

BUSINESS GUIDEBOOK

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LEGAL FRAMEWORK FOR FOREIGN INVESTMENT

Guatemalan law explicitly promotes investment and includes provisions that recognize and guarantee private property rights equally for Guatemalan nationals and foreign investors. No restrictions are placed on foreigners on owning any amount of stock in any Guatemalan company. All sectors of the Guatemalan economy are open to both local and foreign investment and ownership; however, some restrictions apply to sectors considered to be of strategic interest, such as telecommunications and some forms of transportation. Other than applicable taxes, no restrictions apply to remittance of profits and repatriation of capital. Guatemalan law supports an open market respecting entrepreneurial activity and foreign investment.

FOREIGN INVESTMENT IN GUATEMALA

Foreign investment in Guatemala is usually carried out by establishing a local company or a branch of a foreign company.

REGISTRATION OF A LOCAL COMPANY

Legally establishing a local company in Guatemala is a simple and quick procedure, taking approximately two weeks for provisional registration and a maximum of four months for final registration. A company may begin operations under provisional

registration.

Registration requirements for a local company include the following:

- A minimum of two persons, individual or corporate, are required to form a company. To operate in most sectors of the economy, there is no requirement for local participation in a Guatemalan company. Likewise, no restrictions are placed on foreign participation. The charter of the company must be executed in a public and notarized document.
- A certified copy of the charter must be filed with the Commercial Registry (*Registro Mercantil*) within fifteen days. The company's accountant or accounting firm must be registered with the Ministry of Finance.

After verifying compliance with legal requirements, the Commercial Registry provisionally registers the company. The company must then publish notification of the registration three times during the thirty days following the granting of provisional registration. The notices must appear in the Official Gazette (*Diario de Centro America*) and one other newspaper of general circulation. If no opposition is tendered, the Commercial Registry proceeds with final registration.

TYPES OF GUATEMALAN COMPANIES

The Guatemalan Commercial Code provides for the following types of companies:

- **General Partnership** (*Sociedad Colectiva*): partners are jointly and severally liable to the full extent of their personal assets.
- **Limited Liability Partnership** (*Sociedad de Responsabilidad Limitada*): maximum of twenty partners, in which each partner is personally liable up to the amount of equity paid in.
- **Limited Partnership** (*Sociedad en Comandita Simple*): formed by two types of partners: one or more general partners who direct business and are jointly and severally liable for debts, and one or more limited partners whose liability is limited to the amount of equity paid in. The limited partners can have no management voice in the operation of the firm.
- **Special Limited Partnership** (*Sociedad en Comandita por Acciones*): same as limited partnership except equity is represented by shares.
- **Corporation** (*Sociedad Anónima*): equity is divided and represented in equal value shares. Responsibility of each stockholder is limited to shares held. The corporation must have a board of directors, or a sole administrator, and must hold an annual meeting whose minutes must be notarized.

No limitation exists on the number or percentage of foreigners serving on a board of directors of a Guatemalan company. Companies are required to have a legal representative, who must be a resident alien with a work permit or a Guatemalan citizen. Shares may be made out to the stockholder's name or issued to the bearer.

ESTABLISHING A BRANCH OF A FOREIGN COMPANY

A company legally established in a country other than Guatemala can register a branch office in Guatemala by meeting the following requirements of the Commercial Registry:

- Demonstrate that it has been duly organized in accordance with the laws of the country of origin.

- Present a certified copy of its articles of incorporation, by-laws and amendments.
- Submit an authenticated copy of the minutes containing the company's decision to operate in Guatemala and to file for registration and approval.
- Appoint a representative, either a foreign resident with a work permit, or a Guatemalan citizen with sufficient authority, as specified in the company's by-laws, to conduct business and represent the company in legal matters.
- Deposit the operating capital in a legally registered bank and agree to be liable for business conducted locally.
- Agree to submit to Guatemala law and the jurisdiction of the Guatemalan courts.
- Present a declaration of commitment to fulfill all legal obligations prior to withdrawing from Guatemala.
- Present certified copies of the company's latest financial statements (balance sheets, profit and loss statement).

All documents must be translated into Spanish by an accredited translator and the sum of US\$10.00 (or its equivalent in Quetzales approx. Q57) paid for each authentication at a Guatemalan Consular Office. All documents must be recorded by a registered Guatemalan attorney prior to being submitted to the Commercial Registry.

