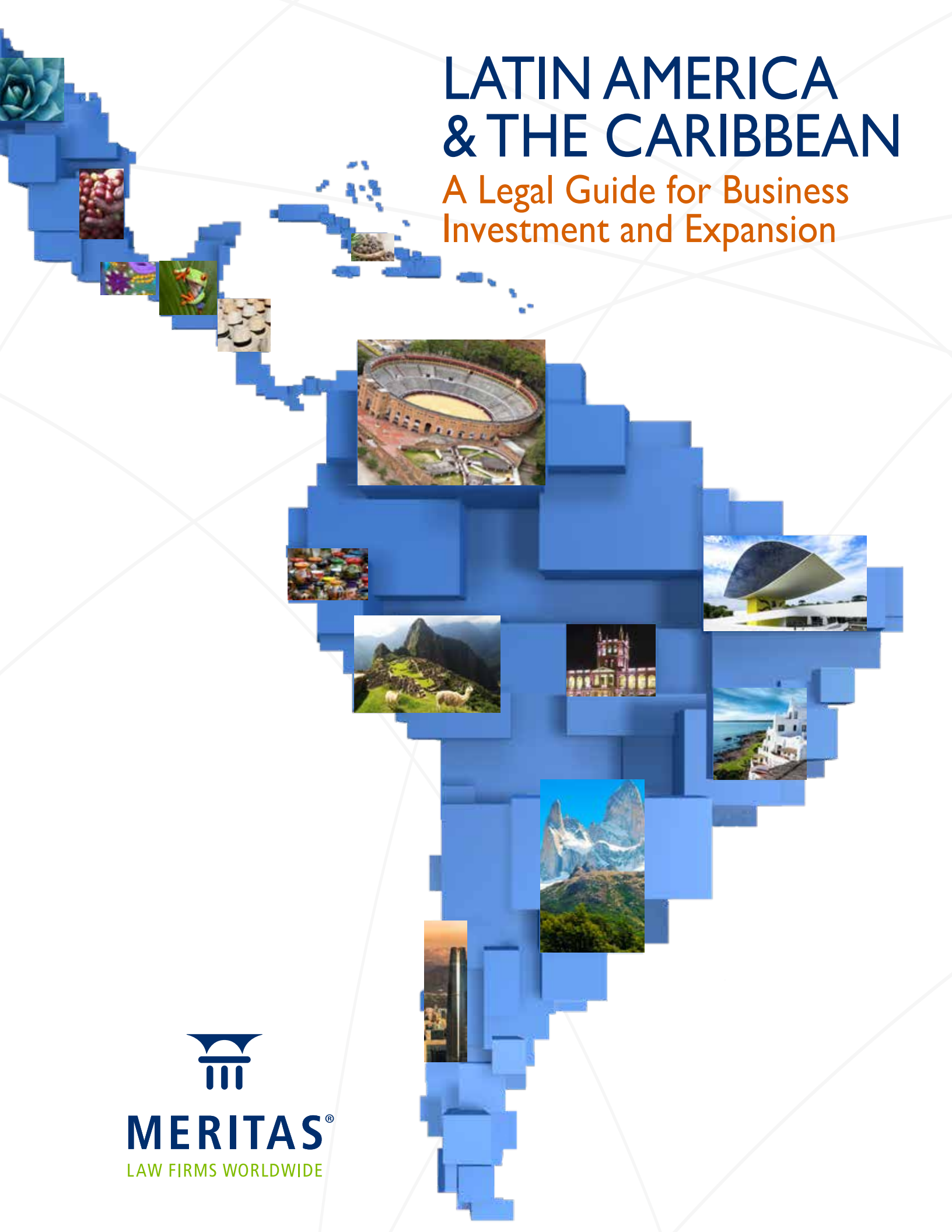


# LATIN AMERICA & THE CARIBBEAN

A Legal Guide for Business  
Investment and Expansion



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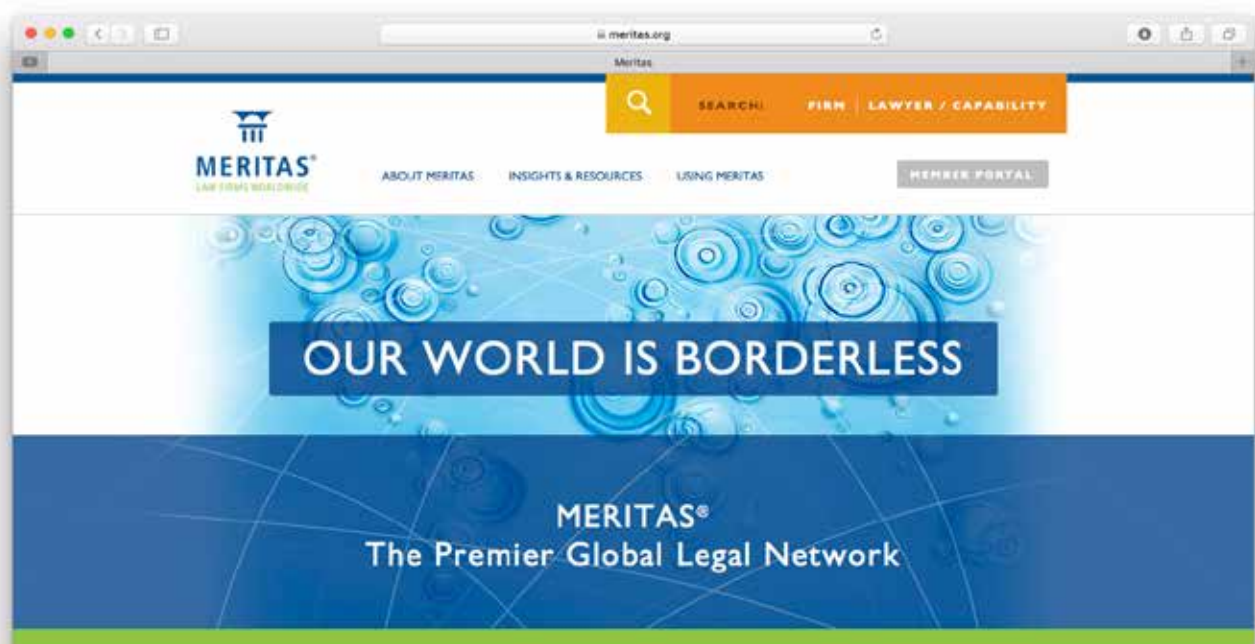
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# HONDURAS

## **FIRM PROFILE:** **CASCO-FORTÍN, CRUZ & ASSOCIATES**

Casco-Fortín, Cruz & Associates is a law firm founded in 2000 by two well-recognized attorneys, Dr. Rosalinda Cruz de Williams and Leonardo Casco Fortín. Both attorneys decided to join forces so as to provide specialized legal services in commercial, banking and financial affairs, performing the first merger of banking institutions in the history of Honduras and acting as legal counsel in subsequent acquisitions.

Currently, the firm offers legal services throughout the country from its offices in Tegucigalpa and San Pedro Sula, servicing national and foreign companies as well as individuals in matters related to commercial law, corporate law, constitutional law, public-private partnerships, administrative proceedings, notarial law, intellectual property, loan agreements and their guarantees, litigations, legal recovery and legal advice, as well as offering options in Alternate Resolution of Conflicts through Conciliation and Arbitration.

The firm is well known for its experience in insurance, banking and financial matters. We are the first choice for insurance companies and banks seeking legal advice for operations in Honduras.

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## I. What role does the government of Honduras play in approving and regulating foreign direct investment?

The Honduran government has acknowledged that foreign direct investment is vital for the generation of economic growth and employment for Hondurans. In response to this, in the past five years the government has implemented a series of legal and institutional reforms that seeks to provide national treatment for foreign investors and are also intended to offer greater legal security to investors regarding the establishment and management of their investments.

The principal laws that promote investment in Honduras are:

- A. Law of Promotion for the Generation of Energy with Renewable Resources;
- B. Law and Regulations for the Defense and Promotion of Competition;
- C. Law and Regulations for the Promotion of Public Private Partnerships;
- D. Special Law for the Simplification of Investment Processes for Public Infrastructure;
- E. Law and Regulations for the Promotion and Protection of Investments;
- F. Law of Representatives, Distributors and Agents of National and Foreign Companies;
- G. Law for the Generation of Employment, Promotion of Entrepreneurship, formalization of Businesses and Protection of the Investors Rights.

