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## **GUIDE TO DOING BUSINESS IN GUATEMALA**

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### **1.- Legal System**

#### **What type of legal system exists in the country?**

Guatemala has a legal tradition derived from Civil Law and the Napoleonic Codes. It is a positivist system. Except for very few exceptions, the only source of rights is the law. The norms are coded and any administrative or judicial ruling, as well as any action presented before the courts or administrative offices must be based on the legislation in force.

### **2.- Foreign Investment**

#### **2.1.- Are there any restrictions to foreign investment?**

No. Guatemala's legal framework is very open to foreign investment. Except for some limitations in what refers to the ownership of properties on the borders, foreign investors enjoy the same rights as national investors.

#### **2.2.- Requirements to be met when investing in the country**

For their investments in the Guatemala, foreigners can:

Create a national corporation, in which case they are treated as local investors and they must comply with the same requirements as the latter; or

Operate through subsidiaries. In this case they must comply with the following requirements:

##### **1. Recording in the registry.**

- i. Prove that it is duly created pursuant to the laws of the country where it was organized.
- ii. Present a certified copy of its articles of incorporation and its statutes, if any, as well as any modification to them.
- iii. Prove that a decision has been duly made by its competent body for these purposes
- iv. Appoint an agent with representation, with ample powers to carry out all the acts and businesses of its type and to legally represent the company in trial and outside the same. If it does not have these powers it will be considered invested in them by order of the law.
- v. Create a capital assigned to its operations and a guarantee in favor of third parties for an amount in quetzals equal to at least \$50,000.00. The latter must remain valid for the entire period of time that said company operates in the country.

- vi. Expressly promise to respond, not only with its properties within the territory of Guatemala, but also with the ones it has abroad, to all acts and businesses carried out in the country.
- vii. Submit to the jurisdiction of the courts of the country, as well as to the laws of the Republic for the acts and businesses within the realm of private law celebrated in the territory or that will have effects in the same.
- viii. Present a statement that neither the company nor its representatives or employees may invoke foreigners' rights, since they will only enjoy the rights and means to exercise them granted by the country's laws to Guatemalans
- ix. Declare that before leaving the country, it will comply with the legal requirements. Article 218 of the aforementioned legal code lists the requirements to be fulfilled when the entity wishes to leave the country and they are: a. present financial statements certified by a Public Accountant; b. present a sworn statement in which the legal representative states that the company he represents complied with all its tax obligations up to the date of its removal, and c. evidence that the obligations and businesses undertaken in the Republic have been fulfilled or are guaranteed. The assets and the guarantee will be settled. After presenting the previously listed documents the Mercantile Registry will issue the authorization for removal from the country.
- x. Present a certified copy of its last general balance and the statement of losses and earnings.

All these documents must be presented in the Mercantile Registry in order to obtain the definitive recording of the entity, and with it the authorization to start operations in the Republic.

If the foreign company decides to create a Guatemalan company the requirements will be the following:

- i. Adopt any of the mercantile forms contemplated in the Code of Commerce
- ii. Be created by Public Deed in which at least two shareholders must appear
- iii. Have a minimum initial paid capital of Q5,000.00
- iv. Obtain the registration in the Mercantile Registry pursuant to the registration procedures in force.

Expenses for professional fees to be paid to the notaries involved must be added to all procedures of the creation of companies, whether national or foreign. Besides, there is also a cost in time since the registration procedure of a mercantile company takes around two months.

## **2. Tax requirements.**

All companies, either local or foreign, with domicile in the country, have the obligation to register as taxpayers before the Superintendency of Tax Administration and, obtain the authorization of its Accounting Books, obtain its Tax Identification Number, and the authorization to issue invoices, as well as present the applicable periodic declarations.

## **3. Licenses and Permits.**

Besides the obligatory registration in the Mercantile Registry necessary for all companies that operate in Guatemala (except as mentioned), the licenses and permits to be obtained by a foreign company will depend on the type of business carried out by the company.

## **4. Is it necessary to create a local company?**

No, it is not a requirement to create a local company, as stated above, but many times it results less expensive to create a local company due to the requirements demanded by the Mercantile Registry in order to record and be able to operate a foreign company.