Upon submission, the Commercial Registry will verify compliance with all legal requirements and establish that charter provisions are not contrary to Guatemalan law. Subsequently, three notices of the registration request are published on separate dates within a one-month period in the Official Gazette and one other newspaper. If no opposition is tendered, the documents are submitted to the Ministry of the Interior for approval. Once approved by the Ministry of the Interior, the documents are returned to the Commercial Registry which, after verifying that the operating capital has been duly deposited in an authorized bank, proceeds with registration. The company must initiate operations within a year of the date of registration. The process of filing for registration and approval takes approximately ten months.

REGISTRATION WITH THE INTERNAL REVENUE SERVICE

Registration with the *Dirección General de Rentas Internas*, Guatemala's equivalent of the Internal Revenue Service, is required to obtain the tax identification number (*Número de Identificación Tributaria {NIT}*). The following documents are required:

- Copy of the publications in the Official Gazette. . Proof of the provisional registration issued by the Commercial Registry. . Copies of the documents filed with the Commercial Registry.
- Form DRISR-90, obtained at the Ministry of Finance, supplying general information on the company.

DISCLOSURE OBLIGATIONS

A company's annual balance sheet must be published yearly in the Official Gazette. Any change of the company's by-laws, authorized equity, legal representative or purpose must be reported to the Commercial Registry. Liquidation or bankruptcy in the country of origin must be reported to the *Dirección General de Rentas Internas*.

TEMPORARY OPERATIONS IN GUATEMALA

Foreign companies may also request approval from the Commercial Registry for temporary operations in Guatemala for a period of less than two years. A company is required to post a bond and provide proof of being duly organized in its country of origin and must appoint a legal representative in Guatemala.

OPERATIONS REQUIRING NO REGISTRATION OR AUTHORIZATION

Foreign companies or individuals do not require any type of registration or approval to do the following:

- Sell or purchase from independent commercial agents legally established in Guatemala.
- Purchase orders through agents legally established in Guatemala provided such purchases are subject to confirmation or acceptance abroad.
- Open or maintain accounts in an authorized Guatemalan bank.
- Acquire real estate, with the exception of land near international borders and waterfront properties.
- Grant loans to businesses established in Guatemala.
- Draw, endorse or contest credit instruments in Guatemala.
- Participate in any legal action or proceeding before a Guatemalan court or public office.

TAXATION

INCOME TAX

Guatemala's Ministry of Finance considers taxable income to be all income generated by capital, property, services, and rights invested or used in the country as well as income derived from any type of activity taking place in Guatemala. All individuals and companies, domiciled or not in Guatemala, are subject to income tax. . Companies are presently taxed at a flat rate of 30 percent of income after allowable deductions. Allowable deductions include operating expenses and other taxes paid.

Personal income taxes are computed according to the following table.

Taxable Income Table * Tax Payable

From	To	Fixed Sum	Percentage	On Excess of Taxable Income
under Q65,000		Q 0	+ 15 %	Q 24,000
Q65,000	Q 180,000	Q 6,150	+ 20 %	Q 65,000
above Q180,000		Q 29,150	+ 30 %	Q 180,000

Currently, withholding tax for payments to individuals or businesses not domiciled in Guatemala applies as follows:

- 12.5 percent on dividends, profits, income or other benefits paid or credited by companies or businesses established in Guatemala.
- 20 percent on payment or credits of interests, fees, commissions, bonuses, salaries and other benefits.

- 30 percent on payment or credits for royalties and other remunerations for the use of patents and trademarks and for scientific, economic, financial and technical advice.

DEPRECIATION RATES

Depreciation is determined on a straight line basis. Authorization to exceed the maximum rates established by law may be granted under special circumstances. Yearly depreciation rates allowed:

Buildings and improvements	5%
Furniture and fixtures	15%
Machinery, equipment and vehicles	20%
Tools and computer equipment	25%
Any other depreciable assets	10%

ANNUAL COMPANY TAX

Companies domiciled in Guatemala must pay quarterly a 1.5 percent tax on one quarter of the amount resulting after subtracting fiscal credits owed, total liabilities and retained utilities from total assets.

VALUE ADDED TAX

Value Added Tax (*Impuesto al Valor Agregado (IVA)*) is levied at a uniform rate of 12% and is applied, among others, to the following: Sale of movable assets and rights regarding those assets;

* Services performed in Guatemala; . Goods imported into Guatemala;

* Sale or rental of real estate.

