia, Colombia, Ecuador and Peru) and by its own Law Decree No. 1075, as well as the international conventions to which Peru is party, like the Paris Convention for the Protection of Industrial Property, Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the Pan American Convention of Washington.

ACQUISITION OF RIGHTS

Patents and trademark rights may be acquired only through registration before the Industrial Property Office. Peruvian trademarks system permits the registration of an exclusive right without any use and without any declaration of intent to use.

APPLICATION REQUIREMENTS

Applications for patents and trademarks must be in a preprinted form containing the following information:

- Name, nationality and address of the applicant and of the inventor in case of patents applications
- Title of the invention (patents)
- Full description of the invention or trademark
- Statement of claims defining the scope of the protection requested (patents)

- Full description of the good or services to be covered (trademarks)
- Other specific information required by law in certain cases

Nonresident applicants must designate an address in Peru and appoint a resident agent (usually the attorney handling the application) through of a power of attorney legalized before their country's Peruvian consulate.

TERMS OF EFFECTIVENESS

Patents are valid for a 20-year term from the date on which the application is filed. Trademarks are valid for a 10-year term from the date of the resolution granting the registration and can be renewed indefinitely for 10-year periods.

INDUSTRIAL PROPERTY OFFICE

The National Institute for the Protection of Free Competition and Protection of Intellectual Property (*Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual* – INDECOPI), is the state agency in charge of granting and regulating property rights as well as enforcing industrial property laws to operate effectively in Peru. INDECOPI is judicially autonomous. Its decisions granting, refusing or revoking any industrial property right, or when solving disputes between parties, are administrative decisions that can be challenged with the courts.

LABOR LAW

HIRING OF EMPLOYEES AND LABOR CONTRACTS

Employees are subject to a three-month trial period, after which they can be fired based only on a just cause. Usually, employment contracts are not subject to a specific term; however, Peruvian labor legislation rules different kinds of employment contracts for fixed-term, part-time, starting a new activity, implementing new technology, covering extraordinary needs of labor, covering seasonal labor needs, etc.

BENEFITS AND LABOR RIGHTS

In addition to a one-day weekly rest and some holidays (around 12 days in a year), employees are entitled to one month of paid vacation after a year of full employment. Furthermore, one monthly salary is paid in July and another in December as bonuses for Independence Day and Christmas. Profit sharing is based on a scale between 5% and 10% depending on the employer's activity for companies with more than 20 employees. As severance payments, employers must make semi-annual deposits in an employee's special bank

account of approximately half a salary per each six months of full employment. Deposits can be withdrawn only upon employees' retirement from employment. The first two hours of overtime have a surplus of 25%; additional overtime is subject to a 35% surplus. Dismissal of an employee without a just cause is subject to the payment of an indemnity of 1.5 monthly salaries per each year of employment with a 12-month salaries cap.

MINIMUM WAGE

The minimum wage (currently equivalent to approx. USD140 per month) is applicable to any employee working a full eight-hour day. Minimum wage for jobs performed in a night shift (10:00 pm to 6:00 am) has a surplus of 35%.

HIRING OF FOREIGN EMPLOYEES

Foreign employees can be hired for certain positions and up to a three-year term, which can be renewed on the same basis. No more than 20% of the employer's personnel can be foreign and no more than 30% of the total payroll can be used to cover foreigners' salaries. The law provides several exemptions to these restrictions. Labor contracts with foreign employees require the approval of the Labor Department.

TAXES AFFECTING SALARIES

In addition to the income tax already discussed, salaries are subject to a withdrawal of 13% for the Public Pension System or approximately 12% for the Private Pension System. Employers must pay, based on the employee's salary, 9% for Health Care Insurance and other special taxes depending on the employer's activity. In addition, employers performing activities that are considered high risk must hire an additional insurance covering health and pension benefits.

SERVICES AND OUTSOURCING

The use of service companies and contractors is subject to certain requirements trying to limit its use. Service companies can only be used to replace employees whose employment contract has been suspended in certain cases (vacations, leave of absence, etc.) or for supplementary (not part of the core business) or highly specialized activities. Contractors need to be companies with their own management, equipment, work force, know-how, technology, performing their services with true autonomy from their client.

TRADE

IMPORT RESTRICTIONS

In general, Peru has a regime of freedom for foreign trade. Currently Peru is ranked 12 in the world's ranking for open trade countries, with an effective import duty of 2.1% on average. Nevertheless, certain products such as foods, medicines, agrochemicals and some others require registration previous to import because of sanitary considerations. The import duty tariff has three levels: 0%, 6% and 11%. Certain agricultural products are subject to a regime of price stabilization (*franja de precios*), which creates additional tariffs for imports in case of a decrease in the international quotas for these products. The importation of used clothes, used rims and vehicles with more than five years of production is prohibited.

Peru has several free trade agreements that reduce import duties for several products depending on the exporting country.

EXPORT RESTRICTIONS

There are neither restrictions nor taxes on the exportation of goods. The exporters have the right to recover the value added tax paid locally in acquisition of raw material, goods and services. The export of several nontraditional products gives the exporter the right to use the drawback regime, in which the customs bureau will refund to the exporter the taxes paid while importing raw material used to produce the exported goods. The rate of drawback is currently 5% of the FOB Callao export price.

DISTRIBUTION REGIME

There are no limitations to the distribution of imported goods. A foreseeable and transparent customs regime exists, which guarantees liberty in foreign trade. Peru has diverse ports throughout its coast, but most of the merchandise is imported through the Port of Callao and is distributed to the main market (Lima) and the adjacent cities.

PERUVIAN TRADE AGREEMENTS

Peru is part of the Andean Community of Nations, and has a free commerce area with Colombia, Ecuador and Bolivia. According to this agreement, Peruvian exports to the above three countries are duty-free. At the same time, all imports from the Andean countries could enter Peru duty-free. Peru has very ambitious trade agreements with Chile and with MERCOSUR (Brazil, Argentina, Uruguay and Paraguay). In accordance with said agreements, a very important portion of the trade within Peru and said countries is also duty-free.

Peru has a free trade agreement with the United States of America. According to this Free Trade agreement, all Peruvian exports to the United States enter duty-free. On the other hand, Peru has given duty-free access to 80% of the American industrial exports to Peru. Similar free trade agreements are applicable with Canada and China.

A free trade agreement with the European Union has been recently approved. It is expected to enter in force in 2013.

DOUBLE TAXATION AGREEMENTS ON INCOME AND CAPITAL

Peru has signed some agreements with other states for the avoidance of double taxation and prevention of fiscal evasion. A multilateral agreement, Decision No. 579, was signed with the Andean Community countries: Bolivia, Colombia, Ecuador, Venezuela and Peru. According to the said Decision, income tax is generally applied only by the country of the source of income. It also establishes rules that allow to the respective tax administrations a joint tax audit and exchange of information.

OECD Model Tax Convention was adopted in the agreements signed with Canada, Chile and Brazil, which allocates tax jurisdiction between source and income. Capital gains, interest and royalties are subject to a withholding income tax rate that in some cases may be more beneficial than the tax rate applied in the current regime. These Conventions also affect related parties' transactions and should be applied considering internal transfer pricing regulations.

Peru has also signed tax conventions for the avoidance of double taxation on income and capital under OECD model with Spain and Mexico, but their approval is still pending before the Peruvian Congress.

In 1493, Christopher Columbus arrived in Puerto Rico and claimed the island for the Spanish Crown. Spain controlled the island for most of the next four centuries until 1898, when it ceded Puerto Rico to the United States as part of the Treaty of Paris, which ended the Spanish-American War.

Puerto Ricans were granted U.S. citizenship in 1917 and the right to elect their own governor in 1947. Puerto Rico approved a constitution in 1952 that was ratified by the U.S. Congress and approved by President Truman the same year. To this day, Puerto Rico remains a commonwealth of the United States.

GEOGRAPHY

Puerto Rico is the easternmost island of the Greater Antilles archipelago in the Caribbean Sea, located approximately 1,050 miles east-southeast of Miami. San Juan, Puerto Rico's capital and principal city, lies on the island's northern coast.

Puerto Rico consists of the main island of Puerto Rico and various smaller islands, including the island municipalities of Vieques and Culebra. The main island is approximately 100 miles (160 km) by 35 miles (60 km) with an area of about 3,400 square miles (8,800 square kilometers). Puerto Rico comprises a mountainous interior surrounded by coastal plains in the north and south.

GOVERNMENT SYSTEMS

Puerto Rico falls within the U.S. federal system and is subject to both U.S. federal and local law. Specifically, the U.S. constitution and most federal laws and regulations apply in Puerto Rico, and the island also has its own constitution, laws and regulations that apply to the extent they are not contrary to federal law.

Puerto Rico's local government, like those of the federal government and the states, includes an executive, a legislative and a judicial branch.

Although Puerto Ricans are citizens of the United States, U.S. citizens living in Puerto Rico do not have the right to vote in presidential elections. They have a nonvoting representative—called a resident commissioner—to the U.S. House of Representatives but no representative to the Senate. Passports are not required for U.S. citizens traveling between Puerto Rico and the United States. International visitors must meet the entry requirements established by the United States.

DEMOGRAPHICS

Puerto Ricans are an ethnic and cultural blend of Spanish, Taíno indian, African and American influences. As of the 2010 census, about 3.7 million people live in Puerto Rico. Natural-born residents are U.S. citizens. The island's major cities have the following populations: San Juan (424,951), Ponce (180,376), Caguas (142,984), Mayagüez (93,730), Trujillo Alto (85,682) and Humacao (60,681).

LANGUAGE AND CURRENCY

Puerto Rico's official languages are Spanish and English and its currency is the U.S. dollar.

MACROECONOMIC INDICATORS

Puerto Rico's economy is centered on high-value services and manufacturing. In 2011, the gross domestic product was approximately USD98.7 billion, with a GDP per capita of USD26,500. As of 2011, the labor force was approximately 1.28 million strong, of which some 1.1 million were employed. Mean household income is over USD27,190.

Exports Value: USD61.7 billion f.o.b. (2010)

Exports Composition: chemicals, electronics, rum, beverage concentrates and medical equipment

Export Partners: US 68.1%, Germany 8.1%, Netherlands 4.7% and Belgium 3.7% (2010)

Imports Value: USD40.8 billion c.i.f. (2010)

Imports Composition: chemicals, machinery and equipment, food and petroleum products

Import Partners: U.S. 51.2%, Ireland 15.5%, Singapore 4.7% and Japan 4.3% (2010)

INFRASTRUCTURE

Ground transportation. Puerto Rico's major cities are connected by a modern highway system. The highway system comprises 387 miles of primary system highways, which are the more important interregional traffic routes, 252 miles of primary urban system highways, 959 miles of secondary system highways, and 3,053 miles of tertiary highways and roads.

Airports. Puerto Rico's air access is by far the best in the Caribbean. Three airports—Luis Muñoz Marín International airport in Carolina (SJU), Rafael Hernandez Airport in Aguadilla (BQN), and Mercedita Airport in Ponce (PSE)—have direct service to the U.S. mainland. Luis Muñoz Marín International

Airport serves as the region's hub, providing service to more than 19 cities in the U.S. and many international destinations in the Caribbean, North America, South America and Europe. The airport receives over 10 million passengers per year, making it the busiest airport in the Caribbean.

Seaports. San Juan is the largest cruise-ship port in the Eastern Caribbean. It is home port to several cruise-ship companies and receives 1.2 million cruise-ship passengers a year.

San Juan, Guayanilla and Mayagüez are the island's principal cargo ports. The port of Ponce is being redeveloped as the island's largest deepwater port and should become one of the Caribbean's principal transshipment facilities within the next few years.

Utilities. The Puerto Rico Electric Power Authority (PREPA) provides electricity service throughout Puerto Rico. The cost of electric power varies depending on the type of industry, voltage level, energy consumption, load factor category and fuel adjustments. Customers of PREPA that qualify under Puerto Rico's economic incentives law are entitled to a tax credit ranging from 3% to 10% of the value of their payments to PREPA.

The Puerto Rico Aqueduct and Sewer Authority (PRASA) provides water and sewer service to most areas of the island. The cost of water depends on consumption and the diameter of the water meter. Most industrial facilities are connected to a two-inch water meter.

Puerto Rico has the necessary infrastructure for VoIP and broadband data connectivity to supply industry needs in landline service, wireless service and Ethernet. Puerto Rico is connected to the mainland United States through the Puerto Rico undersea fiber-optic cable of the American Region Caribbean Optical-ring System. This connectivity provides broadband accessibility for Internet access.

Education. There are 1,319 public and another 500 private primary and secondary schools in Puerto Rico. There are also over 50 institutions of higher learning, including universities, colleges, community colleges and technical institutes. The largest public university in Puerto Rico is the multi-campus University of Puerto Rico. The largest private university systems on the island are the Sistema Universitario Ana G. Méndez, the Pontificial Catholic University, Caribbean University, Carlos Albizu University, Sacred Heart University, Polytechnic University of Puerto Rico, and the multi-campus Interamerican University.

BUSINESS ENTITIES

Puerto Rico recognizes a wide range of business forms, from basic sole proprietorships and general partnerships to special purpose corporate forms and limited liability companies. Investors thus have a variety of options for optimizing liability shield and tax treatment characteristics.

It should be noted that partnerships do not necessarily receive pass-through tax treatment and not all corporations necessarily face double taxation. Instead, partnerships and corporations face taxation both at the partnership/corporate and partner/shareholder levels as the default rule, but both have the option of electing pass-through tax treatment if they meet certain criteria, as explained below.

SOLE PROPRIETORSHIP

A sole proprietorship is a business owned by a single individual who chooses not to form a partnership, corporation or limited liability company. There are no special legal requirements for creating a sole proprietorship other than the normal requirements for starting a trade or business. Sole proprietorships are not juridical entities and cannot enter into contracts or sue or be sued in their own name. Accordingly, a sole proprietorship provides no liability shield for its owner(s) and generally terminates upon the death of its owner(s). Likewise, it is not taxed separately, and all income is passed through to the owner(s). The owner is taxed at the appropriate individual rate.

PARTNERSHIPS

A partnership is an organization of two or more natural persons or juridical entities to carry on a business for profit pursuant to a partnership agreement. Partnership agreements (except those for limited liability partnerships and special partnerships) need not comply with any statutory formalities and need not be recorded in the Puerto Rico Department of State. However, in order to own real property, a partnership must have its partnership agreement incorporated into a public deed prepared by a notary public.

Several types of partnerships are recognized in Puerto Rico, and partnerships may be organized under the Civil Code, the Commercial Code, or the Limited Liability Partnership Act. Generally, however, partnerships have some common characteristics. The civil code treats a partnership as a juridical entity separate from its owners (i.e., the partners). A partner acting within the apparent scope of his authority under the partnership agreement can bind the partnership. Thus, the partnership is liable to a third party for the authorized acts of its partners. Except for partners in limited liability partnerships and limited partners of limited partnerships and special partnerships, the liability of the individual

partners is unlimited and joint with respect to losses, damages, disbursements and obligations.

As mentioned above, and unlike in most states, Puerto Rico partnerships do not automatically provide pass-through tax treatment. Rather, partnerships and their partners are subject to tax at the partnership level and again at the partner level to the extent the partnership makes any distributions. However, partnerships that meet certain criteria can elect pass-through tax treatment pursuant to Subchapter K of the Puerto Rico Internal Revenue Code.

CORPORATIONS

Domestic Corporations

Puerto Rico's General Corporation Law is based on Delaware's. In general terms, a corporation is an entity separate and distinct from its shareholders, directors and officers. It has the power to enter into contracts, hold property, and sue and be sued on its own name; it also has continuity of life and free transferability of ownership interests.

Any person or juridical entity can form a corporation by filing articles of incorporation with the Corporate Division of the Puerto Rico Department of State, along with a filing fee.

The management of a corporation is typically carried out pursuant to bylaws, which may be adopted or amended at incorporation by the incorporator(s) or thereafter by the stockholders or, if permitted by the articles of incorporation, by the directors.

Puerto Rico corporations must maintain a designated principal office and agent in Puerto Rico for service of process.

Ownership of a corporation is effected through ownership of the corporation's capital stock, which may be issued in various classes with various rights and restrictions. Shares of corporate stock are personal property. Shareholders typically must hold meetings at least once per year. Nonresidents of Puerto Rico and non-U.S. citizens may own stock and serve as directors and officers of a Puerto Rico corporation.

Corporations must file an annual report on or before April 15. Annual reports must be signed by the corporation's president and treasurer, and in the case of a Puerto Rico corporation whose annual volume of business exceeds USD3 million, must be accompanied by the corporation's balance sheet at the close of the preceding fiscal year, audited by a certified public accountant licensed in Puerto Rico who cannot be a stockholder or employee of the corporation. Corporations incorporated outside Puerto Rico must accompany their annual

report with an audited balance sheet regardless of annual volume of business. Each annual report must be accompanied by a fee.

Foreign Corporations

All corporations that are not organized under Puerto Rico laws are considered foreign corporations. Prior to conducting business in Puerto Rico, foreign corporations must register with the Puerto Rico Department of State, which will usually permit a foreign corporation to do business in Puerto Rico as a matter of course, so long as the proposed business is permitted and no other corporation is doing business under the same name.

A foreign corporation that fails to register to do business in Puerto Rico will not be allowed to initiate judicial proceedings in Puerto Rico until it is registered. Indeed, a court may suspend a judicial proceeding until a foreign corporation provides evidence that it is registered to do business in Puerto Rico. Courts can also order a foreign corporation to cease all business activities in Puerto Rico until it is duly registered to do business. Nonetheless, the mere fact that a foreign corporation is not authorized to do business in Puerto Rico will not affect the validity of its corporate actions in Puerto Rico or its right to defend itself in a proceeding in Puerto Rico.

Legal process against the corporation may be served on its authorized resident agent, who must be either a natural or judicial person residing in Puerto Rico, but cannot be a stockholder, officer or director of the corporation.

Professional Corporations

A professional corporation is formed for the purpose of rendering the type of professional services that require a license from the Commonwealth of Puerto Rico. All shareholders must be individuals licensed by the Commonwealth to render the professional services offered by the corporation, and those services must be rendered through the corporation's officers, employees and agents.

Officers, employees and agents of a professional corporation are fully and personally liable for any negligent act or omission, unlawful act, or for any culpable conduct that arises from the rendering of professional services on behalf of the corporation, whether committed by such officer, employee, or agent or by any person under his or her direct supervision or control. In addition, the professional corporation is held jointly liable up to the aggregate value of its assets for the negligent or unlawful acts or for the culpable conduct of its officers, employees and agents while offering professional services on behalf of the corporation. But shareholders who were not involved in the negligent or unlawful act or omission or culpable conduct are not personally liable for the damages caused by them. The professional corporation is not liable for the individual debts of its shareholders. Likewise, shareholders of the

professional corporation are not liable for the liabilities of the professional corporation that are not related to negligent acts in the rendering of professional services.