#### **5. Requirements for opening a subsidiary of a foreign company.**

- i. Prove that it is duly created pursuant to the laws of the country where it was incorporated or registered.
- ii. Present a certified copy of its articles of incorporation and its statutes, if any, as well as any modification to them.
- iii. Prove that a decision has been duly made by its competent body for these purposes.
- iv. Appoint an agent with representation, with ample powers to carry out all the acts and businesses of its type and to legally represent the company. If it does not have these powers it will be considered invested in them by order of the law.
- v. Create a capital assigned to its operations in the Republic and a guarantee in favor of third parties for an amount in quetzals equal to at least \$50,000.00. The latter must remain valid for the entire period of time that said company operates in the country.
- vi. Expressly promise to respond, not only with its properties within the territory of the Republic, but also with the ones it has abroad, to all acts and businesses carried out in the country.
- vii. Submit to the jurisdiction of the courts of the country, as well as to the laws of the Republic for the acts and businesses within the realm of private law celebrated in the territory or that will have effects in the same.
- viii. Present a statement that neither the company nor its representatives or employees may invoke foreigners' rights, since they will only enjoy the rights and means to exercise them granted by the country's laws to Guatemalans.
- ix. Declare that before leaving the country, it will comply with the legal requirements. Article 218 of the aforementioned legal code lists the requirements to be fulfilled when the entity wishes to leave the country and they are: a. present financial statements certified by a Public Accountant, an active member of the professional association; b. present a sworn statement in which the legal representative states that the company he represents complied with all its tax obligations up to the date of its removal, with the exception of the tax obligations stated, and c. evidence that the obligations and businesses undertaken in the Republic have been fulfilled or are guaranteed. The assets and the guarantee will be settled. After presenting the previously listed documents the Mercantile Registry will issue the authorization for removal from the country.
- x. Present a certified copy of its last general balance and the statement of losses and earnings.

#### **2.3.- Legal security of the investment.**

The Political Constitution of the Republic of Guatemala (hereafter "the Constitution") guarantees the property right and the liberty of industries and trade, except for the limitations established by law. Additionally, Guatemala is part of several treaties that protect investments:

- Agreement between the Government of Guatemala and the Republic of Korea for the Promotion and Protection of the Investments. Ratified on August 17, 2002

- Agreement between the Government of Guatemala and the Government of the French Republic for the Promotion and Protection of the Investments. Ratified on October 28, 2001

- Agreement between the Government of Guatemala and the Government of the Netherlands for the Promotion and Protection of the Investments. Ratified on September 01, 2002
- Agreement between the Government of Guatemala and the Republic of Cuba for the Promotion and Protection of Investments. Ratified on August 10, 2002
- Agreement between the Government of Guatemala and the Republic of Chile for the Reciprocal Promotion and Protection of Investments. Ratified on October 13, 2001. Valid for an extendable 10-year period.
- Agreement of Nueva Ocotepeque between the Government of Guatemala and the Government of Honduras regarding Trade and Investment. Ratified on March 28, 1995
- Agreement between the Government of Guatemala and the Republic of Argentina for the Reciprocal Promotion and Protection of Investments. Ratified on December 7, 2002
- Agreement between the Government of Guatemala and the Kingdom of Spain for the Reciprocal Promotion and Protection of Investments. Ratified on May 21, 2004
- Agreement between the Government of Guatemala and the Republic of Ecuador for the Reciprocal Promotion and Protection of Investments. Ratified on May 25, 2005
- Agreement between the Government of Guatemala and the Kingdom of Sweden for the Reciprocal Promotion and Protection of Investments. Ratified on July 1, 2005
- Agreement between the Government of Guatemala and the Swiss Confederation for the Reciprocal Promotion and Protection of Investments. Ratified on May 3, 2005
- Treaty on Investments and Trade of Services between the Government of Costa Rica, the Government of El Salvador, the Government of Honduras, the Government of Guatemala, and the Government of Nicaragua. Ratified on January 6, 2006
- Agreement between the Republic of Guatemala and the Czech Republic for the Reciprocal Promotion and Protection of Investments. Ratified on April 29, 2005
- Treaty between the Government of Guatemala and the Republic of Germany for the Reciprocal Promotion and Protection of Investments of Capital. Ratified on October 29, 2006
- Free Trade Agreement ratified on July 1, 2006 between the Government of Guatemala and the Government of the United States of America.

All these commercial treaties are a tool for development and are basic in achieving an adequate promotion of foreign investment. Not only do they present advantages for investors but a better opportunity for nationals.

In the subject of import duties that must be paid by both national and foreign companies, they will depend on the products to be imported since a Customs Duty is established for each product or group of products.

### **3.- Banking matters.**

The requirements demanded will vary depending on the bank where the account is being opened or where the loan is being requested. Despite this, there are general requirements that all foreign

entities must comply with in order to formalize any of the previous relationships. A standard document that all the banks require is the form of the Special Verifications Council –IVE- in which the personal information of the client who wishes to open an account and start a relationship are verified.

#### **4.- Incentives for foreign investment Sectors with the greatest incentives.**

The sectors with the greatest incentives are in the area of the Maquilas with their corresponding Law on the Promotion and Development of Exporting and Maquila Activities and the Customs-Free Areas, with the corresponding Law on Customs-Free Areas.