Value Added Tax withheld by businesses and owed to the government may be offset in equal amount by the tax paid in other transactions. Application for reimbursement of any remaining credit may be made to the *Dirección General de Rentas Internas*.

STAMP TAX

Legal documents require a three percent tax on the value of the transaction being documented. The documents subject to this tax include: . Civil and commercial contracts;

* Documents executed abroad effective in Guatemala; . Public and private documents resulting in the collection, transfer or cancellation of letters of credit, real estate leases and assignments, receipts for insurance premiums and liens; . Receipts for professional services fees when the recipient is not subject to Value Added Tax (*IVA*); . Receipts for service fees provided by insurance and bonding agents and contracts for future services.

Transactions subject to Value Added Tax (*IVA*) are not subject to the Stamp Tax.

IMPORT TAXES

Except for items covered by special incentives or purchased directly by governmental agencies, imports from outside the Central American region are subject to a tariff ranging between 5 and 20 percent *ad valorem* on CIF value. The Value Added Tax (*IVA*) is also paid on imports, unless the import falls under special exonerations.

FOREIGN EXCHANGE REGULATIONS

All foreign currency transactions must be made through approved financial institutions. A form must be filled out for all transactions involving foreign investments, remittance of dividends and repatriation of capital.

Other than compliance with applicable taxes, no further controls and restrictions apply to the remittance of profits and repatriation of capital. The foreign currency exchange rate floats freely.

IMMIGRATION LEGISLATION

All immigration matters are regulated by Decree 22-86 which oversees the admission of immigrants and their activities. Unless otherwise exempt from visa requirements pursuant to international agreements, immigrants should apply for a visa to enter Guatemala at a Guatemalan Consulate in their country of origin. Most immigrants enter the country with a tourist visa and later apply for a resident visa should they choose to remain in Guatemala.

TRADEMARK AND PATENT LEGISLATION

Trademark protection is acquired through registration with the Patent and Trademark Office of the Ministry of Economics and is granted for a ten year period after which it may be renewed indefinitely. To be eligible for a patent, an invention must be new, innovative, and be suitable for industrial application. Patent registration is valid for a maximum period of fifteen years.

LABOR LAWS

Rights and obligations of employers and employees are governed by the Labor Code (*Código de Trabajo*). Remuneration for services by an employee must be paid in local currency (Quetzales) and may be based by time, task or profit sharing, or percentage on common sales or collections made by the employer. Wages must meet the minimum level established by the government. The minimum wage varies according to type of work. All payroll workers receive two annual bonuses equivalent to one month's salary: one payable at year's end (Christmas Bonus), and the other in July (July Bonus).

When an employer terminates an employee without just cause, (just cause is defined by the Labor Code and includes dangerous behavior, excessive absenteeism, disclosing commercial secrets, etc.), the employee is entitled to a severance payment calculated on the employee's income, including perquisites, and the length of time the employee has worked for the employer. Proportional Christmas and July Bonus calculations must be included in severance payment. Day shifts may not exceed eight hours per day and forty-four hours per week. Night shifts may not exceed six hours per night and thirty-six hours weekly. Foreign workers require special permission by the Ministry of Labor to work in Guatemala. Approval must be requested prior to arrival in the country. Foreign nationals may comprise no more than ten percent of the company's work force. The combined salaries of non-Guatemalan employees may not exceed fifteen percent of the non-management payroll.

BANKING LICENSES

Foreign banks may establish branches in Guatemala subject to approval by the Monetary Board and the Ministry of Economics. To establish a branch in Guatemala, the foreign bank must have been in operation in its country of origin for at least ten years.

A minimum initial capital outlay of US\$2 million is required for establishing a new bank, which must remain in the Guatemalan branch. Applications must be submitted to the Superintendence of Banks along with the required documents, including balance sheets, profit and loss statement, and a certificate of good standing issued by the corresponding authority of the country of origin. Branches of foreign banks are subject to the same legal regulatory framework as charter banks, as well as the jurisdiction of the Monetary Board and the Superintendence of Banks.

Foreign branches do not require a board of directors; however, at least one officer in charge of the branch must be domiciled in Guatemala. This officer must be a resident alien or a Guatemalan citizen.