In addition, the Honduran government, in a partnership with the McKinsey consulting firm and the Honduran Private Sector Council, were the main players in designing mechanisms to promote economic and investment development through the Honduras 20/20 program, officialized with the publication of its own law which was published in the “Diario Oficial La Gaceta” on April 29, 2016. The program is directed by two representatives, one from the Honduran government and the other from the private sector. These representatives have broad and sufficient powers to promote all kinds of projects and investments to implement and achieve the objectives of the program.

The 20/20 program is an alliance of the public and private sectors, with the vision of generating 600,000 new jobs and more than USD9,300,000 in exports by 2021. There are currently around 100 sectors in which Honduras has a great growth opportunity, so in the first stage of the program, four specific sectors will be prioritized since they constitute the ideal platform to achieve the program’s objectives.

The priority sectors identified in the 20/20 Plan are:

- **Tourism:** It is expected to generate 255,000 additional jobs and USD850,000,000 in exports as Honduras becomes the leading tourist destination in Central America and the Caribbean.

- **Intermediate Manufacturing:** This sector is expected to generate 95,000 additional jobs through the development of the fastest growing auto parts and electrical equipment cluster on the continent. Also, this sector has the potential to generate USD2,830,000,000 in exports.
- **Business Support Service (BPO’s + ITO’s):** Through this sector, the plan seeks to generate 50,000 additional jobs and USD1,450,000,000 is projected through the development of a service pool with young and bilingual talent that can meet the latest trends in business processes and technologies.
- **Textile Sector:** It is projected to generate 200,000 jobs and USD4,200,000 in exports, provided that Honduras is positioned as the leader in textile exports in the Americas and one of the largest exporters to the United States and Europe.

In addition, the program aims to become a sustainable model that supports small farmers by boosting agribusiness and thus obtain an increase in rural incomes and an improvement in the development of the commercial agriculture sector as well as the reduction of deforestation. Also, considered as a part of this plan is development the housing sector.

The Honduras 20/20 program receives its financing in equal parts from the government of Honduras through the Commission for the Promotion of the Public Private Alliance (COALIANZA in Spanish), and, the Honduran Foundation for

Development Studies (FHED in Spanish). The entity in charge of executing this program is the “Unit for the Transformation and Facilitation of Investments and Entrepreneurship of the Honduras 20/20 Program” (the “Transformation Unit”), which will promote all initiatives. The Transformation Unit consists of a Board of Directors, an Executive Director (who is the legal representative of the unit), an executive secretary and other high-level professionals.

The corporate governance of the Honduras 20/20 program is integrated as follows:

### I. BOARD OF DIRECTORS.

The board of directors will be integrated by:

- The government: 3 members and 1 deputy, all appointed by the President of the Republic.
- The private sector: 3 members and 1 deputy, which will be named or removed by the Honduran Foundation for Development Studies (FHED in Spanish)

#### ATTRIBUTIONS:

- A. Propose to the President of the Republic the appointment or removal of the Executive Director;
- B. Establish goals and objectives, both for the Executive Director and for the Transformation Unit as a whole;
- C. The approval of the annual budget of the Transformation Unit;
- D. The approval of policies and strategies presented by the Executive Director.

### 2. EXECUTIVE DIRECTOR.

The Executive Director shall be directly appointed by the President of the Republic.

#### ATTRIBUTIONS:

- A. Coordinate the Honduras 20/20 Program;
- B. Render accounts on the fulfillment of goals and objectives established by the Directing Council;
- C. Propose to the President of the Republic the need of special regimes for the authorization of projects;
- D. Coordinate with the Government Sector Offices the planning of governmental actions to ensure the diligent execution of any requirement established in the regulations to which the investors are circumscribed;
- E. Maintain permanent communication and coordination with all sectors of society in order to enable their participation in the achievement of the objectives of the Honduras 20/20 Program.

The Private Sector Advisers Council is created and will act as a consultative body in support of the President of the Republic and the Transformation Unit within the framework of the objectives of the Honduras 20/20 Program. This council is integrated by representatives of the business sector, workers and professionals from the social sector of the economy and the academy.