These offer the following tax incentives to investors, both national and foreign:

- i. An exoneration of 100% of the duties, rights and charges applicable to the imports of machinery, equipment, raw materials, and others
- ii. An exoneration of 100% on Income Taxes-ISR- for 10 years
- iii. An exoneration of 100% on the Single Property Tax- IUSI- for the administrative entities of customs-free areas
- iv. An exoneration of 100% on the Tax on Added Value –IVA-

#### **5.- Private Property**

##### **5.1.- Type of system that guarantees it.**

Private Property is guaranteed by norms found in the Constitution. Any person may dispose freely of their property. The State promises to guarantee this right and create conditions that make the use and enjoyment of a person's property possible.

##### **5.2.- Expropriation.**

Expropriation is regulated in the Constitution. It may only occur in specific cases and only due to three reasons: collective utility, social benefit or public interest duly proven. The property to be expropriated must be appraised by experts and based on their on it compensation will be granted. The payment of this compensation may not exceed 10 years.

The expropriation process is governed by the Constitution, as well as by Decree 529, the Law on Expropriation.

#### **6.- Tax regimen**

##### **6.1.- What factors determine a company's physical domicile?**

The Tax Code considers that the physical domicile is the place indicated by the taxpayer or responsible party to receive all summons, notifications, and other mail sent in order for those obliged to exercise the rights derived from their relationships with the treasury and so that the latter can demand their compliance with tax laws.

The physical domicile of the corporations will be: a. the one stated expressly and in writing by the legal representative; b. the one stated by the legal representative in the corresponding act or the one stated in the last declaration of the corresponding tax; c. the one stated in the articles of incorporation; d. the location of its administration or offices; e. wherever its main center of activities is located if the location of its administration is unknown; f. in the event of several

domiciles, the one stated upon the Tax Administration's request and g. whenever the domicile cannot be determined, according to the previous criteria, domicile will be set based on the place where the operations are carried out, or the property subject to the tax is located, or where the event that generates the tax obligation occurs.

The taxpayers and responsible parties with domicile abroad must determine a tax domicile in Guatemala (either the one stated by the company through the previous criteria or that of its legal representative).

#### **6.2.- What taxes apply to companies with fiscal domicile in the country?**

If they have a domicile in the country, foreign companies must pay all taxes that apply to national companies, including but not limited to Income Tax, the Value-Added Tax, and the Single Property Tax.

#### **6.3.- What taxes apply to those companies that receive income in the country, but do not have a physical domicile in the same?**

Withholdings according to the concept of income: "Income from a Guatemalan source is any income that has been generated by capitals, goods, services, and rights of any nature invested or used in the country, or that have their origin in activities of any nature developed in Guatemala, including earnings from the exchange of foreign currencies, whichever the nationality, domicile, or residence of the people that participate in the operations and the place where the contracts are celebrated." (Article 4 of the Tax Code).

#### **6.4.- What taxes apply on the following headings:**

##### **1. Dividends payable to the company's foreign shareholders.**

None, as long as the company has paid the corresponding Income Tax.

The tax to be paid by individuals or corporations that do not have their domicile in Guatemala is calculated applying to the income of Guatemalan source, perceived or credited in an account, the percentages established in the following subparagraphs:

i.- Ten per cent (10%) on payments or credits in an account for interests: payments or credits in an account for dividends, participations in profits, earnings, and other benefits paid or credited in an account for expenses, commissions, bonuses, and other benefits affected by the tax, including wages and salaries; and the income payable to sports players and actors in theater, television, or other types of shows. The dividends, participation in profits, earnings, and other benefits are excluded when it is proven that the taxpayers that distribute said benefits have effectively paid the totality of the tax that corresponds to them, pursuant to this law;

ii.- Thirty-one per cent (31%) on payments or credits in an account for fees; payments or credits in account for royalties and other retributions, for the use of factory patents or brands; as well as for the scientific, economic, technical, or financial advice paid to companies or corporations; and,

iii.- Thirty-one percent (31%) on payments or credits in an account of any other income from a Guatemalan source, not contemplated in the previous subparagraphs.

The agents or representatives of taxpayers that do not have their domicile in Guatemala, or the individuals or corporations that do business directly must withhold the tax and

deposit it in the banks of the system or the institutions authorized by the Superintendency of Tax Administration to collect taxes within the term of the first fifteen (15) working days of the calendar month immediately following the one where the income was perceived or earned.

**2. Dividends received from foreign companies.**

The Law on Income Tax does not make any distinction regarding the origin of the dividend, therefore Income Tax must be paid on them.

**3. Interests paid to the corporation's foreign shareholders.**

None. The Law on Income Tax does not make any distinction regarding the origin of the dividend; therefore it would be subject to Income Tax.

**4. Royalties payable to the corporation's foreign shareholders.**

Refer to the text under number one above.

**6.5.- Are there control rules for foreign companies?**

No.

**6.6.- Are there specific capitalization regulations for foreign companies?**

No.

**6.7.- Price of Transfer – Local treatment**

No.