The annual report of professional corporations must certify that its shareholders, directors and officers are duly licensed, certified and registered to render the professional services of the corporation in Puerto Rico. Non-Puerto Rico corporations may not qualify as professional corporations.

Close Corporations

Close corporations provide structural flexibility to corporations owned by a relatively small number of shareholders that do not intend to go public within a short period of time. To qualify as a close corporation, the certificate of incorporation must include, among other clauses, provisions stating that:

- The number of shareholders may not exceed 75 persons;
- All of the issued stock of all classes must be subject to one or more of the following restrictions:
  - A right of first refusal;
  - An obligation on the part of the corporation, any shareholder or any third party to purchase the shares subject to a purchase-sale agreement;
  - The requirement of the consent of the corporation or the shareholder of any kind of restricted security, prior to the transfer of such security; and
  - The prohibition, for a reasonable purpose, on transferring the securities to designated persons or classes of persons.
- The corporation may not make any public offering that qualifies as such under the Federal Securities Act of 1933.

Nonprofit Organizations

The certificate of incorporation of a nonprofit corporation must clearly state that the corporation is organized for nonprofit purposes and is not authorized to issue stock.

Nonprofit corporations are required to file their annual report with the Puerto Rico Department of State, but they pay lower fees, or, in the case of nonprofit religious, fraternal, charitable or educational corporations, no filing fee is required.

Corporation of Individuals

A corporation of individuals is a corporation that meets certain criteria and can elect to be taxed under Subchapter N of the Puerto Rico Internal Revenue Code as an N corporation. In general, an N corporation does not pay any income taxes at the corporate level, and the corporation's income and losses are passed

through to its shareholders. This pass-through tax treatment is available, however, only if the shareholders consent to the corporation's election and the corporation meets a number of criteria. Specifically, the stock of a corporation of individuals may be owned only by individuals who are citizens or resident aliens of Puerto Rico, estates and certain trusts. Moreover, the corporation must:

- Be an eligible domestic corporation (including a U.S. entity that engages in trade or business only in Puerto Rico), but not an insurance company, a registered investment company, a special corporation owned by employees, a corporation exempt under any tax incentives or similar acts (except under the Puerto Rico Tourism Development Act of 1993), a financial institution, or a corporation licensed as a capital investment fund;
- Not have more than 75 eligible shareholders;
- Have only one class of stock outstanding.

All of these requirements must be met when the election is made and at all times thereafter. Failure at any time to qualify as a corporation of individuals terminates the election, and as of the date of termination, the corporation is taxed as a regular corporation.

Limited Liability Company

Limited Liability Companies (LLC) are more flexible operationally than corporations but can still provide legal protection for their managers and members. To form an LLC, one or more persons must file a LLC Certificate of Formation with the Puerto Rico Department of State, along with a fee. A foreign LLC may register in Puerto Rico by petition signed by an authorized person following the procedures specified in the General Corporation Act; once registered, it shall have some powers as a domestic LLC, provided that its internal affairs and the liability of its managers and members shall continue to be governed by laws of the jurisdiction where the LLC is organized. LLCs may engage in any lawful activity but must maintain a registered office and resident agent for service of process in Puerto Rico.

The management of an LLC is typically governed by an LLC agreement that sets forth:

- The respective duties of the LLC and its managers and members to each other;
- The LLC's management structure;
- The rights of the managers and members; and
- Their respective share of interest in the LLC profits and losses.

Unless otherwise provided in the LLC agreement, managers and members of an LLC cannot be held personally liable for the LLC's obligations solely by reason of being a manager or member. They may rely in good faith on the LLC's records and upon information presented by other managers, members, officers, committees, employees, or anyone else with respect to whom such reliance is reasonable.

Like partnerships and corporations, LLCs are generally taxed at both the business entity and shareholder levels. But also like partnerships and corporations, LLCs can file for pass-through tax treatment under either subchapter K or subchapter N of the Puerto Rico Internal Revenue Code.

Entities may also organize as business trusts, joint ventures, cooperatives, international banking entities (IBE), insurance companies, real estate investment trusts (REIT), registered investment companies or special employee-owned corporations under the laws of Puerto Rico.

BASIC REQUIREMENTS AND PROCEDURES FOR STARTING A BUSINESS

Requesting and registering an Employer Identification Number

Except for sole proprietorships that do not employ anyone (other than the sole proprietor), every entity engaged in a trade or business in Puerto Rico must obtain a federal Employer Identification Number (EIN) from the U.S. Internal Revenue Service (IRS) by filing Form SS-4. Upon obtaining an EIN, the entity must file with the Puerto Rico Department of Treasury a Form SC-4809, a copy of the certificate of incorporation, and a copy of Form SS-4.

Merchant's Registration Certificate

All merchants seeking to engage in a trade or business in Puerto Rico must register with the Registry of Businesses at the Puerto Rico Treasury Department at least 30 days prior to commencing business operations. The Certificate of Registration issued by the Treasury Department must be placed in a location at the trade or business that is visible to the general public. A merchant may not transfer its Certificate of Registration or Certificate of Exemption unless the transfer is previously approved by the Secretary of Treasury. Any merchant who acquires taxable items for resale or any manufacturing plant may request a certificate of exemption of the sales and use tax. Every certificate of exemption is valid for three years. The exemption certificate is important because every merchant who has been issued this certificate will not have to pay sales tax when he or she purchases the items listed in the certificate.

Compulsory Business Registry

All businesses operating in Puerto Rico must register with the Compulsory Business Registry by July 15 of each year. Registration requires certain statistical information and can be done on the Internet. Forms and information are available from the Puerto Rico Trade and Export Company.

Municipal License Taxes

Within 30 days of commencing operations, a business must provide written notice to the Director of Finance of each municipality in which it has commenced operations and request a provisional license for the quarter in which it commences operations.

Bidders Registry

Any person (natural or juridical) who wants to pursue business with any agency of the executive branch of the Commonwealth of Puerto Rico is required to register with the Bidders Registry, which is administered by the General Services Administration. Among the requirements are the payment of an annual fee, and evidence of the payment of municipal and Commonwealth taxes.

Financial and Accounting Records

As a general rule, a taxpayer must keep and maintain financial and accounting records sufficient to compute both net income under General Accepted Accounting Principles and taxable income under the Puerto Rico Internal Revenue Code.

Audited Financial Statements

Every person engaged in a trade or business in Puerto Rico whose volume of business exceeds USD3 million must file financial statements, certified by a certified public accountant (CPA) licensed in Puerto Rico, along with their income tax, property tax and volume of business returns. All foreign corporations must also file a balance sheet of their Puerto Rico operations, certified by a CPA licensed in Puerto Rico, together with the Annual Corporation Report.

Internal Revenue Licenses

A license from the Puerto Rico Treasury Department may be required to carry out certain activities, including: selling cigarettes, gasoline, vehicles and parts and accessories of vehicles, jewelry, cement, arms and ammunition; operating coin-operated machines; operating duty-free port stores; selling firearms and munitions; and operating public carrier businesses. Such licenses may not be transferred without the authorization of the Puerto Rico Secretary of Treasury. A manufacturer of articles whose sale requires a license is not required to have such license, provided the manufacturing operations are completely apart from any location in which an activity subject to such a license is conducted.

Municipal Revenue Collection Center (CRIM)

In Puerto Rico, property is classified for property tax purposes as real property (land, buildings and structures, and machinery permanently attached to the land or building) and personal property (practically all other property, including intangibles, machinery, money, cattle and shares of stock). The Municipal Revenue Collection Center (CRIM) is responsible for making this classification. The CRIM is also responsible for the valuation and appraisal of all taxable property in Puerto Rico.

Permits and Licenses

Any business seeking to construct a new structure or modify an existing structure must obtain a construction permit and a use permit. A use permit is the authorization for the occupation and use of certain lands, buildings or structures. This permit is required when the construction (for which a construction permit was issued) is completed.

A sanitary license is required for the operation of certain public establishments, including any type of prepared food vendor (fast-food, cafeteria, restaurants, bars, nightclubs, etc.), public pools, vending machines and beauty salons. This license is issued by the Department of Health and can be requested with a use permit or directly from the Department of Health.

An inspection by the Fire Department is required for the construction of a new building or to obtain a use permit for the establishing of a public operation. It must be requested annually.

If a business owns or operates an emergency power plant, it must have a construction and operation permit from the Environmental Quality Board (EQB). An emergency plan for the prevention of diesel spills may also be required.

TAXATION

THE U.S. TAX SYSTEM

Individuals Residing in Puerto Rico

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 permits a bona fide individual resident of Puerto Rico to exclude Puerto Rico source income from his gross income for U.S. tax purposes. The determination of bona fide residence in Puerto Rico for income tax purposes is established by the application of three tests established in U.S. Code Section 937: the (a) presence test; (b) tax home test; and (c) closer connection test. Of

course, even bona fide residents of Puerto Rico will be subject to U.S. income tax on income from sources outside Puerto Rico.

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 certain other types of income: 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 only a 10% U.S. income tax withholding instead of the 30% rate applicable to other foreign corporations. The conditions that must be met for the 10% rate to apply are:

- Foreign persons must not own (directly or indirectly) 25% or more of the stock of Puerto Rico corporation at any time during the taxable year in which the dividend is distributed;
- At least 65% of the gross income of the Puerto Rico corporation is effectively connected with the conduct of a trade or business in Puerto Rico or the United States for the three-year period ending with the close of the taxable year of the Puerto Rico corporation or for such part of said period that the corporation has been in existence; and
- No substantial part of the income of the Puerto Rico corporation is used (directly or indirectly) to satisfy obligations to persons who are not bona fide residents of Puerto Rico or the United States.

Notwithstanding the above, 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. When using a Puerto Rico corporation, care should be exercised as to the possible applicability of U.S. Internal Revenue Code provisions related to controlled foreign corporations, passive foreign investment companies, and foreign personal holding companies.

United States Corporations

U.S. corporations are taxable in the United States on their worldwide income. Therefore, U.S. corporations that derive taxable income from Puerto Rico sources must include such income as part of their gross income for determining their U.S. income tax liability. If a U.S. corporation decides to establish its operations in Puerto Rico through a Puerto Rico subsidiary, the latter will not constitute part of the consolidated group for purposes of the filing of U.S. income tax returns, since a Puerto Rico corporation is considered a foreign corporation for U.S. purposes.

THE PUERTO RICO TAX SYSTEM

Business Taxes

Sole Proprietorship

A sole proprietorship is taxed on net income from the operation of its trade or business. The net income, generally, is determined using the rules discussed below for corporations. However, the Puerto Rico Code establishes certain exceptions, such as the treatment of the net operating losses. Specifically, the net operating losses suffered by a business operated by an individual as a sole proprietorship may not be used to reduce the net income derived from other business activities conducted by the individual. However, if a husband and wife each own a different principal trade or business, both trades or businesses will be treated as one principal trade or business for purposes of the net operating loss deduction.

Corporate Income Tax

For income tax purposes, corporations, partnerships, limited liability companies, joint ventures and business trusts, among others, are treated the same: there is no flow-through of income or losses to the owners of such business entities, and instead taxes are levied both at the corporate/partnership level and again at the shareholder/partner level when actual distributions are made.

Taxation of Worldwide Income

Puerto Rico corporations are taxed on their total net taxable income derived from any source whatsoever. Basically, the tax is determined by excluding certain items from gross income, excluding the items of income that are taxed at a different rate, reducing the remaining amount by the corresponding deductions, applying the corresponding corporate income tax rate to the amount remaining after deductions to determine the partial tax, applying the special tax rates to the special-tax-rate items to determine the tax on special items, adding the partial tax to the tax on special items to determine the total corporate income tax, and reducing the total corporate income tax by estimated taxes paid, withheld amounts and other credits. The result is the amount of Puerto Rico corporate income tax due.

Source of Income Rules

Personal Services. Compensation paid for personal services performed in Puerto Rico is treated as derived from sources within Puerto Rico.

Rents and Royalties. Income from rents and royalties paid with respect to property located in Puerto Rico, and rents and royalties paid for the use of, or for the privilege of using, within Puerto Rico, intangibles such as patents, copyrights, secret processes, formulae, goodwill, trademarks, trade names and franchises, are treated as derived from sources within Puerto Rico. Also treated

as income derived from sources within Puerto Rico are payments made for the right to transmit, within Puerto Rico, television and radio programs, films and other similar property.

Sale of Real Property. Gain from the sale of real property is sourced where the real property is located.

Sale of Personal Property. Gain from the sale of personal property produced, in whole or part, by the taxpayer within Puerto Rico and sold outside Puerto Rico or produced, in whole or in part, by the taxpayer outside Puerto Rico and sold within Puerto Rico is treated as derived partly from sources within and partly from sources without Puerto Rico. Gain derived from the sale within Puerto Rico of personal property purchased by the taxpayer outside Puerto Rico and from the sale of personal property purchased within Puerto Rico by the taxpayer and sold outside Puerto Rico is treated as derived entirely from sources within the country in which it was sold. If the personal property is produced and sold in Puerto Rico, the income from the sale will be sourced in Puerto Rico.

Distribution from Liquidation of a Puerto Rico Corporation. Income derived from the total or partial liquidation of a Puerto Rico corporation or partnership is treated as derived from sources within Puerto Rico.

Distribution from the Liquidation of a Foreign Corporation. Income derived from the partial or complete liquidation of a foreign corporation or partnership is treated as derived from sources within Puerto Rico if 80% or more of the corporation's or partnership's gross income for the three years preceding the liquidating distribution was effectively connected with the conduct of a trade or business in Puerto Rico. However, the income will be treated as from sources within Puerto Rico only in an amount that bears the same ratio to the total amount of the liquidating distribution as the gross income of the corporation or partnership effectively connected to the trade or business in Puerto Rico (excluding income considered in determining the branch profit tax, if applicable) bears to gross income from all sources.

Insurance Premiums. Premiums paid with respect to a contract insuring risks located in Puerto Rico are treated as income derived from sources within Puerto Rico. However, premiums paid on life insurance contracts to a person not engaged in trade or business in Puerto Rico are not treated as income derived from sources within Puerto Rico.

Tax Accounting Period

A tax year generally consists of a period of 12 months. A corporation may select its tax accounting period on or before the due date for the filing of its first income tax return, without considering extensions of time to file. Once a

taxable year is selected, that taxable year must continue until the Puerto Rico Department of Treasury approves a change or the law specifically permits otherwise. The tax accounting periods are: (a) the calendar year; (b) a 12-month fiscal year; and (c) 52 and 53 week taxable year.

Tax Accounting Methods

In general, the accounting method used by a corporation to determine its net income for regular business purposes must be used to determine net taxable income for tax purposes. However, the accounting method used by a corporation for tax purposes must be one that clearly reflects income and expenses. The cash-receipt-and-disbursement method, the accrual method, hybrid methods, the installment method, the percentage-of-completion method and the completed-contract method are among the accounting methods allowed for Puerto Rico income tax purposes..

Inventories. The method of inventory used for tax purposes must conform to the best accounting practice in the corresponding trade or business. The term "best accounting practice," as used in the Puerto Rico Internal Revenue Code, is generally the same as "generally accepted accounting principles." The most common methods that may be used to identify inventory are:

- The specific identification method
- The first-in first-out method (FIFO)
- The last-in first-out method (LIFO)
- The weighted average cost method

Pursuant to the Puerto Rico Internal Revenue Code, inventories must be valued at the lower of cost or market value. The regulations offer a number of rules regarding the use of the accounting methods and the valuation of inventories of certain businesses such as securities, farming, livestock breeding, mining, manufacturing and retailing.

Reserve Methods. The reserve method for deductions of bad debts is not allowed under the Puerto Rico Internal Revenue Code.

Gross Income

The meaning of gross income is broad and general. The Puerto Rico Internal Revenue Code provides that gross income includes gains, profits and income derived from salaries, wages or compensation for personal services, interest, rent, dividends, partnership profits, securities or the transaction of any business carried on for gain or profit, or gains or profit and income derived from any source whatsoever. All income is taxable income unless specifically excluded.

Capital Gains

Under the Puerto Rico Internal Revenue Code, corporations may elect to have gains that are derived from the sale or exchange of a capital asset:

- Taxed at a fixed income tax rate and have their other income taxed in the regular manner, or
- Included as part of their gross income and taxed at the corresponding ordinary income tax rate.

If the first method of the two described above is chosen, all long-term capital gains and losses are excluded from the gross income that is taxed at the regular Puerto Rico corporate income tax rates. The alternate capital gains tax rate for corporations is 15%. A capital gain or loss is long-term if the capital asset was held by the transferor for more than six months prior to the transfer.

Non-Recognition Transactions

There are certain transactions in which the gain realized is not recognized for tax purposes and therefore excluded from gross income. In general, the reason for not recognizing such gains is that the underlying transaction is not considered sufficient to break the continuity of the investment. This is the case, for example, with certain exchanges of like-kind property, involuntary conversions, corporate reorganizations, transfers to a corporation controlled by the transferor, property received by a corporation in a complete liquidation of its controlled subsidiary, securities exchanged for securities of the same corporation, and transfers of qualified securities to an employee stock ownership plan. The non-recognition of gain in these cases is, in effect, a deferral of the gain by means of assigning the basis of the transferred property to the property being received in the exchange.

Dividend Income

A Puerto Rico corporation's dividends or partnership's distributions are subject to a 10% withholding tax upon distribution. An accumulated earnings penalty tax of 50% may be imposed if a corporation is determined to have been formed or used to prevent the imposition of income tax on its shareholders by accumulating corporate earnings instead of distributing such earnings to the shareholders. If the earnings have been accumulated because the reasonable needs of the business so dictate, the accumulated earnings penalty tax may not be imposed.

Interest Income

The source of interest income is generally determined by reference to the residence of the debtor. The Puerto Rico Internal Revenue Code grants special tax treatment to certain types of interest, such as interest on government bonds and interest on deposits in Puerto Rico financial institutions.

Business Expenses

Expenses incurred by a corporation during the taxable year that are directly connected to its business activities are generally deductible provided they are ordinary, necessary, reasonable and not in violation of public policy. In general, the rules for the deductibility of the business expenses of a corporation closely follow the rules applicable under the U.S. Internal Revenue Code. However, there are certain items that are statutorily nondeductible even though they would otherwise qualify as a business expense. For example, life insurance premiums paid by a corporation on the life of an officer, employee or person financially interested in the trade or business of the corporation, when the corporation is directly or indirectly the beneficiary of the policy, are not deductible.

