NICARAGUA

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DOING BUSINESS IN LATIN AMERICA AND THE CARIBBEAN

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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

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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

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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.

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