**6.8.- What taxes apply on imports and exports?**

Income Tax, Added-Value Tax, Taxes from Fiscal Stamps, and those corresponding to the customs regimen.

**6.9.- Are there treaties on double taxation?**

According to the Treaties Section of the Ministry of Foreign Affairs, Guatemala is not a part of any treaty that makes reference to or deals with the subject of double taxation.

**7.- Labor Regimen**

**7.1.- Minimum wage - specifications.**

The minimum wage established in Guatemala for non-agricultural activities is of \$170.00 plus a bonus incentive of \$33.00, and with regard to the minimum wage in agricultural activities it is of \$174.00 plus a bonus incentive of \$33.00. The new wage came into force in January 2007.<sup>1</sup>

By legal order workers must be paid 14 salaries a year, that is to the 12 conventional salaries one must add a 13 salary which is the End-Year Bonus (which is paid at the end of the year making a partial payment in the month of December and the rest of the payment in the month of January), and a 14 salary known as "Bono 14" which is paid to the employee in the month of June of every year. The amounts previously described must be taken into consideration when computing the compensations in the event of an unjustified dismissal.

## **7.2.- National employees.**

The Constitution in its Article 102 protects the right to work, as well as the minimum rights the employee must enjoy. Nationals must work in equal circumstances and no Guatemalan may earn less than a foreigner or be subject to inferior work conditions. In the matter of hiring national employees, the Labor Code prohibits employers from employing less than ninety per cent of Guatemalan workers and from paying these less than eighty five per cent of the total salaries paid in their corresponding companies. Any stipulation against that established is null *ipso iure*.

### **1. Requirements for hiring them.**

For the hiring of Guatemalan employees the only requirement is that the person be of legal age. The Labor Code permits the hiring of minors, who are over the age of fourteen. For the hiring of these minors it is necessary that the contracts be signed with their legal representatives, or alternatively with the authorization of the General Labor Inspection. The legal representative or the person who cares for the minor, according to a determination made by the General Labor Inspection, must perceive the salary.

The contract may be verbal (in the specific cases determined by law: agricultural tasks, domestic service, accidental or temporary works that do not exceed 60 days, and the offering of a service for a specific task as long as the value does not exceed Q100.00 or if the delivery term is no more than 60 days) or in writing, in which case it must include at least the matter or subject, the form of performance, the time of its realization, the place of its execution, and the retributions to which the employer is obligated. If the labor contract is in writing, it must be recorded in the Ministry of Labor. Labor costs, not in monetary sense but in time, are included in this item. There is no specific term for the revision and recording of the contracts in the Ministry of Labor and Social Prevision but the entire procedure may take up to 20 days.

The obligations related to Social Security must also be taken into account. If a corporation or company has more than 5 employees, then it is imperative that the company records the payroll before the Guatemalan Institute of Social Security (IGSS). With said recording the employees will enjoy medical benefits that will be covered by the amounts of money that must be paid periodically by both the employer and the employee (from which the employer withholds it). The amounts for said contributions are: for the employer 10.67% and for the employee 4.83%. It is important to take into account the expiration periods for said social obligations, which is of 6 years for the employer's contributions and it does not expire with regard to the employee's contributions.

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<sup>1</sup> The minimum wage in the national currency is equal to Q1,309.20 quetzals for non-agricultural activities; and in the case of agricultural activities the minimum wage is of Q1,337.40 quetzals. The bonus incentive referred to is equal to Q250.00 quetzals.

The exchange rate used was that of the Banco de Guatemala on March 19, 2007

## **2. Causes for the termination of the work relationship.**

The causes for the termination of the work relationship may be seen as causes that may be invoked by the employer and causes that may be invoked by the employee. The Labor Code regulates both situations. The causes that may be invoked by the employer, without responsibility for him, are the following:

a) When the employee acts during his tasks in an openly immoral manner or turns to insults, slanderous allegations, or actions against his employer or its legal representatives for the management of his tasks;

b) When the employee commits any of the acts mentioned in the previous subparagraph against a coworker, during the time in which the tasks are executed, as long as a consequence of this the discipline is seriously altered or the tasks are interrupted;

c) When the employee, outside of the place where his tasks are carried out and during work hours, turns to insults, slanderous allegations, or actions against his employer or against its representatives for the management of the tasks, as long as said acts have not been provoked and that, as a consequence of them, the coexistence and harmony for the realization of the work is made impossible;

d) When the employee commits a crime or offense against the property in detriment of the employer, of any of his coworkers, or in detriment of a third party within the establishment; as well as when he intentionally causes, due to lack of care or negligence, a material damage to the machines, tools, raw materials products, and other objects related, in an immediate and unquestionable manner, to his work;

e) Whenever the employee reveals the secrets referred to in subparagraph g) of Article 63 (technical, commercial, or manufacturing secrets of his knowledge due to the faithfulness of the employer's position);