Organizational Expenses

Organization expenditures, the benefit of which does not have a definite and fixed period of duration, are deductible only when the corporation or partnership is dissolved. When a corporate charter or certificate is issued for a limited time only, the expenses can be amortized over that period. These nondeductible expenditures are generally incidental to the creation of the corporation or partnership, such as legal fees for drafting the corporate or partnership charter, bylaws, minutes of organizational meetings, and original stock certificates, fees for start-up accounting services, expenses of temporary directors and of organizational meetings of directors or stockholders, and state incorporating fees.

Travel and Entertainment Expenses

An employer may deduct the paid or reimbursed travel expenses incurred by its employees while working away from home, provided such expenses are ordinary, necessary and reasonable. These expenses generally include transportation, meals and lodging expenses for business-related travel. The payment or reimbursement by an employer of the commuting expenses of an employee is not deductible as traveling expenses, but is deductible as additional compensation. Expenses incurred by an employee for commuting to and from the place of work are not deductible. Food and entertainment expenses, in addition to being limited by the requirements of being ordinary, necessary and reasonable, are subject to 50% and 25% limitation rules. The 50% limitation rule provides that only 50% of the total of such expenses is allowed as a deduction. The 25% limitation rule requires that the total of such deductions never exceed 25% of the gross income of the person taking the deduction.

Interest

As a general rule, interest is only deductible if the taxpayer has an obligation to pay the interest and it is ordinary and necessary. The Treasury Department has

allowed a deduction of interest that is not paid by the obligor if the party paying the interest is benefited by such payment. However, interest related to an indebtedness incurred to purchase obligations, which is exempt from Puerto Rico income tax, is not deductible. The doctrine of "thin capitalization" has been applied frequently at the administrative level in Puerto Rico. Under this doctrine, debt may be treated as equity and interest payments as dividends if certain factors are present. Interest payments are deductible by the corporation but dividend payments are not.

Royalties

Royalty payments are deductible within the category of ordinary and necessary expenses.

Retirement Plan Contributions

Retirement plans can be divided into two types: qualified plans and nonqualified plans. Qualified plans are those specifically covered by the Puerto Rico Internal Revenue Code. These plans offer a special tax treatment to the: (i) employer, who is allowed to deduct contributions made to the plan; (ii) participants, who can defer the employer's contributions until they are actually received; and (iii) the trust that controls and administers contributions to the plan and payments of benefits to the participants, which is treated as a tax-exempt entity. Qualified plans are heavily regulated and are subject to strict reporting requirements.

Taxes

Taxes paid or accrued by persons that are not individuals are deductible unless otherwise excepted. Puerto Rico income tax and all inheritance, estate, legacy, succession and gift taxes are specifically listed as nondeductible. Income taxes, war-profit taxes and excess-profit taxes not imposed by Puerto Rico (i.e., imposed by the United States or any of its possessions, or by a foreign government) are deductible, but only if they are not otherwise claimed as a credit. Federal import duties and Puerto Rico excise taxes on manufactured and imported goods are not deductible (these charges are included as part of the costs of the goods). However, such taxes may be deductible if they qualify as necessary and ordinary business expenses. In such case, they would be deductible as a business expense and not as a tax, and would therefore be required to meet the ordinary and necessary test. Automobile license fees are considered a tax. As such, they do not need to meet the "ordinary and necessary" test.

Depreciation and Depletion

The cost of business assets with a useful life of more than one year may not be deducted in full in the year of acquisition because part of the cost relates to future years. This deduction is generally referred to as depreciation. Inventory and stock in trade are not depreciable property. The three depreciation systems

that may be used under the Puerto Rico Internal Revenue Code are straight-line depreciation, accelerated cost recovery system (ACRS), and flexible depreciation.

Obsolescence

Generally, obsolescence is taken into consideration when determining the useful life of property. A special deduction for extraordinary obsolescence may be allowed when the economic life of the property ends prior to the termination of its normal useful life.

Charitable Contributions

Corporations may deduct charitable contributions made within a year to certain organizations, such as religious, charitable, scientific, literary or educational organizations. The amount of charitable contributions made by a corporation during a year may not exceed 5% of its net income, computed without the benefit of the charitable deduction. Charitable contributions made in excess of 5% of net income may be carried over to the following five years. The 5% limitation is not applicable with respect to contributions made to municipalities for purposes of an historical or cultural value, certified as such by the Institute of Puerto Rican Culture or the Cultural Center of the corresponding municipality.

Capital Losses

Corporations and partnerships are only allowed to deduct capital losses to the extent of capital gains, with a five-year carryover of excess capital losses. During the carryover period, the carried-over capital losses are treated as short-term capital losses.

Casualty Losses

Casualty losses sustained by a corporation and not compensated for by insurance or otherwise are deductible. The basis for determining the amount of the loss sustained is the adjusted basis of the lost property.

Bad Debts

Corporations are entitled to an ordinary deduction for business debts that become worthless, or for the part of such debts that become worthless, during the taxable year. To allow the deduction for a bad debt, the taxpayer must have included the amount of such debt as income.

Worthless Bonds and Similar Obligations; Worthless Stock and Right to Acquire Stock

If bonds, debentures, notes, certificates of debt and other similar evidences of indebtedness become worthless during the year, the loss is considered due to the sale or exchange of a capital asset on the last day of the taxable year. In that instance, the corporation holding the worthless securities will have a long-term

or short-term capital loss depending on the length of the period during which the security was held. If the worthless security was held for more than six months, the loss will be treated as a long-term capital loss; otherwise it will be treated as a short-term capital loss. Partial worthlessness and reduction in value due to market fluctuations are not deductible.

Inventory Write-downs

Goods in inventory that are unsaleable at normal prices or unusable because of damage, imperfections, shop wear, change of style, odd or broken lots, or other similar causes may be valued at their bona fide selling price less the direct cost of their disposition. The bona fide selling price is the selling price at which the goods are offered at a date not later than 30 days after inventory date.

Rents

Rental payments made by a corporation are generally considered part of the business expenses of the corporation and, thus, deductible. Property taxes on leased property paid by the lessee pursuant to the terms of the lease are considered additional rent paid by the lessee. The amount of the property tax on the leased property paid by lessee is deductible by the lessor. A person acquiring a leasehold for a specified sum may take a deduction for the proportional amount of the sum for each year based on the number of years remaining in the lease term. Likewise, the cost incurred by the lessee to construct buildings and/or make permanent improvements to the leased property must be capitalized by the lessee and deducted throughout the years remaining in the lease term instead of the depreciation deduction. However, if the useful life of the constructed building and/or the permanent improvement made by the lessee is less than the remaining years in the lease term, the lessee must take the deduction for depreciation during the corresponding useful life. As a general rule, if the lease has an option for a renewal period, such renewal period is not taken into consideration when determining the remaining years of the lease term, unless the lease has already been renewed or there is reasonable certainty that it will be renewed.

Salaries and Wages

All reasonable salaries and wages, as well as commissions, bonuses, fees, compensation payments and other similar payments made for services rendered paid by corporations, are deductible as a business expense.

Other Miscellaneous Deductions

There are a number of other miscellaneous deductions available to corporations including a USD400 deduction for each severely handicapped person employed at least 20 hours a week for at least nine months in the taxable year, up to a maximum of five severely handicapped persons, and an amortization deduction for bond premiums.

Capital Expenditures

The Puerto Rico Internal Revenue Code follows closely the U.S. Internal Revenue Code with respect to capital expenditures. The concept of capital expenditures is also based on the principle that the accounting method used must clearly reflect income. Capital expenditures, instead of being deducted in the year in which they are paid or accrued, are included as part of the basis of the acquired or improved asset. In addition, depending on the asset and the circumstances involved, such capital expenditures will be depreciated, amortized or depleted pursuant to the applicable depreciation, amortization or depletion rules, or included as part of the basis until the asset is sold or disposed of. Amounts paid for securing a copyright, defending or perfecting title to property, architect's services in relation to the construction of a building, and commissions in purchasing securities are capital expenditures.

Loss Carryovers

For purposes of determining the amount of the net operating loss carryover, net operating loss equals the excess of deductions over gross income, subject to certain adjustments. The net operating loss may be carried over to the following seven years.

Tax Credits

Foreign Tax Credits

To mitigate or eliminate the risk of double taxation of the same income, Puerto Rico corporations have the option of either deducting or crediting the income and excess profit taxes paid or accrued during the taxable year to the United States, any possession of the United States, or any foreign country. However, a Puerto Rico corporation may not, in the same taxable year, take a deduction for some of the non-Puerto Rico income tax paid and take a credit for the other non-Puerto Rico income tax paid. When non-Puerto Rico income tax is credited, it is treated as a payment of Puerto Rico income tax except that it may not give rise to a refund. No foreign tax credit is allowed to reduce the accumulated earnings penalty tax. The amount of the foreign tax credit is subject to the per-country limitation and the overall limitation. The excess U.S., possessions, and foreign taxes paid or accrued by the Puerto Rico corporation over the foreign tax credit actually allowed in a taxable year may not be carried back or forward for use in other taxable years. In addition to the foreign income and excess profits taxes paid or accrued, a Puerto Rico corporation may be deemed to have paid the foreign income and excess profits tax allocable to the distributed earnings received from its foreign subsidiary.

Other Credits

Amounts withheld may be used as a credit to reduce the recipient's tax liability. A credit is also available for contributions made to the Educational Foundation

for the Free Selection of Schools up to a maximum of USD500 per year. Also, there are certain tax credits available in relation to dividends paid by a corporation operating under a grant of tax exemption if investment requirements are met by the distributing corporation.

Tax Rates and Calculation of Taxable Income

Corporate Income Tax Rates

Puerto Rico corporations and non-Puerto Rico corporations engaged in trade or business in Puerto Rico face a corporate tax rate composed of two parts: a "normal" tax, which is fixed at 20%; and a variable "surtax."

Elimination of the Graduated Tax Rates Benefit

When the net taxable income of a Puerto Rico corporation or of a non-Puerto Rico corporation engaged in trade or business in Puerto Rico exceeds USD500,000 in a taxable year, a 5% additional tax is imposed on the net taxable income in excess of USD500,000 until the maximum tax rate to be paid by the corporation on all its taxable income reaches 39%.

Alternative Minimum Tax

The alternative minimum tax (AMT) is designed to ensure that corporations with substantial economic income may not avoid paying a reasonable amount of income tax by using exclusions, deductions and credits available to them. The Puerto Rico AMT equals the excess of the amount of the tentative minimum tax over the amount of the normal corporate tax plus surtax. The tentative minimum tax is equal to 22% of the excess of net alternative minimum income over the exempt amount. The exempt amount equals USD50,000 reduced (but not below zero) by 25% of the alternative minimum net income over USD500,000. The alternative minimum net income equals the net taxable income subject to certain adjustments. The AMT does not apply to:

- Foreign corporations and partnerships that are not engaged in trade or business in Puerto Rico;
- Special partnerships;
- Corporations of individuals;
- Registered investment companies;
- Real estate investment trusts;
- Special corporations owned by employees;
- Corporations and partnerships operating under a grant of industrial or tourism tax exemption, but only in relation to the income covered by the grant; or
- Corporations or partnerships operating bona fide agricultural businesses, but only to the extent that the income derived from the activity is allowed as a deduction.

However, it is important to mention that payments made to related persons for services not rendered in Puerto Rico and not subject to taxation in Puerto Rico will not be allowed as a deduction for purposes of computing the Alternative Minimum Tax Income. For these purposes, the term "related persons" refers to nonresident aliens or foreign corporations or partnerships not engaged in trade or business in Puerto Rico if there is 50% or more of overlapping ownership.

Assessment and Filing

Corporate Income Tax Return

All Puerto Rico corporations and all non-Puerto Rico corporations that are engaged in trade or business in Puerto Rico are required to file an income tax return and pay the corresponding Puerto Rico corporate income tax on or before the 15th day of the fourth month following the close of its taxable year. An automatic three-month extension of time will be granted to corporations for the filing of income tax returns if the extension request is filed on or before the due date of the filing of the income tax return. The extension must be filed accompanied by the full balance of the income tax due.

Estimated Tax

In addition to the corporate income tax return, every corporation engaged in trade or business in Puerto Rico is required to estimate its tax liability for the current taxable year. The estimated tax may be paid in four installments by the 15th day of the fourth, sixth, ninth and twelfth months.

Consolidated Returns

The Puerto Rico Internal Revenue Code does not provide for the filing of corporate returns on a consolidated basis.

Funding the Corporation

As a general rule, no income is recognized by a Puerto Rico corporation on the original issuance of its stock. However, the Puerto Rico Internal Revenue Code requires that if the transferor consists of more than one person, the number of shares and securities received by each person must be proportional to his interest in the transferred property prior to the transfer. When a corporation assumes the liabilities of the transferor or receives property from the transferor subject to liabilities, such assumed liability is not treated as a receipt of money or other property by the transferor in determining whether the transfer is "solely in exchange of stock or securities." However, for the purpose of determining whether the stock or securities received by the transferors are substantially proportionate to their interest in the transferred property, the assumed liabilities are treated as stock or securities received by transferors. The basis of the stock or securities received by a transferor in a non-recognition exchange with a Puerto Rico corporation is equal to the basis of the property transferred in exchange for the stock or securities, decreased by the amount of

money received, increased by the amount of gain recognized, and decreased by the amount of loss recognized by the transferor. The liability assumed by the corporation is treated as money received by the transferor for the purpose of determining the basis of the stock or securities received by the transferor.

Reorganizations

In general, the reorganization rules under the Puerto Rico Internal Revenue Code follow a pattern similar to that of the reorganization rules of the U.S. Internal Revenue Code, with the principle underlying both codes being that no gain or loss should be recognized because the new corporate structure is merely a continuation of the previous corporate structure. The recognition of gain or loss is postponed by means of a carryover of the basis. The reorganization rules are also applicable to partnerships. The Puerto Rico Internal Revenue Code lists the same types of reorganizations as the U.S. Internal Revenue Code, except the Puerto Rico Internal Revenue Code does not list the transfer by a corporation of all or part of its assets to another corporation in a Title 11 bankruptcy filing or a receivership, foreclosure or similar proceeding in a federal or state court. However, the Puerto Rico Internal Revenue Code specifically provides that no gain or loss is recognized in certain exchanges made in connection with the reorganization of an insolvent corporation affected in a receivership, foreclosure or other similar court proceeding, or in a court reorganization proceeding under Section 77B or Chapter X of the federal Bankruptcy Code.

Liquidations

Generally, a gain or loss may be recognized upon the liquidation of a Puerto Rico corporation at both the corporate and shareholder levels. At the corporate level, liquidation will be treated as if the corporate assets are being sold to the shareholder at fair market value. At the shareholder level, the liquidation is treated as an exchange by the shareholder of its shares of stock for the assets received from the corporation. Thus, a gain or loss will be recognized based on the difference between the fair market value of the assets received and the adjusted basis of the shares of stock being surrendered. No gain or loss is recognized upon the complete liquidation of a controlled subsidiary into its parent corporation. In this case, control is the ownership of at least 80% of the total combined voting power and at least 80% of the total number of shares of all other classes of stock. This ownership requirement must exist on the day that the liquidating plan is adopted and must continue to exist until the liquidating distribution is made. If there is only one liquidating distribution, all the property must be transferred to the parent in the same tax year. If there are a series of distributions, all the properties must be transferred to the parent within three years from the close of the taxable year during which the first distribution was made.

Acquisition of Stock with Step-up in Basis of Assets of Acquired Corporation

A corporate tax election is available to an acquiring corporation to step up the basis of the assets in a target corporation, the stock of which it purchased.

Foreign Entities Doing Business in Puerto Rico

A foreign corporation (one that is organized under the laws of a country other than Puerto Rico) may engage in trade or business in Puerto Rico as a division or branch of that foreign corporation or as a separate corporation or subsidiary. Resident foreign corporations are taxed in Puerto Rico on their Puerto Rico source income and on any effectively connected income at the same graduated tax rates as any domestic corporation.

Subsidiary

A foreign corporation that is engaged in a trade or business in Puerto Rico must treat the following as income effectively connected to its trade or business in Puerto Rico:

- All income from sources within Puerto Rico;
- Income attributable to an office or other fixed place of business in Puerto Rico that consists of:
  - Rents or royalties derived from the use outside Puerto Rico of intangibles such as secret processes, formulae, patents, trademarks, franchises and copyrights;
  - Dividends or interest, or gain or loss from the sale or exchange of stocks or bonds or other evidences of indebtedness that is either derived from a banking or financing business or from a corporation trading in stocks or securities for its own account; and
  - Gains or losses derived from the sale or exchange of personal property outside Puerto Rico through the corporation's office or fixed place of business in Puerto Rico (except gains or losses from the sale of personal property that is manufactured outside Puerto Rico and is to be used, consumed, or disposed of outside Puerto Rico).
- Income or gain attributable to the rendering of services or the sale of property in another year if in such other year it would have been treated as effectively connected income; and
- Gain or loss from the sale or disposition of property that is used in connection with a trade or business in Puerto Rico or that ceased to be used in connection with a trade or business in Puerto Rico within the previous 10 years.

The foreign subsidiary will be allowed to deduct the expenses directly allocable to the Puerto Rico business. In addition, a reasonable apportionment of expenses not directly related to any item of income shall be allowed as a deduction. Any actual repatriation of dividends will be subject to a 10% income tax withholding at source. Foreign corporations not having any office or place of business in Puerto Rico must file their Puerto Rico income tax returns on or before the 15th day of the sixth month following the close of their taxable year. However, if the Puerto Rico income tax liability of a foreign corporation was paid in full under the withholding provisions, the foreign corporation will be exempt from the filing requirement. A foreign corporation that is not engaged in trade or business in Puerto Rico, but derives income from real property located in Puerto Rico owned for the production of income, may elect to treat such income as connected to the conduct of a trade or business in Puerto Rico, whether the income is rent or gain from the sale or exchange of the property. If it exercises the election, the foreign corporation not engaged in trade or business in Puerto Rico will be taxed on the real property net taxable income at regular Puerto Rico income tax rates instead of a 29% tax rate on the gross income from the real property. However, the election does not by itself cause any other income received by the foreign corporation not engaged in trade or business in Puerto Rico to be treated as income effectively connected to a trade or business in Puerto Rico.

Branch Profit Tax

Income taxation of a U.S. branch is the same as for a U.S. subsidiary. The only difference will be that a deemed dividend distribution tax (branch profit tax or BPT) will be assessed on the branch upon any advances made to its home office. The BPT rate is 10% of the "dividend equivalent amount." Broadly speaking, the BPT would be imposed if the earnings and profits derived by the branch were not reinvested in Puerto Rico as of the end of the taxable year. Comparing the net equity at the end of the taxable year and the net equity at the beginning of the taxable year makes the determination whether the amount was invested or reinvested. A foreign corporation is not subject to the branch profit tax in a taxable year if for the current and two preceding taxable years at least 80% of its gross income was effectively connected with a Puerto Rico trade or business. In determining taxable income, the branch will take into consideration items of income effectively connected with the conduct of a trade or business in Puerto Rico. The branch will be allowed to deduct the expenses directly allocable to the Puerto Rico business. In addition, a reasonable apportionment of expenses not directly related to any item of income shall be allowed as a deduction.