FINANCIAL LEGISLATION

All loan agreements must be signed and witnessed by a licensed Guatemalan attorney. Loan agreements secured by mortgages or pledges must be signed in a legalized public document before an attorney and duly registered in the Property Registry (*Registro de la Propiedad*). The Guatemalan Commercial Code provides for several types of notes and drafts which include: promissory notes, bills of exchange, debentures, and checks. Notes and drafts are negotiable and their transaction involves a few simple procedures. The negotiation and transfer of instruments payable to the bearer is effective upon delivery of the instrument. Instruments payable to a specific name or account are negotiated by endorsement and delivery.

ENVIRONMENTAL LEGISLATION

An environmental impact study is required before beginning any construction, industrial project, or other activity that could modify or disturb the environment. The study must be carried out by qualified technicians, either companies or persons approved and certified by the National Commission on the Environment (CONAMA), and submitted to CONAMA. Stiff fines for non-compliance are applicable.

LAW FOR THE PROTECTION AND IMPROVEMENT OF THE ENVIRONMENT (Decree 68-86)

Guatemalan legislation prohibits the emission and discharge of polluting matter or agents that may affect the environment. It also prohibits the storage of contaminating or radioactive materials, as well as those products or materials not freely and legally marketed in their countries of origin. The importation of human or animal wastes, treated or untreated, is banned.

AGREEMENT ON U.S. CAPITAL INVESTMENT GUARANTEE (Decree 1 545)

The Overseas Private Investment Corporation (OPIC) provides investment guarantees for qualifying U.S. investment projects in several countries. Guatemala is a participant in this program, and upon approval by the Guatemalan Government, the qualifying project is eligible for guarantees by OPIC covering losses resulting from inconvertibility of currency or expropriation. Parties choosing to be covered by the agreement must first apply to OPIC and then submit their application to the Ministry of Economics.

The covered investment may be in cash or in capital goods. An investment is considered to be of U.S. origin when classified as such by the Government of the U.S. or OPIC. In

the case of cash investments, the money must be exchanged through one of the authorized banks in the country.

ONE-STEP EXPORT BUREAU

Procedure for exporting Guatemalan Products were greatly simplified by the establishment of the One-Step Export Bureau (*Ventanilla única de Exportaciones*) at the Ministry of Economics. the bureau brings together in a single office all organizations and institutions associated with the export activities. Export permits are routinely issued in a matter of hours.

DRAWBACK INDUSTRIES LAW (Decree 29-891)

The Drawback Industries Law encourages the manufacture of goods for export to countries outside Central America and regulates the drawback industry under specific classifications. The law offers temporary exemption from tariffs and Value Added Tax on imported raw materials, samples, machinery, equipment and other items. Approval by the Ministry of Economics is required to obtain the benefits granted by this law.

In addition to traditional incentives and tax holidays, the Drawback Industries Law allows single business to qualify as a stand-alone free trade zone anywhere in the country.

FREE TRADE ZONES LAW (Decree 65-89)

A free trade zone is defined as an area of land especially designated, subject to a special customs classification, in which individuals and enterprises manufacture or merchandise goods for export or re-export, or engage in foreign trade services. A free trade zone may be established anywhere in the country by private as well as public enterprises. Private enterprises need approval by the Ministry of Economics. Incentives provided by the Free Trade Zone Law include:

For manufacturing and service firms established in a free trade zone:

- Full tax exemption on imports of equipment, machinery, tools, raw materials, inputs, seem-finished products, containers, and packaging used for manufacturing or rendering of services.
- Full income tax exemption, for a twelve year period, on income from the manufacture or rendering services originating in the free trade zone.
- Value Added Tax exemption on goods transferred between free trade zones within Guatemala.
- For businesses located within the free trade zone engaging in commercial activities:
- Exemption from taxes, custom duties or import charges on commodities and components stored in the free trade zone for their commercialization,
- Full income tax exemption, for a five year period, on income derived from commercial activities within the free trade zone.
- Exemption of Value Added Tax, on goods transferred inside and between free trade zones in Guatemala.

TOURISM LAW

(Decree 1701 and its reforms, Decree 22-71, Decree 22-73 and Decree 68-85)

The Tourism Law contains important provisions to encourage and develop the tourism industry including the following tax incentives, available for a ten year period to investors in this sector.

- Exemption from all duties and import taxes on raw materials, construction materials, operating machinery, electrical appliances, vehicles, ships, cutlery, furniture and entertainment equipment, not produced in Guatemala or Central America.
- Exemption from real estate taxes on new construction and the expansion of existing structures.