f) When the employee stops presenting himself to work without the employer's permission or without a justified cause, for two complete and consecutive working days or for six half working days in the same calendar month;

g) When the employee expressly denies to adopt the preventive measures or to follow the procedures indicated in order to avoid accidents or illnesses; or when the employee refuses to, in the same manner, obey the norms or instructions that the employer or its representatives in the management of the tasks, indicate to them clearly in order to obtain a greater efficiency and performance in their tasks;

h) When he violates any of the prohibitions of Article 64 or the internal work regulations duly approved, once the employer has warned him in writing. The warning will not be necessary in the case of intoxication when, as a consequence of it, the person were to put in danger the life or security of people or the employer's properties;

i) When the employee, upon celebrating the contract has induced the employer in error, lying about having qualities, conditions, or knowledge that he evidently does not possess, or presenting references or personal statements whose falseness is later verified by the employer, or carrying out his work in a manner that clearly demonstrates his inability to perform the tasks for which he was hired;

j) When the employee is arrested or is sentenced to prison; and

k) When the employee incurs in any other serious offense to the obligations imposed by contract.

The causes that may be invoked by the employee in order to terminate the work relationship, without responsibility on its part, are the following:

a) When the employer does not pay the complete salary that corresponds to him, on the date and place agreed on or where it is normally done. The deductions authorized by law are excluded;

b) When the employer incurs during the work in a lack of integrity or honesty, or acts in an openly unmoral manner or turns to insults, slanderous allegations, or actions against the employee;

c) when the employer directly, one of his family members, a dependent of his, or one of the people that live in his house, commits with his authorization or tolerance, any of the acts established in the previous subparagraph against the employee;

d) When the employer directly or through its family members or dependents, maliciously causes a material damage to the employee's tools or utensils;

e) When the employer or its representative in the management of the tasks turns to insults, slanderous allegations, or actions against the employee outside the place of work and outside work hours, as long as said acts have not been provoked and that as consequence of the same the coexistence and harmony are lost make compliance of the contract impossible;

f) When the employer, a member of his family or his representative in the management of the tasks or another employee is attacked by any contagious illness, as long as the employee must remain in immediate contact with the corresponding person;

g) When there is a serious danger for the security or health of the employee or his family, either due to lack of hygienic conditions in the place of work, due to excessive unhealthy conditions of the region, or because the employer does not comply with the preventive and security measures established through the legal stipulations;

h) When the employer compromises with its imprudence or inexcusable lack of care, the security of the place where the tasks are carried out or of the people located there;

i) When the employer violates any of the prohibitions included in Article 66;

j) When the employer or its representative in the management of the tasks transfers the employee to a lower position or with a lower salary or fundamentally or permanently alters any other of his work conditions. However, in the event that the employee has been promoted to a position that implies duties different to those performed by the interested party in the previous position, the employer may within the trial period return him to his original positions, if it establishes the evident incompetence of said employee in the performance of the position to which he was promoted. When the promotion or increase in salary were temporary, by virtue of specific circumstances, the employer does not incur in responsibility when it returns the employee to its original conditions; and

k) When the employer incurs in any other serious offense to the obligations imposed by contract.

Other causes for the termination of the work relationship are the failure to comply with any obligation agreed on or legal, as well as failure to comply with their corresponding obligations (established in the Labor Code).

In the matter of the termination of the work relationship it is important that the employer takes into account that upon terminating the relationship he will be obligated to pay the employee a compensation (in the event of an unjustified dismissal) equal to one month's salary for each year of continuous services and if the services do not reach a year, in a proportional manner to the term worked. For the effects of the calculation of continuous services, the date on which the work relationship started must be taken into account. The compensation for time served is governed by the following rules: a. its amount may not be the object of compensation, sale, or assignment, nor may it be seized; b. its amount must be estimated based on the average of salaries received by the employee during the last six months of validity of the contract or the time during which he has worked; c. the continuity of the work is not interrupted by illness, vacations, licenses, legal strikes, or other analogous causes; d. any clause of the contract that tends to interrupt the continuity of the services offered is null ipso iure; and e. the employer that fires an employee due to illness or permanent invalidity or old age, is not obliged to pay said compensation, as long as the employee in question is protected by the corresponding benefits of the IGSS. In Guatemala by law, if the contract is for an indefinite period of time, the first two months are considered a trial period and during said trial period any of the parties may terminate the contract, with or without just cause, without incurring in any responsibility.

### **7.3.- Foreign employees.**

In the case of foreign employees the percentage established in the Labor Code must be respected and only 10% of the total employees can be foreign. The percentage is not applicable to employees that occupy positions of managers, director, administrators, superintendents, and general managers.

#### **1. Requirements for their hiring.**

Foreign employees that have entered the country legally require a prior authorization of the Ministry of Labor and Social Prevision to work in a dependency relationship, offering their services to an employer of the private sector. They must also prove that they speak, read, and write the Spanish language. Besides, the employer must state that it will be responsible for the employee's behavior.