Other Reporting Requirements

Informative returns are to be filed for any payment of dividends or any payment in excess of USD500 to individuals for interest, rents, salaries or wages not

otherwise reported, premiums, annuities, compensations, remuneration or other fixed or determinable gains, profits and income. Any person who credits or makes payments to an individual of USD500 or more and who becomes obligated to withhold the tax on such payments shall file a return specifying the total amount of interest paid or credited, the tax deducted and withheld, the name, address and the account number of the person to whom the payment or withholding was made. Such return shall be filed on or before February 28 of the year following the calendar year in which the interest was paid.

Tax Withholding

Wages

Withholding is generally applicable to all of an employee's wages for services performed for his employer. Non-cash wages are measured by their fair market value at the time of transfer.

Services

In general, payments made in the conduct of a trade or business or for the production of income in excess of USD1,500 to another person (natural or juridical) for services performed within Puerto Rico are subject to a 7% withholding. The amount withheld should be deposited with the Secretary of the Treasury on or before the 15th day of the month following the close of the month in which the tax was deducted. There are certain exemptions to this requirement. Corporations and partnerships may get a reduced withholding tax of 3% if they are in good standing with the Puerto Rico Treasury Department. A "Partial Relief of Withholding Certificate" must be obtained and remitted to each customer. In addition, there is a "Total Waiver of Withholding Certificate" that provides a total exemption from the 7% income tax withholding to corporations and partnerships that meet certain requirements. Individuals are no longer eligible for the partial relief withholding certificate. Therefore, all payments for services made to individuals are subject to a full 7% withholding. The tax must be deposited on or before the 10th day of the month following the month in which the tax was deducted and withheld. In addition, an informative return must be filed by February 28 of the following year covering such payments and withholdings during the calendar year. Also, a form should be filed summarizing the number of informative returns filed. An Annual Reconciliation Statement of Withholding at Source on Payments for Services Rendered must be filed by the same date. The Puerto Rico Department of Treasury requires that every person that is obliged to file five or more informative returns must do so electronically.

Fixed or Determinable Annual or Periodic Income

A withholding of income tax at source is required to be made on payments of interest, rent, salaries, wages, participation in partnership profits, commissions,

premiums, annuities, remuneration, compensation, dividends, or other fixed or determinable, annual or periodical gains, profits and income (but only to the extent that any of the items constitute gross income from sources within Puerto Rico) to nonresident individuals, or nonresident fiduciaries, or foreign corporations and foreign partnerships, not engaged in trade or business within Puerto Rico.

Municipal License Tax

The municipal license tax is imposed on gross income. The tax rate varies depending on the municipality but ranges from 0.2% to 0.5% in the case of nonfinancial businesses. For financial business the tax rate ranges from 1% to 1.5%. This tax is payable directly to the municipality. A number of business activities and types of income are exempt from municipal license taxes. For example, businesses operated by or for the government, businesses with a volume of business of less than USD5,000, income from the sale of agricultural products to farmers, tax-exempt nonprofit organizations, international banking entities and insurance companies, the exporting activities of businesses operating in a tax free zone, income from services performed as an employee, income from the sale of oil and its derivatives to the Puerto Rico Electric Power Authority, and plants engaged in the processing of tuna (provided they employ 300 or more individuals in the same physical facility) are 100% exempt from municipal license taxes. The municipal license tax annual return must be filed every year on or before April 15, or within five working days after April 15. The municipal license tax may be paid in two equal installments. The first installment is paid from July 1 to July 15 after the due date for the filing of the return corresponding to that tax. The second installment is paid from January 1 to January 15 of the year following the year of the due date for the filing of the return. If the total municipal license tax is paid at that time, a 5% discount is applied. Financial statements certified by a CPA licensed in Puerto Rico must be attached to the declarations if the total volume of business is or exceeds USD3 million. Otherwise a copy of the income tax return, stamped on all its pages as received by the Department of the Treasury, should accompany the declaration. After the payment of the first installment, the municipality will issue a municipal license that must be posted in a clearly visible place in the business or service establishment.

Property Taxes

Municipalities may impose, by means of municipal ordinances, a property tax of up to 4% per annum on the appraised value of all taxable personal property in the municipality and up to 6% per annum on the appraised value of all taxable real property in the municipality. Real property taxes and personal property taxes are imposed as of January 1 of each year. Therefore, persons that did not

own the property as of that date are not subject to the property tax. Likewise, if the property was owned as of January 1 but was sold during the course of that year, the owner of the property as of January 1 is liable for the payment of the corresponding property tax for that year. Municipalities do not have jurisdiction to impose property taxes on property located outside Puerto Rico. Likewise, property in interstate or foreign commerce is not subject to the Puerto Rico property tax. On the other hand, a property tax may be imposed on property located in Puerto Rico prior to being transported in interstate commerce or after the property finally comes to rest in Puerto Rico. If, on the assessment date, the property is under the control of the carrier and is to be shipped outside Puerto Rico, it is in interstate commerce and thus exempt from property tax. However, if the property had been sold to a buyer outside Puerto Rico but was still in the hands of the seller on the assessment date, the property tax liability for the property remains the responsibility of the seller, even if on the next day it is delivered to the carrier for shipment outside Puerto Rico.

Personal Property Tax

Any natural or juridical person engaged in a Puerto Rico trade or business and that as of January 1 owns personal property used in the trade or business must pay personal property tax to the municipality in which the property is located. The rates depend on the municipality and are imposed on the market value of the property. The market value is initially determined by the taxpayer. Generally, book value is accepted as equivalent to fair market value, but if book value does not reflect fair market value, the municipality may revalue the personal property. Taxable property normally includes cash on hand, inventories, materials and supplies, furniture and fixtures, and machinery and equipment used in the trade or business. A minimum residual value is assigned to items that are substantially depreciated. There are certain exemptions established in the Puerto Rico Internal Revenue Code. A personal property tax return must be filed on or before May 15 of each year in the corresponding regional office of the Municipal Revenue Collection Center, together with the full payment of such tax. If full payment of the personal property tax is received on or before May 15, a 5% discount is allowed. If the volume of business (defined as gross receipts) of the corporation exceeds USD3 million, the property tax return must be reviewed by, and accompanied by financial statements certified by, a Puerto Rico-licensed CPA. The financial statements of foreign corporations engaged in business in Puerto Rico should reflect solely their operations in Puerto Rico. A trial balance of the corporation's business activities in Puerto Rico as of the preceding January 1 is required when the corporation does not have a calendar year closing. The trial balance must be traced to the corporation's accounting records and accompanied by a report from an accountant affirming that the trial balance is in agreement with the books of account of the business.

Real Property Tax

The real property tax is imposed on the value of the property as assessed by the Municipal Revenue Collection Center. The tax is payable semi-annually on July 1 and January 1 of each year. The assessed value is the valuation of property for property tax purposes, which is equal to the fair market value of the corresponding real property in the year 1958.

Excise Tax

The Puerto Rico Code imposes an excise tax on certain articles imported into and manufactured in Puerto Rico. The Puerto Rico Internal Revenue Code has three types of excise taxes. First, there is an excise tax on imports and products manufactured in Puerto Rico. This excise tax is imposed only once on articles imported, sold, consumed, used or transferred in Puerto Rico. This tax is imposed on cement manufactured in or introduced into Puerto Rico, sugar, plastic products, cigarettes, fuels, products derived from oil and hydrocarbon mixture, and vehicles; the tax rates are different for the different products. Second, there is an excise tax on certain transactions, including sales of jewelry, occupancy or rooms in hotels, public shows, and horse-racing winnings; the tax rate varies depending on the transaction. Third, there is an excise tax in the form of licenses for the sale of certain articles or the conduct of certain activities. In addition, there are several exceptions to this general rule and some exemptions to the imposition of the tax.

Manufacturers

In the case of Puerto Rico manufacturers selling their manufactured products in Puerto Rico subject to excise tax, the taxable price in Puerto Rico is equal to 72% of the selling price. The corresponding excise tax rate is then applied to that amount.

Importers

An importer's cost in Puerto Rico shall be the sum of all the costs, excluding those for freight and insurance that make possible the arrival of an article to a Puerto Rico port of entry, regardless of its name or its origin. The cost also includes certain royalties or commissions, plus 10% of the sum of the related costs by reason of freight and insurance. The cost in Puerto Rico shall not be reduced for discounts for prompt payment, or for discounts granted by reason of volume of purchase, by reason of sales volume or considerations of a speculative nature, but it may be reduced for commercial discounts that are granted to reduce the prices stipulated in lists, catalogs, advertisements or other publications to the prevailing market prices or for converting the consumer price into a wholesale or retail price, as long as the Secretary of the Treasury of Puerto Rico determines that such reduction is properly warranted. For these importers the effective tax rate is 6.6% of the cost. Importers of merchandise

are required to declare and pay the excise tax at the time of introduction. Additionally, they must file monthly declarations and pay the applicable Excise Tax for imports of goods via the U.S. Postal Service. Importers who satisfy certain requirements and elect to participate in the bonded program will be assigned an excise tax identification number. The identification number is renewable every year. If it is not renewed, the number will be inactivated and the privilege of getting an automatic release of the merchandise in the port will be suspended.

Exemptions

Raw material to be used in Puerto Rico for the manufacture of finished products, excluding hydraulic cement, is exempt from the excise tax. Also considered as exempted articles in transit and for export are those consigned to the dealer/importer with the intent of having them exported. These articles are exempt from the excise tax during the period they are in the custody of the custom authorities or deposited in a bonded warehouse or in a Foreign Trade Zone. Additionally, articles introduced into Puerto Rico or originally acquired in Puerto Rico from a local manufacturer are exempt from the excise tax if they (i) have not been sold, used or transferred in Puerto Rico, or (ii) are in possession of dealers-importers or dealers who have acquired them from manufacturers in Puerto Rico and sold for use and consumption abroad.

Sales and Use Tax

Every merchant engaged in any business that sells taxable items is responsible to collect the Sales and Use Tax (SUT) as a withholding agent. The SUT rate is 7% (5.5% for the Commonwealth of Puerto Rico and 1.5% for municipalities; however 6% is always collected by Hacienda) and in general will apply to the following items:

- Taxable personal property
- Taxable services
- Admission rights

In general, the person that buys, consumes, uses or warehouses for use or consumption a taxable item is the one responsible for the payment of the sales and use tax. However, if the transaction is subject to the sales and use tax and the merchant is required to collect said tax from the buyer as a withholding agent, the merchant is responsible for the payment of the sales and use tax. If the merchant does not meet the obligation of collecting the sales and use tax from the buyer, the Treasury Department may collect the sales and use tax from either the merchant or the buyer. Every merchant must file a Monthly Sales and Use Tax Return on or before the 10th day of the following month in which the tax is collected. The law provides an exemption from the SUT to the resellers on every taxable item acquired for resale and to manufacturing plants on raw

material and machinery and equipment for use in the manufacturing process. In order to claim this exemption, the merchant has to request the Certificate of Exemption to the Secretary of the Treasury.

Merchants subject to the Act must keep the following for a period of no less than six years:

- Accounting records
- Papers
- Documents
- Invoices
- Commercial receipts
- Canceled checks
- Payment receipts
- Certificates of exemptions
- Shipping documents
- Evidence of the taxable items received, used and sold
- Collection records
- Any other evidence related to the sales and the amount of the sales tax withheld and paid to the Secretary of Treasury.

Merchants that use the accrual method of accounting may claim a sales tax credit for the sales tax paid on sales that resulted in bad debts. Said credit may be taken in the monthly return after the month in which the account became a bad debt.

Gift Tax

The Puerto Rico gift tax will be imposed based on the fair market value of the property donated less any obligation assumed by the donee as a result of accepting the gift. The donor is the person primarily liable for the payment of Puerto Rico gift tax. However, the recipient may also be held personally liable up to the value of the property received as a result of such gift. For donors residing in Puerto Rico, the Puerto Rico gift tax is applicable to gifts of property located anywhere in the world. For donors not residing in Puerto Rico, the Puerto Rico gift tax is only applicable with respect to gifts of property located in Puerto Rico. An exclusion from the total amount of gifts made during a year is available to a donor with respect to the first USD10,000 donated to each donee. If the property being donated is community property, each spouse, separately, may use the USD10,000 exclusion. The rates of the gift tax and the estate tax are the same, ranging from 18% applicable to taxable gifts up to a maximum rate of 50% for the portion of the value of taxable gifts that exceed USD2.5 million. The gift tax return is due on or before April 15 of the year following the year of the gift.

Estate Tax

Different formulas are used for determining the gift and estate tax of U.S. citizens who did not acquire their U.S. citizenship by being born or naturalized in Puerto Rico and were residents of Puerto Rico at the time of death, and those individuals who were nonresidents of Puerto Rico at the time of death but had certain property located in Puerto Rico.

Under the Puerto Rico Civil Code, the gross estate includes all the property, rights and obligations of the decedent that are not extinguished by death. As a general rule, the estate of a decedent that was a resident of Puerto Rico at the time of death includes all the property of such decedent, wherever located. However, the estate of a nonresident alien or person who was a resident of Puerto Rico at the time of death but did not acquire U.S. citizenship solely by reason of being a citizen of Puerto Rico or being born or residing in Puerto Rico, will be taxed only on the part of the estate located in Puerto Rico. In such cases, the estate tax will equal the maximum foreign estate tax credit granted under the U.S. Internal Revenue Code for the portion of the gross estate located in Puerto Rico. Upon the death of a decedent, an estate tax lien is automatically imposed on all the assets of the decedent. A Release of Estate Tax Lien will not be issued until the estate tax return is filed and all taxes owed by the decedent to the Commonwealth of Puerto Rico (including income taxes) or to its municipalities, have been fully paid. If the outstanding taxes are prescribed, a certificate to that effect must be obtained.

The executor of an estate is the person primarily liable for the payment of the Puerto Rico estate tax. After filing the estate tax return and paying the corresponding estate tax, the executor may ask the Secretary of Treasury that he or she be released from personal liability with respect to the payment of deficiencies. If the Secretary of Treasury does not reply to the request, the executor is released from that liability one year after the date of the filing of the request. The Puerto Rico Internal Revenue Code establishes a limited number of deductions to reduce the gross estate, which depends on the property transferred or the recipient; for example, it grants a deduction from the gross estate equal to the fair market value of property located in Puerto Rico. As a result of this deduction, most estates in Puerto Rico are exempt from Puerto Rico estate tax. Residents of Puerto Rico are permitted a USD400,000 deduction. However, this deduction will be reduced by the amount of the deduction allowed for property located in Puerto Rico. Hence, if the value of the property located in Puerto Rico is equal to or exceeds USD400,000, the fixed exemption will be completely eliminated. The rates of the estate tax are the same, ranging from 18% applicable to taxable estates with a fair market value of USD10,000 or less, up to a maximum rate of 50% for the portion of the value of taxable estates that exceed USD2.5 million. The estate tax return is due on or before 270 days after the decedent's death.

Payroll Taxes

Puerto Rico Income Tax Withholding

Under the Puerto Rico Internal Revenue Code, the employer is required to withhold income tax at source upon the salaries and wages paid to its employees performing services in Puerto Rico. The withholding rates depend upon the personal exemption and credits for dependents claimed in the withholding exemption certificate to be completed by every employee. The Secretary of the Treasury has issued tables for the determination of the tax to be withheld included in an instruction manual. There is no wage limitation for the withholding. Every employer having one or more employees should withhold the tax. The date for depositing the amount withheld will depend on the classification of the employer as a monthly depositor, a biweekly depositor or a next-day depositor.

A monthly depositor is an employer that, during the base period, withheld Puerto Rico income tax of USD50,000 or less on the wages of its employees. Such an employer must deposit the amount withheld on or before the 15th day of the month following the withholding.

A biweekly depositor is an employer that, during the base period, withheld Puerto Rico income tax of more than USD50,000 on the wages of its employees. Such an employer must deposit the amount withheld as follows:

- If the payment of the salary or wage was made on a Wednesday, Thursday or Friday, the deposit must be made no later than the following Wednesday.
- If the payment of the salary or wage was made on a Saturday, Sunday, Monday or Tuesday, the deposit must be made no later than the following Friday.

A next-day depositor is an employer that on any day within a deposit period accumulates USD100,000 or more of Puerto Rico income tax withheld on the salaries and wages of its employees. Such an employer must deposit the amount withheld on the next banking day. From that day onwards such an employer will be considered to be a biweekly depositor.

FICA Tax

The provisions of the United States Federal Insurance Contributions Act of 1935 (FICA) apply in Puerto Rico. Under this act, both employers and employees are required to contribute to the Social Security Fund that was established to provide retirement benefits for all workers. For the year 2009 the tax rate is 7.65% for employer and 7.65% for employee. Each percentage is comprised of 6.2% for social security and 1.45% for hospital insurance. Self-employed individuals are subject to the total 15.3% tax rate on net earnings from carrying on a trade or business. The Social Security Tax is computed on the first

USD106,800 of wages received and the Medicare tax is computed on the total wages, without ceiling. The quarterly return of combined employer and employee social security taxes is due on April 30, July 31, October 31 and January 31. The return along with the payment should be filed with the Internal Revenue Service. The employer must give the employee two copies of Form W-2PR on or before January 31, following the end of the calendar year in which the tax was withheld. Employers must determine how frequently they should deposit the social security taxes every year. Which category an employer is in for a calendar year will be dictated by the amount of employment taxes reported for a one year look back period ending the preceding June 30.

Puerto Rico Unemployment Tax

Each employer pays this tax on the first USD7,000 of annual wages paid, based on an experience rating system. In addition, every employer must pay a special tax of 1% of all taxable wages. However, the special tax together with the experience-based tax would not exceed 5.4% and may be credited against the Federal Unemployment tax mentioned below. The tax must be paid on or before the last day of the month following each calendar quarter along with the quarterly return. The Puerto Rico Department of Labor requires every employer hiring 25 employees or more to file the quarterly payroll tax forms electronically.