#### **2. Causes for termination of the work relationship.**

The causes for termination of the work relationship in the case of foreign employees are the same as in the case of the causes for termination of a national employee. In the event of high hierarchy positions the employer must justify in a reliable manner that it is dealing with those positions.

#### **3. Immigration requirements.**

In order to be able to hire a foreign employee it is necessary to fulfill two requirements: 1. That he has entered the country legally and has obtained his Residency; and 2. That he has obtained his Working Permit, requested in the General Employment Office of the Ministry of Labor and Social Prevision and, once authorized, said authorization must be sent to the General Immigration Office.

It must be taken into account that the work permit only has a validity of one year and may be extended for equal terms fulfilling the requirements established and applying for it in writing at least 15 days in advance.

#### **7.4.- Taxes payable by the employee.**

Employees in Guatemala must pay the following taxes: Income Tax, Added-Value Tax, contribution to the tax of the Guatemalan Institute of Social Security, and the Recreational Tax for the Recreation Institute for Employees of Guatemala's Private Companies.

#### **7.5.- Taxes payable by the employer.**

In the case of employers, they are obliged to pay: employer contributions to the Guatemalan Social Security Institute and the Recreational Tax for the Recreation Institute for Employees of Guatemala's Private Companies.

#### **7.6.- Collective Labor Right.**

Work unions are described as any permanent association of employees or employers or people of a specific profession or independent occupation (independent workers), created exclusively for the study, improvement, and protection of their corresponding common economic and social interests. There are rural labor unions and urban labor unions. The labor unions cannot grant privileges to its founders, executive members, or advisors except those advantages inherent to the position. Employees may not be fired for participating in the formation of a labor union. They enjoy immovability as of the moment in which they inform, by any written means, the General Labor Inspection of the formation and they enjoy immovability up to 60 days after the registration. In the event that what is established in the Labor Code with regard to the immovability of the members of the labor union is not complied with, those affected must be reinstated within 24 hours and the employer responsible will be punished with a fine of between ten and fifty monthly minimum wages in force.

The labor unions duly created are legal entities capable of exercising rights and contracting obligations. They are exempt for paying any type of fiscal and municipal taxes that may fall upon their properties, which they are entitled to acquire at any time. They may not seek to have profits. Any employee 14 or older may belong to a worker's union. A person may not belong to two or more unions.

The Collective Labor Right is not only protected in the ordinary Labor Legislation but it also enjoys constitutional protection since Article 102 "g" of the Constitution establishes the free exercise of unionization. Besides, Article 34 of the same legal body establishes the Right to Free Association. The Collective Labor Right also extends to the Collective Pacts of Labor Conditions since these are celebrated between one or several worker's unions and one or several employers in order to regulate the conditions in which the work must be offered. This Collective Pact has the nature of a Professional Law and its norms govern all contracts, whether individual or collective. Its norms extend to the signing parties, all those employees that work in the company when the pact comes into force, and all those hired in the future.

The Collective Conflicts of an Economic Nature are those regarding the creation, modification, suspension, or suppression of the conditions in the offering of the services and they grant, both the employees and the employers, the right to go to strike.

### **8.- Agency and Distribution**

#### **8.1.- Applicable legislation.**

The Agency and Distribution contracts in Guatemala have undergone a series of modifications throughout the years, thus it is important to point out that in order to be able to establish which norms apply to the contracts the date on which the contracts were celebrated must be taken into consideration. If the contracts were celebrated after the year 1971 but prior to the year 1998, the norms of Decree 78-71 of the Congress of the Republic must be applied. If the contract was celebrated after 1998 but prior to the year 2006, Decree 8-98 of the Congress of the Republic must be applied. However, if the contract was signed after the signing of the Dominican Republic – Central America Free Trade Agreement (DR-CAFTA) the norms of the Code of Commerce must be applied, but with the modifications introduced by Decree 11-2006 of the Congress of the Republic.

### **8.2.- Requirements for foreign companies.**

The Commerce Code establishes that the requirements that must be fulfilled in its Article 215 apply when the foreign company wishes to establish agencies or branches in the country. It is important to point out that foreign companies that wish to have one or more agencies or branches in the country must have at least one permanent agent in the country.

### **8.3.- Restrictions for foreign companies.**

There are no restrictions on the Agency and Distribution relationships, except the general ones that appear in the Code of Commerce. It is only necessary to comply with the requirements listed in numeral One in order to be able to create or carry out Agency or Distribution relationships.

### **8.4.- Applicable tax regimen.**

The tax regimen applicable to Agency and Distribution relationships is the one imposed by the Tax Code of Guatemala as well as any other applicable tax if the negotiations were subject to another legislations with taxes applicable to them.