Federal Unemployment Tax

The Federal Unemployment Tax Act (FUTA) provisions apply in Puerto Rico as well as in the United States. The tax is imposed on persons who employ one or more individuals for a portion of a day in each of 20 weeks in the current or preceding calendar year, or who pay in the aggregate USD1,500 or more of wages in a calendar quarter of the current or preceding calendar year. The tax must be deposited on or before the last day of the month following each calendar quarter if the tax exceeds USD500. An annual return must be filed on or before January 31. The FUTA tax rate for 2008 is 6.2% (0.8% after a credit of 5.4% for the Puerto Rico unemployment tax) on the first USD7,000 of wages paid to an employee each calendar year. The tax is deposited quarterly. Any excess is deposited with the last quarterly installment along with the annual return Form 940-PR due on January 31. No deposit is required if the tax is USD500 or less. The amount must be added to the tax for the next quarter. Then, in the next quarter, if the total non-deposited tax is more than USD500, it must be deposited. If the liability for the fourth quarter (plus any non-deposited amount from any earlier quarter) is over USD500, the entire amount must be deposited by the due date of the annual return (January 31).

Disability Benefits Tax

The Disability Benefit Act provides benefit payments to employed workers who suffer the loss of wages as a result of disability due to illness or accident not

connected with employment. This Act provides a tax of 0.60% on the first USD9,000 of wages paid during the calendar year by an employer to an employee. Both the employer and employee share the tax imposed evenly (the employer is liable for 0.3% and the employee for the other 0.3%). Employers must pay the full amount of the disability benefits tax on or before the last day of the month following each calendar quarter. Payment must be accompanied with the quarterly return. Thus, the filing of the quarterly return and the corresponding payment are due on April 30, July 31, October 31 and January 31.

State Insurance Fund Corporation (FSE)

The Workmen's Accident Compensation Act establishes a compulsory insurance program covering employees who suffer injury, become disabled or lose their lives due to a job-related accident or function. The rate varies according to the type of labor performed by the employee. Rates are revised every year, and the tax is entirely borne by the employer. By July 20 of each year, every employer must file a payroll statement showing the number of employees, occupation or industry classification and the respective total amount of wages paid during the immediately preceding fiscal year ending June 30. At the end of each fiscal year, the manager of the fund compares the payroll reported with that of the preceding fiscal year, upon which the current year's premium is based. The premium is then adjusted accordingly. All employees are legally required to be covered under workmen's compensation insurance. If an employer fails to pay the workmen's compensation insurance premium, that employer will not be covered for the corresponding period and will continue to be liable for such premiums and for the corresponding penalties for late payment. In such cases, employees suffering an accident may still benefit from the services offered by the State Insurance Fund as if the employer had been up to date in its payments. However, in those cases the State Insurance Fund will collect from the uninsured employer all the costs and expenses incurred in relation to the injured employee.

Chauffeurs' Insurance

The purpose of the chauffeurs' tax is to provide insured workers with sickness and disability pensions, a bonus to the insured after reaching the age of 65, and compensation to surviving spouses and children under 15 years of age, in the event of the death of the insured. The sickness, disability or death need not be work-related. No sickness pension is paid if the case is compensated under the State Insurance Fund. However, if the State Insurance Fund compensation is less than the worker would receive under the Chauffeurs' Insurance Fund, the difference will be paid by the Chauffeurs' Insurance Fund. If the employer hires non-executive employees who are required or permitted to operate motor vehicles as part of their responsibilities, chauffeurs' insurance must be paid instead of the Puerto Rico Disability Benefits Tax. Employers pay a tax of 30

cents weekly for each covered employee, who pays 50 cents weekly. The total is withheld by the employer from the covered employees' compensation and is remitted with the quarterly return no later than 15 days after the last day of each calendar quarter. The Puerto Rico Department of Labor requires every employer hiring 25 employees or more to file the quarterly payroll tax forms electronically.

Other Taxes

Alcoholic Beverages Tax

Distillers, rectifiers, producers, manufacturers and importers are generally taxed on distilled spirits, wines with 24% or less alcohol content by volume, imported champagne and sparkling or carbonated wines or imitations thereof, and beer, ale, porter, malt extract and other similar fermented or unfermented products. If wines, champagne and sparkling carbonated wines or imitations thereof have more than 24% alcohol content by volume, they are considered distilled spirits. The tax is imposed on a per-wine gallon or a per-proof gallon. Alcoholic beverage tax rates range from USD0.97 per-wine gallon up to USD31.29 per-proof gallon for the various classifications of distilled spirits, wines, champagne and sparkling wines.

Construction Tax

The Autonomous Municipalities Act of Puerto Rico grants the municipalities the power to impose and collect construction taxes within the territorial limits of the municipality. The construction tax rate varies from municipality to municipality but is generally around 4% or 5% of the cost of the project. The cost of the project for work performed outside Puerto Rico is not subject to the construction tax. Specifically exempted from the construction tax are:

- Projects of nonprofit associations that provide affordable housing to moderate or low-income families that qualify under the National Affordable Housing Act
- Projects of nonprofit associations that provide affordable housing for persons 62 years or older that qualify under the National Affordable Housing Act
- Projects for the construction or rehabilitation of affordable housing qualifying under the New Housing Operation Public and Private Co-Partnership Program
- Projects for the construction of real property for leasing to moderate income families
- Projects for the expansion of buildings that promote, under the industrial incentives laws, the increase of employment and for which the tax exemption decree is still in effect

- Construction projects carried out under the management of an agency of the central government, or its instrumentalities, a public corporation, a municipality or an agency of the federal government.

This last exemption is not applicable to construction projects carried out by a person acting on behalf of, or by contract or subcontract executed with an agency or instrumentality of the central government, municipal government or an agency of the federal government. There are also exemptions for medical facilities.

Occupancy Tax

The room occupancy tax is 9% on the rates charged per furnished room in any building used for the rental of rooms to guests on a daily, weekly or fractional basis, or for a global all-inclusive service. If the building facility or facilities include a duly authorized casino, the room occupancy tax is 11% of the rates charged per room. However, if the facility is authorized by the Puerto Rico Tourism Company to operate as a Puerto Rico inn (*parador*), the tax rate is 7%. Motels are subject to a 9% room tax if the daily rate exceeds USD5 a day. Facilities that operate as all-inclusive hotels are subject to a room tax equal to 5% on the total amount charged per day. Short-term supplementary lodgings that do not qualify as a hotel, condo-hotel, all-inclusive hotel, motel, Puerto Rico inn (*parador*), small inn, guest house or apartment hotel, but are dedicated to the rental of rooms for fewer than 90 successive days, are subject to a 7% tax. These short-term supplementary lodgings may include houses, apartments, cabins and villas. The room tax is to be paid on the 10th day of the month following the month in which it was collected. A monthly return must accompany the tax. Some municipalities have approved municipal ordinances imposing a tax on the guests of hotels, motels, guesthouses, paradores and inns for the rooms that they rent thereat. The municipality of Vieques has approved an ordinance imposing an occupancy tax in that municipality.

Special Tax Treatment Zones

Free Trade Zones

Puerto Rico is within the customs jurisdiction of the United States. Therefore, imports into Puerto Rico from foreign countries are subject to applicable duties under corresponding U.S. customs and imports laws. U.S. customs laws provide for the establishment of free trade zones. There are four free trade zones (FTZ) in Puerto Rico: (1) FTZ No. 61 located in the metropolitan area near the San Juan port facilities; (2) FTZ No. 163 located near the port facilities in Ponce; (3) FTZ No. 7 located in Mayagüez; and (4) sub-zones located throughout the island in certain PRIDCO industrial parks.

Bonded Warehouses

Articles deposited in a bonded warehouse during the period of time they remain deposited are considered as exempted from the excise tax.

INCENTIVES

BUSINESS, MANUFACTURING AND SERVICES

Puerto Rico has long been a destination for investment for industry, although the focus has shifted in recent years from heavy and labor-intensive manufacturing to high-technology, high-value-added and services-oriented enterprises. The Puerto Rico Industrial Development Company is the primary government agency charged with promoting industry, and it is especially focused on attracting and developing high-technology enterprises like biosciences, information technology and professional services.

The Economic Incentives for the Development of Puerto Rico Act (Act 73)

The Economic Incentives for the Development of Puerto Rico Act provides attractive tax and other incentives to foster investment in key sectors of Puerto Rico's economy.

Eligible Businesses

"Eligible businesses" can apply to qualify for incentives under Act 73. In general terms, eligible businesses include: businesses established to manufacture products on a commercial scale; businesses established to render services on a commercial scale for foreign markets or for other eligible businesses in Puerto Rico; and businesses established to engage in a wide range of specific economic activities, such as scientific research and development, the generation of renewable power, recycling, hydroponics, value-added activities pertaining to port operations, software development, manufacture of renewable energy equipment, and others. In some cases, there are other criteria that must be met, but generally a wide range of economic activities will qualify as an eligible business under the Act.

Application for a Decree

Act 73 operates through a tax decree—issued for a period of 15 years—that the government of Puerto Rico grants to approved eligible businesses. The decree identifies and ensures the incentives to which the eligible businesses are entitled. To obtain a decree, an eligible business must submit an application, with all required supporting materials and fees, to the Office of Industrial Tax Exemption. Once the application is duly filed, the decree should be granted or denied within 70 days.

Standard Incentives

Approved eligible businesses qualify for the following benefits:

- Income Tax Rates
  - Typically, eligible businesses are subject to a 4% income tax rate and a 12% withholding tax rate on royalties. Alternatively, with approval from the Secretary of Economic Development, an eligible business may be subject to a 8% income tax rate coupled with a 2% withholding tax rate on royalties.
  - An eligible business engaged in a Novel Pioneer Activity (ie., socially or economically beneficial activities that have not been carried out in Puerto Rico during the previous year) will be subject to a 1% income tax rate.
  - Income from economic activities that create or develop intangible property in Puerto Rico will be subject to a 0% tax rate.
  - An additional reduction of 0.5% from the fixed 4% tax rate will be available to eligible businesses that are established in a low or intermediate industrial development zone.
  - Eligible businesses that locate their operations in Vieques and Culebra shall be totally exempted from the payment of income tax for the first 10 years of their decree, after which they will be subject to a 2% tax rate.
- Withholding Tax Rates on Royalties or License Fees
  - Nonresidents not engaged in trade or business in Puerto Rico will be subject to a 12% withholding tax on royalties or license fee payments for the use of intangible property in an eligible business. This rate may be reduced to 2% by the Secretary of Economic Development.
- Investment Income
  - Eligible businesses are not required to pay taxes on income derived from "eligible investments," which are specified in the Act and typically involve debt and/or equity investments in certain local real estate, business activities and securities.
- Distributions
  - The stockholders or partners of a corporation or partnership with a decree shall be totally exempted from taxes on the distribution of dividends or profits.
  - Gains realized from the sale or exchange of equity shares of an eligible business or of substantially all of the businesses assets, if such sale is executed while the business's decree is still in force, shall be subject to a 4% tax. After the decree

has expired, the tax treatment will be adjusted to limit the benefits to gains generated while the decree was in force.

- No income tax shall be levied on or collected from the transferor or transferee with respect to the complete liquidation of an exempted business.

- Tax Credits
  - An eligible business that purchases products manufactured in Puerto Rico will be permitted to claim a credit of 25% of the purchase cost, up to a maximum of 50% of its tax liability; for products made from recycled materials, the credit shall be equal to 35% of total purchases up to the 50% limit.
  - Eligible businesses can receive a tax credit for each job created during the first year of operations. The size of the credit will depend upon where the exempted businesses are located: in Vieques and Culebra, the credit is USD5,000 per job; in a low industrial development zone, it is USD2,500 per job; and in an intermediate industrial zone, it is USD1,000 per job.
  - Eligible businesses can receive a credit of 50% of the investment for investments in research and development, clinical trials, toxicology tests, infrastructure, renewable energy and intangible property.
  - Eligible businesses can receive a tax credit of 50% of the investment for investments in machinery and equipment for the generation and efficient use of energy. For eligible businesses that invest to generate energy for their own consumption, the credit will be capped at 25% of the business's income tax. For eligible businesses dedicated to the production and sale of energy in Puerto Rico, the credit will be capped at USD8 million for each eligible business, up to an aggregate maximum of USD20 million for such investments by all eligible businesses per year.
  - All eligible businesses that are industrial clients of the Puerto Rico Electric Power Authority can receive a tax credit of 3% of their electricity payments. A higher credit (3.5%) is available for eligible businesses that retain 25 employees or an average payroll of USD500,000 or more during the taxable year.
  - Eligible businesses can receive a credit for 12% of all payments made for the use or right to use intangible property in their exempt operation in Puerto Rico.

- Eligible businesses can receive a credit of 50% of the amount of any investment in a "strategic project," as defined in the Act.
- Investors can receive a credit of 50% (1) of the cash amount used to purchase the majority (50% or more) of the equity interest or operational assets of an exempted business that is in the process of closing operations in Puerto Rico or (2) of the cash amount contributed to a small- or medium-sized business in exchange for corporate stock or partnership interest used for construction or improvements of the physical facilities and purchase of machinery and equipment.

- Real and Personal Property Tax
  - Eligible businesses shall receive a 90% exemption from municipal and Commonwealth property taxes on personal property used in the businesses' development, organization, construction, establishment or operation.
  - For the first five years of operations, eligible businesses shall receive a total exemption from the payment of property taxes on real property used for its central or regional corporate headquarters rendering centralized management services to affiliated entities.
  - Eligible businesses shall receive a complete exemption from real property taxes during the period authorized under the grant to carry out the construction, expansion or establishment of the tax-exempt business, and during the first government fiscal year during which the business would have been subject to property taxes.
  - Eligible businesses can also take advantage of the benefit afforded by the Optional Self Assessment, as described in the Act for real property taxes. This method may be used exclusively for that property which should be properly considered as real property because of the use and location to which it is destined and that is used in the development, organization, construction, establishment or operation of the exempted business; and that property has not been assessed by CRIM.
- Municipal License Tax and Other Municipal Taxes
  - Eligible businesses shall enjoy full exemption from municipal taxes or municipal licenses that apply to the volume of their business generated during the quarter of the government fiscal year in which the exempted business commences operations and continuing for the two following semesters.

- Eligible businesses shall be fully exempt from any tax, levy, fee, license, excise, rate or tariff imposed by any municipal ordinance on the construction of works to be used by the exempted business within a municipality (such taxes do not include the municipal license tax levied on the volume of business of contractors or subcontractors of the exempted business).
- Income obtained from investments that qualify shall be totally exempt from municipal licenses, municipal excises and other municipal taxes.
- Eligible businesses enjoy the following exemptions from municipal licenses, municipal excises and other municipal taxes imposed by any municipal ordinance:
  - Exempted businesses in Vieques and Culebra shall enjoy 90% exemption.
  - Small- or medium-sized businesses shall enjoy 75% exemption.
  - Central or regional corporate headquarters engaged in rendering centralized management services to affiliated entities shall enjoy 100% exemption during five years from the date the exemption begins.
  - Other businesses shall enjoy a 60% exemption.

• Commonwealth Excise Tax and Sales and Use Tax.

The following items directly or indirectly introduced or acquired by an exempted business will be totally exempt from Commonwealth excise and sales and use taxes during the life of the decree:

- Raw material (except hydraulic concrete, crude oil, partially manufactured products, finished oil products, and finished products from any other hydrocarbon mixture) to be used in Puerto Rico to manufacture finished products. Raw materials include: any product in its natural form, derived from agriculture or extractive industries; any product, residual product, or partially manufactured or finished product; and sugar by the bushel or in units of 50 pounds or more to be used exclusively in the manufacturing of products;
- Machinery and equipment (and accessories thereof) used exclusively in the manufacturing process or in the construction or repair of ships, inside or outside the premises of a manufacturing plant;
- Machinery, trucks or forklifts used exclusively and permanently to transport the raw material within the circuit of the tax-exempt business;

- Machinery, equipment and accessories used to carry out the manufacturing process, or which the tax-exempt business is under the obligation to acquire as required under federal or Commonwealth laws or regulations for the operation of an industrial unit. The exemption shall not cover machinery, devices, equipment or vehicles used in whole or in part in the administrative or commercial operations of the exempted business, except in those cases in which these are also used in at least 90% in the manufacturing process or in the construction or repair of vessels;
- Machinery and equipment that must be used by an exempted business to comply with environmental, safety and health requirements;
- Machinery, equipment, parts and accessories used in experimental or reference laboratories;
- Machinery, equipment, parts and accessories used in the preliminary phase of region exploration geared to the mineralogical development of Puerto Rico, and the dry docks and shipyards for the construction or repair of vessels;
- Fuel used by the exempted business covered by the Act in the cogeneration of electric power for its own use or for the use of its affiliates;
- Chemicals used by the exempted business in sewage treatment; and
- Energy-efficient equipment, properly certified by the Energy Affairs Administration.

Special Incentives

The following special incentives have been created to encourage the establishment and retention of local and foreign investment in Puerto Rico.

Basic Incentive for Job Creation

Companies that are promoted 132 by PRIDCO, including both local and non-local businesses that meet their commitments related to job creation and retention, receive a basic incentive payment for each employee hired. The incentive is USD400 per employee for new businesses and USD250 per employee for existing business expansions. The company will receive an orientation from PRIDCO and must submit, within a year from the promotion date, certain information for evaluation.

Incentive for Job Creation and Location

In addition to the basic incentive above, companies that are promoted by PRIDCO can receive a location-based incentive for job creation outside of the San Juan metropolitan area. This incentive will be available for local and non-local businesses, and it depends on the geographical location of the company and the number of persons that will be employed. The company will receive an orientation from PRIDCO and must submit, within a year from the promotion date, certain information for evaluation.

Special Aid for the Rescue of a Project

Where a PRIDCO-promoted business intends to cease operations or reduce its workforce by 50% or more, a new owner committed to keeping at least 25% of the employees who are working at the moment of the rescue may be entitled to assistance. The new owner will receive an orientation from PRIDCO and must submit, within six months from the promotion date, certain information for evaluation.

Incentive for Assisted Projects

Established companies that are not promoted by PRIDCO, including both local and non-local businesses, may be eligible to receive special aid for creating jobs that are "additional to" the base employment level established by PRIDCO for this company. The company will receive an orientation from PRIDCO and must submit, within a year from the promotion date, certain information for evaluation.

Incentive for Strategic Projects

Companies that are promoted by PRIDCO that execute projects that have extraordinary importance for the economy of Puerto Rico—i.e., because they create and maintain a large number or high quality jobs, promote new technology, transfer technology business knowledge, or are otherwise considered highly meritorious by the Executive Director and the Board of Directors of PRIDCO—may be eligible for incentives. The company will receive an orientation from PRIDCO and must submit certain information for evaluation by PRIDCO and approval by PRIDCO's Board of Directors.

Incentive for Infrastructure Development and Industrial Building Improvements

Companies that are promoted by PRIDCO may be eligible for an incentive to improve buildings that belong to PRIDCO that are necessary for the companies' operations. As a general rule, the infrastructure incentive is not available for improvements to private buildings unless they can help create and retain jobs, in which case board of directors approval is required. The company will receive an orientation from PRIDCO and must submit certain information for evaluation by PRIDCO, including project drawings, specifications, cost estimates, agency

approvals and any other document required for the installation or construction of the improvements. The application for this incentive must be prepared and certified by a licensed engineer or architect.

Incentive for the Puerto Rican Industry Manufacturing of Furniture and Related Products, and the Apparel Industry and Similar Products

This incentive is available for Puerto Rican businesses that have been operating for at least one year in the manufacture of furniture or related products or in the manufacture of apparel or similar products that qualify for the economic incentives provided by the Act No. 8 of 1986. Moreover, this incentive can be granted in addition to other special incentives. Businesses that qualify for the incentive will receive a cash incentive of 3% of eligible sales, up to a maximum amount of USD150,000 per business per year. The incentive can be used to acquire raw materials, machinery or equipment; acquire and/or improve the company's manufacturing facilities; pay production payroll (where the company is not already participating in another reimbursement program); subsidize the lease of buildings housing the manufacturing process; acquire technical assistance, training in new production techniques, administration, promotion, and/or marketing; improve services through computerized equipment; promote the business's services and/or products outside Puerto Rico; make interest payments on loans related to operations; and other purposes established under Act No. 8 1986. To qualify, a company must apply during July or August and submit all required documentation to PRIDCO. The application will be received and evaluated by the Office of Strategic Planning and Economic Analysis. Once it is determined that the company is eligible, it can request the incentive at the end of each trimester.

Incentive for Industries Located in Vieques and Culebra

Companies that are promoted by PRIDCO may be eligible for a cash incentive of up to USD100,000 for establishing and operating a business in Vieques or Culebra. The incentive can be used for maritime, land and aerial transportation of raw material and finished products, including labor costs, tolls and other expenses related to transportation, based on an evaluation by PRIDCO. The eligible company may request the incentive at the end of each trimester, after the commencement of operations has been certified, or at the end of the fiscal year, whichever is more convenient. The application must include detailed costs. The commitments will be formalized through a contract.

Marketing Incentives Program

This matching fund is available to qualified, local, PRIDCO-promoted companies whose sales are greater than USD100,000 per year and whose commencement of operations has been certified. Through this incentive, PRIDCO will reimburse 50% of the cost incurred, up to USD50,000, for publicity, publications, promotional material, market research and for special promotional activities.

The company must submit the application to PRIDCO for evaluation at least 60 days before the promotional campaign or marketing activity will be carried out.

Special Fund for Economic Development

Puerto Rico is focused on attracting research and development to the island. Law 73 established a Special Fund for Economic Development (known as the FEDE). This fund can be utilized for the following programs or uses:

- Scientific research, development of new industrial products or processes, improvement of existing products or processes in nonprofit private educational institutions;
- Special incentives for scientific and technical research and the development of new industrial products and processes, improvement of existing products and processes, research and development directed to bioscience, information technology, biomedics, agricultural biotechnology, aeronautical engineering and renewable energy, among others;
- Industrial incentives program administered by PRIDCO in furtherance of its industrial promotion efforts, including the improvement and development of industrial property;
- The development and establishment of special programs of self-employment or micro-enterprises to integrate persons who are economically disadvantaged into the mainstream of modern socioeconomic development;
- Special incentives for the establishment in Puerto Rico of industries of strategic importance to the government, including the investment in venture capital funds that promote this type of industry, upon authorization by the Economic Development Bank;
- Special incentives for the acquisition of exempted businesses by their management;
- Special incentives for establishing programs to further and promote investment, technology and training of small and medium businesses;
- Financial support to community businesses;
- Special incentives for the establishment and development of the strategic projects in the Act;
- Support for entities or programs dedicated to:
  - furthering the establishment of networks of public Internet access and reducing the digital divide in PR;
  - rendering consulting services in information systems for small or medium businesses;

  - establishing incubation centers that provide a support structure and a proper framework for the establishment and development of new companies through specialized resources;
  - establishing centers and training programs in information and communication systems for unemployed people throughout the island;
  - establishing educational programs at all levels with emphasis on languages, sciences and mathematics.
- Support regional initiatives for purposes of development of companies, research and development, establishment of incubators and other related objectives.

Similarly, the Puerto Rico Science, Technology and Research Trust (the Trust)—an autonomous entity that receives funding from the FEDE and the Scientific Research Fund of the University of Puerto Rico among other sources—provides a financing option for research, development and infrastructure projects in the fields of science and technology. Approximately 30% to 40% of the Trust's annual budget is used to finance corporate activities and projects that impact science and technology research and development in Puerto Rico. Between 30% and 40% is invested in academic projects (to match academic research initiatives), recruiting and retaining scientists, and creating an effective structure to commercialize products. Between 20% and 30% is earmarked for the development of research infrastructure, such as institutes, programs, incubators and more. Applications to the FEDE should be submitted to the Executive Director of PRIDCO. The application must be approved by the board of directors of PRIDCO.

Agriculture

The Agricultural Incentives Law

The Agricultural Incentives Law provides incentives to bona fide farmers and agricultural businesses. To qualify as a bona fide farmer, an applicant must obtain (1) a certification from the Secretary of Agriculture that the applicant is engaged in an agricultural business, as defined by regulation, and (2) a determination from the Treasury Secretary that 50% of the applicant's income derives from this agricultural business. To obtain the certification from the Secretary of Agriculture, the applicant must apply through the Department of Agriculture's regional offices, where local agronomists evaluate and, if appropriate, endorse the application. Then, the application is referred to department headquarters for further evaluation, where it is either denied or approved; if it is accepted, a bona fide agriculture certificate is issued to the applicant.

Annual Bonus for Agricultural Workers

Law 42 of 1971 establishes that the Secretary of Agriculture of the Commonwealth of Puerto Rico will pay an annual bonus to every person who (1) produces agriculture or livestock, (2) maintains a farm or its direct dependencies, or (3) affects the storage, transportation, distribution and marketing of farm produce.

Wage Subsidy Program to Eligible Farmers, Law 46 of 5 August 1989

Law 46 of 1989 subsidizes certain farm wages. Under this law, a farmer initially has to pay farm employees the required wages from his own pocket. The government of Puerto Rico, through the Agricultural Development Administration, will then reimburse the farmer (assuming the farmer otherwise complies with the law) the amount of the wage subsidy.

International Banking Entities (IBEs)

Puerto Rico's International Banking Center law permits the creation of international banking entities (IBE), which are essentially banks located in Puerto Rico that provide financial services to clients outside of Puerto Rico. IBEs are given attractive tax treatment of 0% in income taxes, dividends or other distributions of profits outside of Puerto Rico, distributions on liquidation, municipal license taxes and property taxes. It should be noted that Puerto Rico is considered a foreign jurisdiction under the U.S. International Banking Act of 1978 (IBA) and Puerto Rico IBEs are therefore exempt from the IBA's requirements for domestic financial institutions. Similarly, Puerto Rico IBEs are generally exempt from the U.S. Bank Holding Company Act (BHCA) and thus may be affiliated with commercial institutions (if the IBE accepts demand deposits and issues commercial loans; however, it will be considered a Bank under the BHCA).

International Insurers

Puerto Rico's International Insurer and Reinsurer Act 144 (IIRA) provides for the creation of international insurers, branches of international insurers, international reinsurers and holding companies. Protected cell plans and securitization plans are allowed. To qualify as an international insurer or reinsurer under the IIRA, an insurance company must be approved by the Insurance Commissioner. Generally, an international insurer is one that provides direct insurance only for risks outside of Puerto Rico, although it can provide surplus lines coverage and reinsurance for risks located in Puerto Rico. An international insurer holding company is a Puerto Rico legal entity that holds shares or other securities of an international insurer or another international insurer holding company. A branch is a business unit through which a foreign insurer not organized under Puerto Rico law carries out business transactions along the lines of an international insurer. International insurers, branches and

international insurer holding companies are given an attractive rate of 0% on income taxes, branch profit taxes, dividends or other distributions of profits, distribution in liquidation, municipal license taxes and property taxes. In addition, they are not required to file tax returns, and the revenues to nonresidents are also exempt from taxation. A response to a complete application presented before the Office of the Commissioner of Insurance is granted within 60 days.

Public-Private Partnerships 146

Puerto Rico has embraced public-private partnerships as a way to leverage the capital and expertise of the private sector with the management and oversight of the government to provide the public with needed assets and services. Puerto Rico's Public-Private Partnerships Authority is the public entity responsible for implementing public-private partnerships. Among its main functions are:

- Establishing priorities among key projects with high PPP potential;
- Conducting or commissioning analyses as well as feasibility, desirability and convenience studies regarding specific PPP projects;
- Creating and approving regulations to govern procedures leading to the establishment of partnerships;
- Evaluating the terms and conditions of each partnership contract and making recommendations to the PPPA board of directors and the partnering government entity; and
- Entering into direct contracts with third parties for specialized services related to the establishment of partnerships.

The Puerto Rico government plans to utilize PPPs for strategic projects like roadways, power plants and other public infrastructure projects. As of January 2010, some 28 strategic projects had been identified, representing an estimated USD7 billion investment.

Film and Creative Services

The Puerto Rico Film Commission (PRFC) was created in 1999 to develop the film industry on the island, in part by offering incentives to off-island producers looking to film their projects in Puerto Rico. The PRFC's primary incentive is a 40% tax credit. The PRFC also provides incentives for film-industry-related infrastructure projects. The 40% tax credit is calculated on expenditures and is issued in the form of a transferable tax credit. It applies to all payments to Puerto Rico residents for feature films, television series and miniseries (including Telenovelas), film soundtrack recordings, and film infrastructure projects. This "Puerto Rico spent" investment includes (but is not limited to) equipment, crew,

actors, travel (if through a local travel agency), hotels, stage ground rental and a percentage of the per diem. The tax credit is limited to 50% of the cash capital contribution. To be eligible, the payments to Puerto Rico residents have to be made by a licensed film entity. The film entity does not need to be organized in Puerto Rico, and it can be a single purpose company established in Puerto Rico or a subsidiary registered to do business in Puerto Rico. At least 50% of principal photography must be shot in Puerto Rico or USD1 million must be spent in Puerto Rico. In order to ascertain the amount of any tax credit that will be granted, a Puerto Rico budget is required. There are production services companies and local unit production managers that can do this work.

The Treasury Department may advance 50% of the estimated tax credit before shooting. In this case, the PRFC and the producer will estimate the tax credit based on the Puerto Rico budget. To obtain this advance, the film entity license must be obtained, the producer must provide a proof of completion bond or letter of credit in favor of the Treasury Department for the amount of the advance, or the PRFC audit must certify that 40% of the Puerto Rico budget has been spent.

Hotel/Hospitality Development

Tax Credits and Tax Exemptions

Puerto Rico's tax incentives package offers hotel developers a competitive advantage over developing in other destinations. The Puerto Rico Tourism Development Act of 1993 is the specific vehicle that depicts the parameters of such benefits. All exempt businesses will be entitled to full exemption from excise taxes on imported articles (except for inventory items) to be used in a tourism activity, provided it is established to the satisfaction of the executive director that a genuine effort was made to acquire such articles in Puerto Rico, but such acquisition was not economically justified taking into consideration quality, quantity, price or availability in Puerto Rico. Under the law, eligible businesses can qualify for a 10-year exemption from various Puerto Rico taxes stated above; the original 10-year term can be extended for an additional 10-year term. To be eligible, the business must be devoted to tourism activities utilizing (i) new facilities; or (ii) existing facilities which have not been used in a tourism activity for three or more years; or (iii) existing facilities for which there will be substantial renovations or expansions.

The Tourism Development Act, commonly referred to as Law 78, also provides for a tax credit of 50% of equity invested (including in land) by a developer, up to a maximum of 10% of the total investment. Specifically, any person who acquires an equity interest in a corporation or a partnership (either directly or indirectly through a Tourism Venture Capital Fund) that operates an exempt tourism business, or who invests in a condo hotel, will be entitled to an investment tax credit equal to 50% of the cash paid for such equity investment.

Land contributed to the corporation or partnership in exchange for an equity interest will also qualify for the investment tax credit. The 50% credit is to be taken in two installments: 25% in the first year of the investment and the other 25% in the second year. Any unused tax credits may be carried forward. The tax credits may be assigned, transferred or sold. The total amount of the investment tax credit that may be taken by all investors cannot exceed 10% of the total cost of the tourist project. If the 10% limitation is exceeded, the equity investors who are the developers of the project (as opposed to passive investors in the project) will be liable for excess investment tax credits taken by them. Any loss from the sale or other disposition of an eligible investment will be considered a capital loss or, subject to certain conditions, such loss may be taken as a credit against taxes during a five-year period. Developers typically sell the tax credits in the local Puerto Rico Capital Market and invest the proceeds into the project. In essence the tax credit lowers the amount of equity the developer must come up with as part of the project's capital structure. Applications for tax exemption under the Tourism Development Act of 1993 are filed with the Executive Director of the Puerto Rico Tourism Company and with the Secretary of the Treasury. Once the application is duly filed, the grant of tax exemption must be issued or denied within 120 days.

Incentives for Local Certified Suppliers

The Puerto Rico Tourism Company reimburses cruise ship owners 10% of food and beverage purchases made from certified local suppliers while the cruise ship is docked at any Puerto Rico port. The cruise ship owner must submit copies of all invoices for purchases from any certified local supplier and a detailed log of its purchase receipts for the end of each calendar month. PRTC will reimburse the cruise ship owner up to 10% of the reported purchases within 30 calendar days after receiving this documentation. During the regular term of this regulation, PRTC will also reimburse the cruise owner an additional 5% for purchases of products from or manufactured in Puerto Rico (as certified by the Puerto Rico Industrial Development Company and the Puerto Rico Department of Agriculture) made while docked at any Puerto Rico port.

Foreign Trade Zones

Puerto Rico has the largest noncontiguous Foreign Trade Zone (FTZ) system in the United States. The system allows companies to obtain significant financial savings, since raw material, components and packaging can be transported tax-free throughout these zones and items shipped abroad after processing are exempt from U.S. taxes. Benefits include:

- Deferment of federal customs duties;
- Deferment of Puerto Rico excise tax;
- No payment of municipal license taxes on exports outside the United States;

- No U.S. customs duties on labor, overhead or profit attributed to FTZ production operations; and
- Reduced time and effort in the activation process.

The Turks and Caicos Islands (TCI) lie 575 miles southeast of Miami and 39 miles southeast of The Bahamas. There are eight principal inhabited islands which have an estimated population of 35,000. The legal system is based upon English common law with local modifications, and the islands are governed by a Cabinet of locally elected ministers, presided over by a British-appointed Governor. To the extent that TCI statutory law does not apply or requires interpretation, the common law of England applies. The local currency is the U.S. dollar.

FOREIGN INVESTMENT

Foreign investment is heavily promoted. International firms and investors are encouraged to invest mainly in the areas of tourism and finance. Certain incentives such as customs duty exemptions are, in practice, made available for developments that are determined to be beneficial to TCI.

MAIN RIGHTS

There are no exchange controls and funds may be moved freely in and out of the jurisdiction.

A statutory body called The Financial Services Commission has been established with a view to licensing and supervision of various business and financial areas of interest including: Superintendent of Banks, Superintendent of Trusts, and Superintendent of Insurance.

ACQUISITION OF LAND BY FOREIGNERS

There is no restriction as to ownership or sale of land, which by far represents the most active market in TCI.

COMPANIES RECEIVING THE INVESTMENT

Receipt of foreign investment by TCI companies is not regulated. Exempted companies (the TCI version of an IBC) cannot acquire or hold land.

RESIDENCY REQUIREMENTS

Not required of foreign investors.

ENVIRONMENTAL REGULATIONS

At the present time no environmental legislation exists in TCI. An environmental impact study of land which is to be the subject of development is often required of large scale real estate developers prior to the grant of development permission.

BUSINESS ENTITIES

The incorporation and regulation of companies in TCI is governed by the Companies Ordinance 1981 (last amended in 2011) and by English common law. The Companies Ordinance recognizes four main forms of company: the ordinary company, the exempted company, the limited life company, and the foreign company.

Directors

All companies are required to have at least one director and one secretary, neither of whom need to be resident in TCI. A sole director of the company may also serve as the secretary. One narrow exception to this rule involves the Limited Life Company, whose articles can provide for management by the members or by a designated manager. Other officers for TCI companies may be established by way of the company's articles of association.

Registered Office

All companies are required to have a registered office in TCI.

Accounts and Records

All companies in TCI are required to keep proper books of accounts which give a true and fair view of the company's affairs and explain its transactions.

Minimum Capital Stock

There is no minimum capital requirement for companies in TCI; however, a company which is required to be licensed under the Banking Ordinance 1979, the Insurance Ordinance 1989, or the Trustees Licensing Ordinance 1992 will be obliged to have capital appropriate to the business it intends to carry on.

Number of Shareholders

One shareholder is sufficient, and shares may be held by nominees or trustees, if desired.

Annual General Meeting

Save for the first general meeting which is to be held within 15 months of the date of incorporation, a general meeting is required once per year. There is no statutory requirement to hold the meeting in TCI.

Formal Requirements

The requirement for original registration for TCI companies (thus excluding Foreign Companies) involves the filing at the Companies Registry of a Memorandum of Association and Articles of Association, both executed by a person agreeing to take at least one share or otherwise to become a member.

TRUSTS

As a common law British overseas territory in which the concept of the trust has long been accepted, TCI offers a highly favorable situs for trusts. The Law of Trusts in TCI is governed by the Trusts Ordinance of 1990. This provides statutory regulation of trusts in the islands. The Ordinance is comparable to the present trust legislation in the Channel Islands and the Cayman Islands and is generally regarded as a benchmark for off-shore trust legislation. It provides a safe jurisdiction for the assets of business persons and investors alike. The freedom afforded by the absence of tax treaties and exchange controls and the privacy ensured by the nonregistration of trust documents is restrained by a strict licensing regime under which the activities of those who hold themselves out as professional trustees are regulated.

The Ordinance is not intended to be an exhaustive code and the English principles and applicable case law continue to apply insofar as they are not overridden or varied by the statutory provisions. The Ordinance was enacted in TCI to cater to modern demands and includes features from other jurisdictions and some original provisions resulting from recommendations by respected English counsel.

It is to be noted that the Courts of the Turks and Caicos Islands have jurisdiction where the trust is a Turks & Caicos Trust; the trustee resides in the islands, the trust property is situated in the island, or the administration of the trust is found within the island jurisdiction.

Some of the main features of a TCI Trust are as follows:

Severable Aspects

The validity of the trust, the interpretation of its terms and the administration of the trust property are each regarded as severable aspects. The trust instrument may also provide for the law applying to each aspect to be changed from time to time.

Exclusion of Foreign Law

The Ordinance contains provisions excluding the applicability of foreign law to the creation of a TCI Trust and to dispositions made under it. For example, in the absence of an express term to the contrary, the laws of the settlor's home jurisdiction have no application to the question of whether the trust or any disposition of property of the trust is valid or enforceable.