## **9.- E-commerce**

### **9.1.- Applicable legislation.**

In Guatemala E-Commerce is a relatively new area and there isn't a specific legislation on the matter. The transactions carried out through E-Commerce, if they do not include specific stipulations governing the transaction, will be governed by the General Principles of Mercantile Law, as well as International Customs used for International Transactions.

The only normative body in Guatemala is chapter 14 of the DR-CAFTA, which states that the Parties will apply the rules of the World Trade Organization (WTO) for the transactions made through electronic means. Besides, it establishes the Principle of a Non-less Favorable Treatment and it pushes the private sector to carry out actions that seek sharing information and self-regulation through different mechanisms, including model contracts for the creation of standardized norms and customs.

In those cases in which there is a contract of adhesion, it must be taken into account that the Civil Code may be applied in Guatemala, in what refers to its norms on the Offer, as well as the norms of the Law on Consumer Protection, if the applicable jurisdiction is Guatemala.

### **9.2.- Electronic signature.**

Once again we face a situation where there is a lack of local legislation and therefore we must adopt norms, opinions, and customs of the WTO, the Agreement on the Aspects of Intellectual Property Rights related to Trade (ADPIC), as well as Good Faith, and the customs and General Principles accepted in Mercantile Law.

## **10.- Economic information and others**

### **10.1.- Population.**

12,800,000 habitants (information up to July 2005)

### **10.2.- Territorial extension.**

108,890,000 km<sup>2</sup>

### **10.3.- Public Services and Transportation.**

Public services in the Republic of Guatemala vary from one municipality to another, thus it is difficult to offer specific information, but we will use the municipality of Guatemala as a point of reference. In the city of Guatemala, the rate for public electricity is 13%. In the other departments and municipalities of the Republic the costs vary. With regard to water, it does not represent such a high cost as electricity. The rate for water services (fixed rate) and the sewer system is of \$2.06 and 20% over consumption, respectively. In order to calculate consumption, the Municipality charges per cubic meter and it varies between \$ 0.14 and \$ 0.72 cents.

In the subject of public transportation there are two options: urban and extra urban buses, which have a price of \$0.13 (equal to Q1.00 quetzal in local currency) and in the case of extra urban transportation the cost of the trip will depend on the destination; and the Transmetro (transportation service recently created by the Municipality of Guatemala) that has a price of \$0.13 (equal to Q1.00 quetzal in local currency).

### **10.4- Construction Costs and Municipal Taxes.**

According to information recollected from the Guatemalan Construction Chamber and the Office of Construction Permits of the Municipality of Guatemala, the approximate costs are the following:

The average cost of labor is \$178.05 per square meter of construction and simple finishing details. However, to the construction cost of the structure itself, one must add the cost of the construction license to be paid to the Municipality of Guatemala. The amounts vary depending of the construction area and the activity. In time, the cost may vary between 1.5 months and 4 months. 2 forms must be completed. 101 (change of use) and 105EAP (Establishments Open to the Public). An approximate cost for each 100 square meters of construction is of \$100.00. On the final value, computed by the Municipality, a 4.5% is established, which will determine the value of the construction permit.

### **10.5 –Does the national legislation offer a safe and legal framework for foreign investments?**

Foreign investments are subject to the general legal framework that applies equally to nationals. This legal framework offers sufficient guarantees for investment, but they do not always result this way when put into practice. The judicial system, final protector of this legal body, is very weak, but an effort is being made to create more and better job opportunities, to impulse economic growth, and to be able to compete in international markets.

Guatemala has several laws that deal with, within the ordinary national legal framework, investment matters. These are:

- Law on Foreign Investments Decree No. 8-98

This law prohibits any discriminatory act against a foreign investor, it acknowledges that the latter must receive the same treatment as a national investor. Therefore, they shall enjoy the same conditions, in all commercial areas, that Guatemala offers Guatemalans. It establishes limitations to the State in matters such as Expropriation of the Investment.

- Law on the Free Negotiation of Foreign Currencies Decree No. 94-2000. This law deals with the subject of the Free Disposal, possession, contracting, consignment, transfer, purchase, sale, possibility to charge and pay with and of foreign currencies.

#### **10.6.- What level of economic stability does the country have?**

There is an inflation rate of 9.3% per year.<sup>2</sup> But in the first six months of the year 2006 Guatemala's macroeconomic stability allowed an economic growth of 4.4%

#### **11.- Information at a Central American level**

##### **11.1.- Experience lived by the country in light of the FTA agreement signed between Central America, Dominican Republic, and the United States of America (DR-CAFTA).**

The Guatemalan economy has evolved greatly in recent years. Due to globalization, the service and manufacturing sectors have experienced the greatest growth. On its part, agriculture continues to be strong and it adopts high levels of use of technology, which has led, at the same time, to a dynamic growth in related economic sectors, such as transportation and logistics. The latter have experienced a great increase due to the country's strategic geographic location and its preferential access towards several international markets. Even though the signing of the DR-CAFTA is very recent and the experiences with regard to commercial exchange, customs matters, and effective productivity policies have been few and are still in development, something that has been experimented fully has been the help received by the World Bank with the objective of offering the help necessary to promote projects for the creation and implementation of productivity policies for the private sector in order to make the most of the advantages offered by international trade. Immediate help has been received to promote this matter. The World Bank also supports projects that strengthen the governability and institutions that are necessary in order to create an environment of stability for the promotion of investments. Efforts are being made to improve the legal system and in Guatemala specifically in order to fight corruption.