Rule Against Perpetuities

This does not apply to a TCI trust. The trust instrument may specify the duration of the trust.

Concept of the Protector is Given Statutory Recognition

It is common, particularly in discretionary trusts where it is for the trustee to decide who is to benefit under the trust and when, to require the trustee to obtain the consent of a named party before exercising his powers.

Protective Trusts

The trust instrument may provide that the interest of a beneficiary is liable to be diminished or terminated or subject to a restriction on alienation (a protective trust).

Trustee to Act Fairly as Between Beneficiaries, Not Necessarily Evenhandedly

Trustees can be given wide discretion in relation to the various interests of beneficiaries and wide powers of accumulation and advancement. The overriding consideration is that they act fairly between one beneficiary and another.

Privacy

The Ordinance provides that a trustee is not required to disclose to any person any document showing he has exercised a power or discretion or performed a duty, nor to disclose to any person other than a beneficiary any document relating to or forming part of the accounts of the trust, unless required to do so by the terms of the trust or by an order of the court.

Supervision

All professional trustees in TCI must be licensed by The Financial Services Commission via the Superintendent of Trustees.

Benefits of a TCI Trust

Trusts can be used for tax-planning purposes. There are several different sets of circumstances under which persons might wish to dispose of their property during their lifetime. For example, in countries where taxes are levied upon a person's estate upon their death, it is prudent to mitigate the incidence of taxation by reducing the size of estate before death. Similarly, where the property is income-producing, disposing of the property may reduce the settlor's income tax liability. Settlors can minimize their tax liabilities through the use of TCI trusts particularly if they intend to move from one country to another. Where TCI is the situs of the trust, it may be possible to avoid tax on capital gains in the settlor's domicile in addition to any income tax which would otherwise be payable.

Where settlors reside in a country which does not recognize the trust concept and has laws which can override their will, they may, by the use of a TCI trust,

be able to prevent their property passing to members of their family who they wish to exclude.

Since the trust is a separate legal entity created when the settlor transfers assets by deed to a trustee for the benefit of named beneficiaries, the need for probate or letters of administration on the death of the settlor is eliminated.

Individuals, for any number of good reasons, may wish to keep their affairs private, for example, regarding asset ownership; this is effectively achieved by creating a TCI trust. Settlors can isolate property in an offshore trust and thereby minimize risk associated with economic and political instability.

TAXATION

There is no direct form of taxation in TCI – no income tax, company tax, withholding tax, capital gains or other tax on income, profits or assets. TCI does not tax foreign income and has no exchange control. The main sources of government revenue are customs duty and stamp duty, the bulk of the latter coming from real estate transactions.

Value Added Tax (VAT) on goods and services is set to be introduced on 1 April 2013.

STAMP DUTY

At the present time, the rate of stamp duty for a land transaction on the island of Providenciales ranges from 3.6% where consideration exceeds USD25,000 but does not exceed USD500,000 up to 9% where consideration exceeds USD3 million.

Stamp duty is also payable upon registration of security documents – 1% of the amount borrowed, 0.2% on share transfers – based on consideration passing, and 8% on the transfer of shares in a landholding company.

TREATIES/INTERNATIONAL TRADE AGREEMENTS

On 8 March 2002 the TCI entered into formal written commitment to the Organization for Economic Cooperation and Development's (OECD) principles of transparency and information exchange. In furtherance of this, at the end of 2009 the TCI government entered into a tax information exchange agreement with the Republic of Ireland, called the Ireland Agreement.

The Ireland Agreement was in turn incorporated as a schedule to the Tax Information Exchange Ordinance 2009 which deals with the exchange of information relating to taxes and for connected purposes. The Ordinance provides that where the TCI government becomes a party to tax information

exchange agreement similar to the Ireland Agreement, the Governor may prescribe that the terms of the Ordinance shall apply to the said Agreement, with such specified modifications as may be specified in the Order.

The functions and powers under the Ordinance are to be exercised by a person described as a "Competent Authority" who is appointed by the Permanent Secretary of Finance. When making an information request, the Competent Authority can require a person to provide such information as is requested in their notice provided that: (a) the person is reasonably believed to have the said information and (b) provided that the information is held by a bank, financial institution, person acting in an agency or fiduciary capacity such as a nominee or trustee or the information relates to beneficial ownership of a company, partnership or other person. Penalties for noncompliance could include a fine up to USD10,000 or imprisonment for a term not exceeding two years, or both.

Between July 2009 and 30 June 2010 the TCI has entered into tax information exchange agreements with the following countries: Ireland, Netherlands, United Kingdom, Denmark, France, Sweden, Norway, Iceland, Greenland, Finland, Faroe Islands, Australia, New Zealand, Germany and Canada.

LABOR LAW

The Employment Ordinance regulates the terms of employment in TCI.

MINIMUM WAGE

The minimum wage in TCI is USD5 per hour.

HIRING OF EMPLOYEES; LABOR CONTRACTS

Within four weeks of commencement of employment an employer must provide a written statement to the employee which contains specific employment terms relating to dates, remuneration, terms and conditions relating to work hours, holidays, sick time and other terms which are listed in the Employment Ordinance.

BENEFITS AND LABOR RIGHTS

Where an employer requires an employee to work overtime and the employee agrees to do so, the wage rate for the period worked overtime is double time on any public holiday, and at any other time where the employee works in excess of his normal working hours in any week, one-and-a-half times the basic wage.

HIRING OF FOREIGN EMPLOYEES

Hiring of foreign employees can only be effected by first obtaining a work permit authorizing the employment of that individual. The work permit can be limited in duration, may have attached conditions or restrictions, and can be revoked by the Immigration Board for a variety of reasons including public interest. Preference is given to the local labor force and every business requires a Business License under the Business Licensing Ordinance. There are a number of categories in the Business Licensing Regulations reserved for businesses controlled by local nationals.

TAXES AFFECTING SALARIES

There are no taxes affecting salaries. There is a national insurance system that provides payments in respect of retirement, incapacity, maternity, employment injury and old age. The amount of contribution payable in respect of an employed person other than public officer is 8% of one's earnings for that week (subject to a maximum contribution), of which 4.6% is payable by the employer and the remaining 3.4% is payable by the employee.

There is also a National Health Insurance scheme; contributions are 3% of the employee's salary payable each by the employer and the employee (subject to a maximum).

TERMINATION OF EMPLOYEES; SEVERANCE BENEFITS

Severance is payable only where an employee who has been continuously employed for at least two years by the same or associated employer is dismissed by reason of redundancy; or is laid off or kept on short-time for eight or more consecutive weeks and complies with requirements as to giving notice of intention to claim severance. Severance is paid at a rate of two-weeks' pay for each year of service and pro rata for each incomplete year.

A minimum period of notice of termination of employment is required for all employees. The minimum notice period ranges from one working day to two months depending on the employee's length of employment.

With a geographical area of 176,215 square kilometers and a current population of 3.2 million inhabitants, Uruguay is one of the smallest countries in South America. Its current growth is 5% per annum.

The Uruguayan legal system is based on written law, passed by Parliament and enacted by the Executive Power. The country is politically organized under a Presidential system, divided into three independent powers: Executive, Judicial and Legislative.

Uruguay is politically divided into 19 departments, each one with its own Municipal Government, Mayor and Department Council elected by democratic vote.

FOREIGN INVESTMENT

The government actively promotes investments and has a specific policy towards the attraction of foreign investment. The system is absolutely open and, from a fiscal viewpoint, it is nondiscriminatory between local and foreign investors. Foreign investors are entitled to the same incentives as local investors.

No special authorization is required for foreign investment in Uruguay.

Incentives available for local and foreign investors are focused on the creation of labor sources, the establishment of high-technology industries and the increase of exports. The most generic incentives are tax exemptions for certain types of investments.

ECONOMIC POLICY FRAMEWORK

In Uruguay there are no restrictions on the free inflow and outflow of foreign currency. Foreign currencies can be freely exchanged and they are all legal tender (this allows for contracts to be performed in any currency). Domestic and foreign investors are treated equally under the law.

INTERNATIONAL TRADE AGREEMENTS

In 1991, Argentina, Brazil, Paraguay and Uruguay signed the MERCOSUR treaty, which created a single free circulation market with a common external tariff that ranges from 0% to 23%. The first article of the above mentioned treaty states that there shall be free transit of goods, services, persons and capital between member states, thus eliminating customs duties. Taxes between MERCOSUR

countries are almost 0% for most products (there are exceptions) as long as the products from those countries meet the requirements of origin, which shall be controlled and certified by a representative of the importer. Bolivia and Chile have also partially adhered to MERCOSUR and have some preferences regarding international commerce.

MERCOSUR signatory countries have also signed agreements with other parties such as Israel, India and the Andean Community. Finally, Uruguay has also entered into an agreement with Mexico on import-export tax benefits.

BUSINESS ENTITIES

The law governing commercial companies in Uruguay is basically Act No. 16.060 or the Business Organizations Act, which contains most of the rules applicable to the incorporation, operation and liquidation of a business entity. In accordance with its provisions, business associations can be carried out under different legal formats, such as corporations.

Subsidiaries of foreign corporations are also authorized to carry out business activities upon following incorporation procedures.

CORPORATIONS *(SOCIEDAD ANÓNIMA, S.A.)*

Corporations must be incorporated by at least two founders. The main formalities for the setting up of a corporation include:

- Approval of the articles of incorporation and corporate bylaws by the government;
- Registration in the Commercial Public Registry; and,
- Publication in the Official Journal and another private journal.

There are no restrictions regarding the nationality or address of the company founders or directors. Once the incorporation process is finished, the stock capital may be owned by only one shareholder and may be issued in bearer or registered shares.

Corporate bodies of a corporation are the following:

- Board of Directors
- Shareholders' Meeting (ordinary and extraordinary)
- Fiscal Commission or Syndic (optional in the case of "close" corporations, which are those corporations whose shares are not offered to the public)

The ordinary shareholders' meeting must be held at least once a year at the corporate domicile to consider the year-end financial statements, to discuss the

performance of the board of directors, and to appoint its members and the Syndic of the company, if applicable.

The board of directors may be vested with the broadest powers or it may be subject to limitations depending on the shareholders' decision, in which case, those limitations must be set forth in the corporate bylaws.

The board of directors may have one or more members, either physical or legal persons, whatever their nationality, domicile or residence, whether shareholders of the company or not and their meetings are not required to be held in the country.

Shareholders are entitled to attend meetings and to vote directly or indirectly through an attorney in fact. In the latter case, a power of attorney duly notarized, or a private instrument in case of representation for a specific meeting, shall be sufficient.

Further to the capital stock, at least 25% of the authorized share capital must be paid in at the moment of incorporation, there being no legal requirements on the minimum or maximum amounts of capital.

Annual Obligations

Corporations are required to fulfill the following obligations:

- To keep accounting records and draw up financial statements at the end of each fiscal year;
- To call an ordinary shareholders' general meeting (annually) to approve the financial statements, evaluate board of directors' performance, and appoint the company authorities;
- To file the tax return and pay the applicable taxes.

LIMITED LIABILITY PARTNERSHIP *(SOCIEDAD DE RESPONSABILIDAD LIMITADA, S.R.L.)*

SRLs in Uruguay have the following characteristics:

- The liability of the partners is limited to their capital contribution, except for Business Income Tax (IRAE) and salary obligations;
- Interest parts in the company are nominative;
- A minimum of two interest part holders (partners) is required;
- SRLs are managed and represented by one or several individuals, partners or not, designated in the partnership agreement. In general, resolutions at the partners' meetings are adopted by those holding the majority of the interest parts if there are fewer than 20 partners. If there are 20 or more partners, the resolutions, in general, are adopted by a simple majority of votes of the partners present, counted as one vote per interest part (in such case the scheme is the same as the one for corporations).

SUBSIDIARIES OF FOREIGN CORPORATIONS

Subsidiaries of foreign companies may carry out their business in Uruguay and are subject to the bylaws of their head office. They must be registered at the Public Registry of Commerce and their incorporation must be published in the Official Gazette and another private journal. They must also be registered in the General Tax Office (DGI) and the Social Security Bank (BPS).

TAXATION OF LEGAL PERSONS

In general, taxes are levied only on activities carried out in the country, on the possession of assets located in the country, and on the corresponding Uruguayan income.

BUSINESS INCOME TAX (IRAE)

This applies to income from Uruguayan source obtained from any type of economic activity (industry, commerce, agriculture, cattle farming and services).

Uruguayan Source

Income obtained from activities carried out, assets located and rights used economically in Uruguay, regardless of the nationality, domicile or residence of the persons who take part in the activities, or of the location where the legal act is executed, is considered to be from Uruguayan source.

Taxable Amount

The taxable amount is determined by the difference between gross income and expenses necessary to produce said income, all duly documented.

Income and expenses are recorded on the accrual basis, as opposed to the cash basis.

Rate

Legal persons as well as foreign residents with a permanent establishment located in Uruguay are subject to income tax on their territorial source by applying a rate of 25%.

Authorized Deductible Expenses

Deductions are limited to those expenses which are deemed taxable income under IRAE, IRPF (personal income tax on physical persons) or IRNR (income tax on nonresidents) or under regulations on foreign income.

If the counterparty to the transaction incurs in expenses taxed at a rate lower than IRAEs, then the deduction will be limited to the amount resulting from applying the quotient between the applicable tax rate to such income and the IRAE tax rate to the expense (tax rate difference limitation).

Inflation Adjustment

In order to record the result caused by inflation, our tax regime establishes a global and simplified calculation system consisting of the application of the Wholesale Price Index on the net worth of the taxpayer at the beginning of the fiscal year, duly adjusted by the same rules applicable to IRAE.

Tax Loss

Tax losses can be deducted over a period of five years, updated pursuant to the Wholesale Price Index.

Transfer Pricing

As of the enforcement of the Tax Reform Act of 2007, Uruguay introduced transfer pricing regulations into its general tax system, regulations which did not exist before that time. Said regulations are aligned with those of other countries in the region, with the exception of Brazil, and are also aligned with OCDE guidelines.

Calculation Scheme

Following is the calculation process used for IRAE on the financial results of the income generating entity:

	NET PROFITS (according to the Balance Sheet)
(+ / –)	Fiscal adjustments
(+ / –)	Inflation adjustment
(–)	Nontaxable gross income
(+)	Costs associated with nontaxable income
(+)	Nondeductible expense
(=)	**FISCAL PROFIT OR LOSS**
(–)	Fiscal losses from previous years
(–)	Channeling savings
(–)	Investment exemptions
(=)	**TAXABLE AMOUNT**
	IRAE = 25% x Taxable Amount
(–)	IRAE advance payments
(–)	Tax benefits derived from government-approved projects (See IRNR, Taxable Amount, pg 456)
(=)	**TAX PAYABLE or TAX CREDIT**

Tax benefits; see IRNR Uruguayan Source & Taxable Income, pg 456

TAX ON THE DISPOSAL OF AGRICULTURAL AND CATTLE FARMING PROPERTY (IMEBA)

This indirect tax levies the first disposal of agricultural or cattle faming products made by producers to buyers who pay IRAE, official entities and exporters.

All agricultural and cattle farming producers must pay IMEBA, but those who must pay IRAE shall deduct their IRAE payments from their IMEBA payments. For small farmers or producers, IMEBA will take the place of IRAE as the final tax.

Producers who shall pay IRAE as their definite tax obligation (no option) are the following:

- Corporations, permanent branches of nonresident companies, Closed Investment Funds, official entities and trusts (except for guarantee funds);
- Taxpayers whose income exceeds an amount determined by the Executive Power;
- Those who obtain income from the sale of assets destined for agricultural and cattle farming, but not included in IMEBA; and
- Other agricultural and cattle farming products specified by the Executive Power.

IMEBA rates vary from 0.1% to 2.5% of the sales or the export prices, depending on the type of product.

NET WORTH TAX (IPAT)

This is an annual tax at the rate of 1.5% on the local (Uruguayan source) net worth of companies located in the country, adjusted as per the tax regulations, at the end of each fiscal year of the company.

Uruguayan Source

Assets located abroad are not considered for this tax.

Rate

Uruguayan and foreign legal persons pay IPAT at the rate of 1.5%.

Taxable Amount

The taxable amount of IPAT is determined by the difference between:

- The assets located in Uruguay, valued according to specific tax rules; and,
- Certain liabilities, specifically listed in the Uruguayan regulations as Deductible Liabilities.

The following are liabilities deductible from IPAT taxes:

- Yearly averages of credit balances (at the end of each month) of loans granted by:
  - financial institutions
  - other local entities authorized to grant loans on a regular basis
  - closed investment funds
  - trusts
- Debts with suppliers of goods and services of all types, with the exception of balances due on imports and debts with state entities not subject to IPAT;
- Debts for taxes not yet due, excepting IPAT;
- Securitized debt or debentures listed in financial markets under certain conditions.

When the company owns assets located abroad which are exempt from IPAT or which do not form part of the amount taxable by IPAT (Assets Not Taxed), only those liabilities that surpass the value of Assets Not Taxed are admitted.

Calculation Scheme

IPAT is calculated as follows:

ASSETS (according to the Balance Sheet)	
(+ / –)	Valuation adjustments
(=)	**FISCAL ASSETS**
(–)	Assets located abroad
(–)	Exempted assets
(=)	**TAXABLE ASSETS** (A)
LIABILITIES (according to the Balance Sheet)	
(+ / –)	Valuation adjustments
(=)	**FISCAL LIABILITIES**
(–)	Nondeductible liabilities
(=)	**DEDUCTIBLE LIABILITIES**
(–)	Assets located abroad + Exempted assets
(=)	**ADMITTED LIABILITIES** (B)
TAXABLE AMOUNT = A – B	
	IPAT = 1.5 % x Taxable Amount
(–)	IPAT advanced payments
(=)	**TAX PAYABLE** or **TAX CREDIT**

VALUE ADDED TAX (IVA)

IVA levies "the internal circulation of goods, the rendering of services in the territory of Uruguay, the entry of goods into the country and the value added to real estate on account of construction work."

Rates

The basic rate is 22% applicable to the majority of taxable goods and services rendered in the national territory.

There is a 10% minimum rate applicable to basic products such as some food products, drugs, hotel services and the first sale of real estate made by IRAE taxpayers. This concept includes the first disposal of real property with certain remodeling. The first sale of real estate with construction modifications is included in the concept as well.

IVA Calculation

The taxpayer pays the difference between:

- The IVA invoiced by the company (Sales IVA), and
- The IVA paid to its suppliers of goods and services or due on the import of goods to the country (Purchases IVA).

To be able to offset IVA from purchases, those goods and services must be directly or indirectly related to the activities which generated Sales IVA.

EXPORTS (0% RATE REGIME)

Exports of goods and of some services are not subject to this tax.

The concept of export of services includes among others, those services rendered at customs locations, the supply of ships and services supplied from Uruguay to persons domiciled abroad and to be used exclusively abroad.

The exporter recovers the IVA from purchases of goods and services used to generate other goods or services destined for export. The mechanism implies the use of credit certificates issued by the Uruguayan Tax Authority.

Exemptions

Certain activities have been expressly exempted from IVA by law, such as the sale of currencies and securities, loan assignments, operations related to fuels, books and other educational material, water supply, transport of passengers, real estate leases and income from investments in treasury bills.[1]

[1] IVA acquired (direct and indirect) and applied to the cost of sales of these operations is not deductible since it is related to nontaxable operations.

EXCISE DUTY (IMESI)

This levies the first local sale and import of certain products (vehicles, beverages, tobacco and cigarettes, fuels and lubricants). Exports are not taxed.

Taxable Amount

In most cases it equals the retail price of the taxed goods. In other cases, such as beverages, cigarettes, lubricants, etc., the Executive Power periodically fixes notional prices on which the tax rates are applied.

Rates

Rates vary for the different products. The highest rates correspond to vehicles, cigarettes and alcoholic beverages.

CORPORATE CONTROL TAX (ICOSA)

Corporations must pay an annual tax of 0.75% calculated on a fixed amount which is set every year by the Executive Power. The tax to be paid by fiscal years ended in 2012 amounts to approximately USD600. ICOSA payments are registered as advances to offset a corporation's IPAT (in practice this tax operates as a sort of minimum IPAT for corporations).

TAX ON THE CONCENTRATION OF RURAL ESTATE (ICIR)

This is an annual tax which levies ownership of rural estates exceeding as a whole 2,000 hectares of CONEAT index 100 or its equivalent per holder.

The CONEAT index is an indicator of the productivity level of the land. As an example, a holder of 4,000 hectares of CONEAT index 70, for the purposes of this tax, will pay for 2,800 hectares (4,000 x 70/100).

The law has established four different categories subject to this tax:

1. Physical persons, family units and undivided estates owners of real property which at year end exceed, as a whole, 2,000 hectares of CONEAT 100.
2. Corporations, partnerships limited by shares, agricultural associations, civil associations with an agricultural object, permanent establishments of nonresident entities in the Republic, semi-governmental and decentralized services of the industrial and commercial domain of the State, closed credit investment funds, trusts (except for guarantee trusts), de facto business associations and civil associations (except for those associations formed exclusively by resident physical persons and those associations which obtain only pure capital income, formed exclusively by resident physical persons and by nonresident entities.

3. Legal persons set up abroad provided they do not constitute a permanent establishment.
4. Any other holder of rural estate levied by tax which is not under the cases set forth before.

Likewise, in order to determine the payable tax, the total number of CONEAT hectares of rural property owned by the liable subject will be taken into account and said amount will be used to calculate the tax by applying the CONEAT amount per hectare provided by the law:

Number of Hectares CONEAT index 100 or equivalent	**Amount per Hectare** CONEAT index 100 or equivalent
From 2,000 to 5,000	67 UI (approx. USD8)
More than 5,000 to 10,000	100 UI (approx. USD12)
More than 10,000	135 UI (approx. USD16)

UI: *Unidades Indexadas* (Indexed Units)

The tax will be calculated on the real estate owned by the taxpayer at December 31 of each year.

PAYROLL TAXES (SPECIAL SOCIAL SECURITY CONTRIBUTIONS)

Entities must pay social security contributions on all types of salary payments made to its personnel located in Uruguay.

Contributions to social security are the following : (a) Pension Contribution; (b) Health Insurance; and, (c) Contribution to a Labor Reconversion Fund.

Such contributions are compulsory for employers and employees. Therefore, they are subdivided into Employer's Contributions and Employees' Contributions.

Employees' contributions are deducted from their salaries and paid directly to the social security system by the employer.

Applicable Rates

The following rates are applicable to the above mentioned social security contributions on salaries:

Contribution	**Employer's Contribution**	**Employee's Contribution**
Pension	7.5% with a maximum of approx. USD320	15% with a maximum of approx. USD640
Health	5%	3%, 4.5%, 6% or 8%
Labor Reconversion Fund	0.125%	0.125%

In addition, employers have to withhold employees' IRPF (personal income tax on physical persons) at its different rates according to their level of remuneration (from 0% to 30%).

Exemptions

- Employer's contribution on the 13th salary (*Aguinaldo*) is decreased by 5% since it is exempt from the employer's health contribution.
- The yearly vacation bonus (*Salario Vacacional*) is not subject to payroll taxes (it is intended for better enjoyment of the vacation).
- Amounts paid on account of severance pay are not subject to payroll taxes either.
- Board members and syndics who do not earn a salary for their positions and board members who reside abroad are not subject to payroll taxes.

TAX INCENTIVES FOR INVESTMENTS

In order to simplify this analysis, we will divide benefits into three groups: (a) benefits obtained automatically upon the acquisition of specific assets, (b) nonautomatic benefits which are only granted if a specific activity is designated by the Uruguayan government as being "of national interest," and finally, (c) benefits which can be obtained by submitting an Investment Project approved by the Uruguayan government.

Automatic Benefits

IRAE Exemption: The law allows fiscal deductions in the following cases: (a) 40% of the investment in certain assets including machinery, communications and data processing equipment, hotel furnishings, etc.; (b) 20% of the investment in construction or improvement of industrial and hotel facilities.

Total reductions due to these benefits cannot exceed 40% of the annual net income of the fiscal year, once income exempted by other rules is deducted.

IPAT, IVA and IMESI Exemptions: The following investments are exempted from IPAT, IVA and IMESI on imports and IVA on local purchases:

- Industrial machinery
- Industrial installations
- Agricultural machinery meaning the machinery used by agribusiness entities in order to produce primary products
- Utility vehicles

Sector Activities Promoted by the Executive Power

We will now briefly analyze the tax benefits granted to certain sectors of activity which have been promoted by the Executive Power.

Within the framework of the sector promotion under the Investment Act, activities such as those carried out by public works concessionaires, tourism-related plans or projects and activities carried out by Distant Call Centers have been promoted under certain conditions.

Further to public works concessionaires, the following benefits have been granted: the channeling of domestic savings, IPAT exemption on fixed and intangible assets, IVA exemption on imports or a IVA credit for the purchase of machinery and works equipment in the market.

Additionally, regarding tourism-related projects, the following benefits have been granted: IVA exemption or IVA credit regarding market purchases, accelerated depreciation of assets and services destined for construction, improvements or extension of the projects and IPAT exemption for infrastructure, civil works and fixed assets investments.

Finally, tax exemptions are granted to companies that generate energy based on renewable sources on their sales in the spot market to the state energy entity.

Benefits Derived from Government-Approved Projects

IRAE taxpayers may obtain important tax benefits by submitting an investment plan before the Executive Power.

The benefits are:

- Income Tax on Economic Activities (IRAE) exemption. The amount and term to enjoy the benefit depend on the project's rating based on an "indicator matrix."
- Corporate Net Worth Tax (IPAT) exemption on movable assets and buildings.
- Tax exemptions on the import of movable assets or fixed assets which do not compete with the national industry.
- IVA refund for the acquisition in the local market of materials and services for civil works purposes.

Project evaluation criteria

The Application Committee (COMAP) from the Ministry of Economics and Finance is the division responsible for the evaluation of projects.

The matrix used to evaluate projects is comprised of the following indicators:

- Employment generation
- Geographic decentralization

- Increase of exports
- Use of clean technology
- Increase of Research and Development and Innovation (RDI)
- Sector indicators

The methodology used for said evaluation is published in a document called "COMAP – *Criterios Básicos Generales de Funcionamiento*" (COMAP – General Functioning Basic Criteria).

TAXATION OF PHYSICAL PERSONS

This section will briefly describe taxes applicable to physical persons who do not develop business activities in Uruguay, and income and assets not related to the business activities carried out by physical persons.

PERSONAL INCOME TAX ON PHYSICAL PERSONS

This is an annual tax on persons who hold fiscal residence in the country.

Fiscal Residence

A physical person is considered a fiscal resident when the same resides at least 183 days in the national territory or when his/her business head office, basis or vital economic interest is located in the national territory.

The physical person shall be deemed to have a fiscal residence in Uruguay provided his/her spouse or children (minors) reside regularly in the country, unless proved otherwise.

Taxable Amount

The events that give rise to this tax include capital income and capital gains set forth by the law, and income from personal work and services under an employment agreement.

The Tax Reform Act classifies income into two categories:

Category I: *Capital Income*. This category comprises income resulting from capital, capital gains and other similar sources.

This category includes:

- Income from real estate capital: leases, subleases, rights of use, etc. of Uruguayan source. Certain expenses and taxes may be offset against it;
- Interest and dividends of Uruguayan and foreign source;
- Capital gains of Uruguayan source.

The current rates applicable to income from Category I are the following:

RATE	INCOME FROM CATEGORY I
3%	Interest from deposits (local currency or indexed placements) in financial entities, over a one-year term.
3%	Interest from other placements (bonds, debentures, etc) over a three-year term.
5%	Interests from deposits (local currency without any adjustment index) in financial entities, under a one-year term.
12%	Dividends or profits paid by IRAE taxpayers to Uruguayan residents originated in interest or dividends obtained from abroad.
7%	Other dividends or profits paid by IRAE taxpayers.
7%	Returns derived from copyrights on literary, artistic or scientific work.
3%	Returns on certificates of interest in national entities issued by financial trusts through public offers and stock exchange listing, with terms longer than three years.
12%	Other income.

Most significant exemptions regarding Category I are:

- Interest paid on government securities.
- Income from Provisional Savings Funds.
- Dividends and earnings distributed by IRAE taxpayers from IRAE-exempt activities, accrued in fiscal years which started as of the effective date of this Act.
- Earnings distributed by personal associations (*sociedades personales* – those which are neither corporations nor limited partnerships that issue stock) whose income does not exceed the limit determined by the Executive Power and by those rendering personal services under a nonemployment agreement subject to IRAE.
- Capital gains from stock purchases due to capital reductions in companies taxed under IRAE and IMEBA and in companies constitutionally exempt from these taxes.
- Income from the sale of bearer shares and other interest represented by bearer certificates belonging to companies taxed under IRAE or constitutionally exempt from said tax.

Category II: ***Income from Personal Work and Services***. This category comprises income obtained from work, either under an employment agreement or not, with the exception of income taxable by IRAE.

This category comprises labor income obtained from:

- The rendering of personal services under an employment agreement,
- Pensions and similar, and
- The rendering of personal services under a nonemployment agreement.

Rates are progressive between 10% and 30%, starting with a minimum nontaxable amount.

PERSONAL NET WORTH TAX (IPPF)

This is an annual tax on the fiscally determined net worth of physical persons, families and estates, estimated each December 31.

Uruguayan Source

Assets located abroad are not taxed.

Taxable Amount

The taxable amount is calculated based on the fiscal value of assets (located in the country) with some exceptions and deductions of certain liabilities authorized by our regulations.

Some of these exceptions are:

- The value of real estate and vehicles is regularly adjusted by the Executive Power.
- Residential homes are taken at 50% of their value.
- Home furnishings are calculated at a notional level by applying a 10% or 20% on the total remaining assets.

Deductions are limited to loans granted by local banks or other institutions regularly authorized to grant loans which exceed the value of assets located abroad.

Physical persons and undivided estates pay this tax when their calculated net worth according to the fiscal criteria exceeds a Minimum Nontaxable (MNI) amount which currently amounts to approximately USD100,000 and double this amount for family households.

Rates

Rates vary from 0.7% to 1.80% depending on the wealth level from the above mentioned MNI onwards.

TAXATION OF NONRESIDENTS

NONRESIDENT INCOME TAX (IRNR)

This taxes income of Uruguayan source of any nature whatsoever obtained by nonresidents. According to our tax legislation, a nonresident person is anyone who has not set up a permanent establishment in Uruguay.

Actually, a permanent establishment belonging to a nonresident person is deemed as such when said person carries out activities through a fixed place of business in Uruguay.

Uruguayan Source

This is defined as income obtained from activities carried out in Uruguay, and assets located in and rights economically used in Uruguay regardless of the nationality, domicile or residence of the persons participating in the operations and on the place where legal businesses are carried out.

Likewise, income obtained on account of the rendering of services performed abroad to taxpayers residing in Uruguay is deemed from Uruguayan source, provided those services are used by the person receiving said services for the generation of income subject to IRAE.

Taxable Income

The regulation classifies income into the following categories:

- Business income
- Labor income
- Capital income
- Capital gains

Taxable Amount

Taxable income categories under business income and labor income are equivalent to the sum of all income under these concepts.

For the remaining income, rules applied correspond to those of the Income Tax on Physical Persons (IRPF).

If some income is negative and some positive, these cannot be offset against the different categories.

Rates

Current rates applicable to the IRNR are the following:

RATE	INCOME FROM CATEGORY I
3%	Interest from deposits (local currency or indexed placements) in financial entities, over a one-year term.
3%	Interest from other placements (bonds, debentures, etc.) over a three-year term.
5%	Interest from deposits (local currency without any adjustment index) in financial entities, under a one-year term.
7%	Dividends or profits paid by IRAE taxpayers to nonresidents.
7%	Returns derived from copyrights on literary, artistic or scientific work.
3%	Returns on certificates of interest in national entities issued by financial trusts through public offer and stock exchange listings, with longer terms than three years.
12%	Other income.

NONRESIDENT NET WORTH TAX (IPNR)

Nonresident physical persons are subject to Net Worth Tax on their assets located in the country as is the case for resident physical persons.

Foreign legal persons who do not have a permanent establishment pay a net worth tax rate of 1.5% on local assets located in our country, valued according to the regulations applicable to resident entities.

FREE ZONE CORPORATIONS

Business associations, either corporations or other types, whose only object is to carry out transactions within Uruguayan Free Trade Zones and abroad (developing commercial, industrial, service and financial activities) are exempt from any national taxes. Special Contributions to Social Security (CESS) are not included in this exemption, which however are only applicable to staff located in Uruguay.

On the other hand, any type of goods entering a Free Trade Zone from abroad or goods exported to foreign countries from a Free Trade Zone are exempt from all types of taxes.

As to Special Contributions to Social Security, in the case of foreign staff residing in Uruguay (which at first cannot exceed 25% of the total number of employees), members of staff can waive benefits from the Uruguayan Social Security and in this case, social security contributions on their remuneration must not apply.

With respect to the income tax applicable on income of the above mentioned foreign staff derived from their employment agreement with the Free Trade Zone company, it should be pointed out that said staff may choose whether to be taxed as IRPF taxpayers (progressive rates between 10% and 25%) or as IRNR taxpayers at a 12% rate.

The payment of dividends by Free Trade Zone companies is not subject to taxation.

REGISTRATION OF BEARER SHARES

Act 18.930, in force as of 1 August 2012, established the creation of a Register at the Central Bank of Uruguay (BCU) for the identification of owners and beneficiaries of bearer shares.

It is important to highlight that this act does not overrule the bearer share regime in Uruguay. It only introduces some modifications concerning the reservation existing before regarding the identity of the holders, and enables access to this information in a restrictive way, only to certain agents and third parties with which Uruguay has signed treaties of information exchange.

The following resident entities are reached by the obligation to inform and identify their owners or beneficiaries: corporations, partnerships limited by shares, agricultural associations, trusts and investment funds, as long as they are not regulated by the Central Bank of Uruguay, and in general, any other entity issuing bearer shares.

The regulations also include nonresident entities which issue shares both to the bearer and nominal, when any of the situations provided by law exist.

In turn, resident entities with nominal or book entry shares are excluded from the obligation to inform the Central Bank of Uruguay, as well as those issuing securities that are listed on the national, international or renown stock exchanges.

The information provided to the Central Bank of Uruguay is secret and access to it will be restricted to:

- The General Taxation Bureau (DGI), within the framework of inspection activities or in compliance with express requests

under sufficient grounds made by another foreign state with which our country has signed agreements concerning the exchange of information.

- The Financial Analysis and Information Unit of the Central Bank of Uruguay.
- The National Secretariat on Money Laundering.
- The Criminal Justice or Competent Justice due to matters of alimony, on sufficient grounds.
- The Transparency and Public Ethics Board.
- The State Internal Audit for compliance with its supervising and controlling duties.
- Others, only when authorized, expressly and in writing, by the subject whose particulars are included in the Register of the Central Bank of Uruguay.

The Act provides sanctions for nonfulfillment of its provisions, both for the owners or beneficiaries, as for the issuing entities, such as monetary sanctions such as penalties and fines and limitations to exercising the rights inherent to the condition of holder of those shares.

TREATIES TO AVOID DOUBLE TAXATION

Uruguay has adopted, as the principle of taxing rights, the territoriality criteria or the principle of the source. By doing this, it has not had the historical necessity of signing agreements to avoid double taxation.

This is evident until the year 2009 in the mere existence of two agreements, one with Germany and one with Hungary, which date back over 20 years and in practice are not often used.

Based on the increased pressures and demands of the various international agencies such as the Organization for Economic Cooperation and Development (OECD), Uruguay has seen the need to begin to align with international standards.

As part of compliance with international standards and seeking to improve investment conditions, our country has begun working on a variety of agreements to avoid double taxation (CDI) and to improve the exchange of tax information.

The following chart shows the stages of the CDIs (11 of them) between Uruguay and other countries:

Treaties with Information Exchange Clauses		Information Exchange Treaties		
In Force	***Signed***	***In Force***	***Signed***	***Under Negotiation***
Spain	Argentina	France	Faroe Islands	Brazil
Mexico	Ecuador		Denmark	
Hungary	Malta		Greenland	
Germany	Portugal		Sweden	
Switzerland	Finland		Norway	
	India		Iceland	
	Korea			

FREE TRADE AND PRESERVATION OF FREE COMPETITION

Act 18.195, which promotes free trade and the preservation of free competition, protects the welfare of current and future consumers, promoting economic efficiency and equality of access of companies and products to the market. Under this regulation, it is prohibited to:

- Abuse a dominant position, and
- Promote practices, behaviors or recommendations, individual or concerted, whose objective or effect could be to restrict, limit, hinder, distort or impede the current or future competition in the relevant market.

IMMIGRATION

Any person who has legally entered the country is able to apply for permanent or temporary residence. In addition, the applicable regulation (Law 18.250) establishes that all foreigners must be treated equally as Uruguayans, regarding their rights and especially their labor rights. Both permanent and temporary residents may develop their labor activities under an employment agreement or on their own. Nonresidents must not carry out any labor activity other than the ones expressly authorized by the National Immigration Bureau, in general granted when said activities do not exceed a period of six months.

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