Guatemala has experienced changes in different legal bodies in order to adapt to the requirements established by the United States and included in DR-CAFTA. This is considered the first step in creating a safer, more standardized, stable, and attractive environment for foreign investment. However, we have observed promotion of investment and competitiveness operations, creating with this a favorable business environment.

Guatemala has the largest economic market of Central America, with a GIP of US\$ 34 billion, representing 39.6% of the region's total GIP. The GIP (Total value of all goods and services produced in the country during a year) recently recorded an increase of 4.6% (2006) and it is estimated that for 2007 it will grow 5.1%. This is a record amount, since it is estimated that Guatemala's GIP will be greater than that projected for Latin America in the same period (According to CEPAL America's rate will be 4.7%).<sup>3</sup>

The National Law Center for Inter-American Free Trade is participating in a project, funded by the United States Agency for International Development, which sees to introduce legal

<sup>2</sup> Recorded in the year 2006 according to reports of the Department of State of the United States of America

<sup>3</sup> Information obtained on the web page of the National Competitiveness Program PRONACOM [www.pronacom.org](http://www.pronacom.org)

reforms in the legislations of the member and signing countries of the DR-CAFTA and thus achieve standardization and build a large-capacity market in the region that will attract foreign investment.

The project is focused on the following areas: bankruptcy, competition, contracts, judicial system, property, intellectual property, direct foreign investment, international trade, health and phytosanitary measures, as well as technical barriers for trade, customs administration, and execution of measures for the transportation of goods and services, all the infrastructure necessary for the implementation of the projects.

With the participation and support of local governments, the international community, and the private sector, this project is no longer an idea and is on its way to becoming a reality that is already in its implementation phase, which is focused on the legislative reforms necessary to achieve standardization, especially in the subject of security of transactions in the region.

#### **11.2.- Viability of an efficient customs union**

The union of borders between the Central American countries is not a goal but an ongoing process. It cannot be said that it is a complete and efficient customs union there are always formal, cultural, physical, and practical inconveniences. Guatemala is fully interested in achieving a regional customs union, reason for which it has enacted several bylaws and regulations that seek to put into practice the agreements reached in the integration negotiation. That is, the possible obstacles, which can be reduced to tax obstacles, may be easily changed for the achievement of the union. However, the identification of the tariff differences currently included in the free trade agreements in force in the countries of the region must be identified.

#### **11.3.- Viability of the regional registration of a company.**

Currently the Central American region does not have a unified mercantile registry. If a foreign company wishes to register a company that will operate regionally, it must follow the procedures and comply with the registration and legal requirements established in each legislation.

In order to achieve a registration that is valid in the entire region, the standardization of the registration procedures and the inclusion of the same requirements in the ordinary legislation regarding the recording of a foreign company in the country must be achieved.

#### **11.4.- Viability of recording intellectual property at a regional level.**

With regard to the matters of viability of negotiations and relationships at a regional level in Central America, the subject of intellectual property is possibly the most developed. Despite the fact that there isn't a Standardized Registry of Intellectual Property, there is a Principle of First Registration. If any symbol protected by rules of Intellectual Property is recorded in any of the countries of the region, and later wants to be recorded in any of the other countries, even when there is already a similar symbol, the first one recorded enjoys the first priority.

The efforts required to achieve a unified registry of Intellectual Property are not impossible but they are not a priority, since first the different countries of the region must have their own Registries and norms adapted to the international guidelines and their procedures must be efficient.

#### **11.5.- Advantages of the commercial trade between the countries of the region.**

Throughout Central American history commercial trade between the countries of the region has been constant, but it has not been a large-scale activity. The Central American countries for many

years adopted an individualistic attitude that up to this date affects certain commercial relationships. But despite this tradition, in recent years this attitude has been replaced by visions of negotiations between the countries in order to create a stronger front for the negotiation and establishment of commercial activities. The Central American countries have always had weak economies and the armed conflicts and natural disasters have not helped to push these countries forward. The greatest advantage for the countries of the region is that trade would lead to a decrease in the price of products imported from other parts of the world; as well as a united front that could lead to negotiations as a whole in which the region would be in a more competitive position. This would also lead to an effective customs union and probably viability in registration and legal unions that would be beneficial.