Likewise, the framework of the 20/20 program establishes that the Honduran government and its entities shall prioritize the provisions, requests for information or other actions which are necessary to fully implement the Honduras 20/20 Program; therefore the Honduran government entities have a mandate to incorporate and prioritize the requirements of the Honduras 20/20 Program into its policies.

The Honduras 2020 Plan is the most recent and innovative program of the current administration. There is great expectation which has been generated with this plan, to help fast-track the country into a better position to attract foreign and local investment, generate jobs and create economic growth.

### 2. Can foreign investors conduct business in Honduras without a local partner? If so, how does the Honduran government regulate commercial joint ventures between foreign investors and local firms?

Foreign investors may conduct business in Honduras and create corporate entities without the need to have a local partner. A Honduran corporation may be wholly owned by a foreign parent company. Foreign entities can also establish branches in Honduras with no need to partner with a local investor. The Honduran Commercial and Tax Code does state

that for tax purposes, these entities need to appoint a legal representative who is a resident of Honduras with board powers to carry out all the legal acts and businesses to be conducted in the national territory.

The Honduran government is generally open to foreign investment establishing only very few exceptions. For reasons of social interest, the government may reserve the right to limit the exercise of certain basic industries, or services to Honduran nationals.

Some examples of restrictions to foreign investors are:

- A. The Constitution of the Republic which limits foreign participation in the direction, intellectual, political and administrative orientation of radio or television stations delegating these functions exclusively to Hondurans by birth.
- B. The Fisheries Law establishes that only Honduran residents and legal entities in which at least 51% of the capital belongs to Hondurans, will be granted permits for exploitation or profit purposes as well as fishing licenses.
- C. The Ground Transportation Law of Honduras establishes that the ground transportation, subject to a fee or payment in any of its modalities, is a public service of the State rendered only by the Executive Power or by an authorized Honduran natural or legal person.

The main Honduran law that refers to the commercial joint ventures between foreign investors and local

firms is The Public/Private Alliance Promotion Law which establishes that the parties within a Public-Private Alliance model can be organized as joint ventures, legal entities, whether for profit or not, participation contracts, management contracts, trusts or any other form or modality that is suitable for the execution of works and/or provision of required services. The Public/Private Alliance Promotion Law states that the distribution of risks and costs must be agreed between the parties according to what best suits the needs of the alliance, therefore, the parties can freely agree the terms and conditions of commercial joint ventures between foreign investors and local firms. Said law establishes the following basic and mandatory content that must be included in all Public/Private alliances contracts:

- Purpose of the contract and general conditions;
- Term of validity of the alliance;
- Project execution schedule;
- Rights and obligations of the parties;
- Allocation of risks among contracting parties;
- Required guarantees;
- Quality of service standards and service, work or product management indicators;
- Authority to subcontract;
- Economic rebalancing clause;
- Stipulation of penalties in case of breach of contractual obligations;
- Establishment of assumptions and

grounds for termination of the contractual relationship.

### 3. What laws influence the relationship between local agents and distributors and foreign companies?

The Honduran legislation regulates all representation, agency and distribution agreements under the same law and makes no distinction between them in its application. The main legal bodies that refer to the relationship between local agents and distributors and foreign companies are:

- A. The Law on Representatives, Distributors and Agents of National and Foreign Companies (Decree Law 549).
- B. The Regulation of the law on Representatives, Distributors and Agents of National and Foreign Companies.
- C. Commercial Code of Honduras.
- D. The Dominican Republic, Central America and United States of America Free Trade Agreement (DR-CAFTA).
- E. The Implementation Law of the Dominican Republic, Central America and United States of America Free Trade Agreement.

The main purpose of the Decree Law 549 is to regulate the commercial and contractual relations established or to be established between national and foreign companies and natural or legal persons engaged in the country to represent them, to distribute their products or promote purchase orders

of their merchandise as to ensure the permanent supply of products or goods in appropriate conditions for the consumer.

The DR-CAFTA and its implementation law among other topics, refers to the relationship between local agents and distributors and companies according to the nationality of its parties. The regulations contained in both documents are intended to substitute more restrictive regulations prescribed by the Decree Law 549.

The Decree Law 549 defines a grantee as a natural person or legal entity, whether by contract or by the actual performance of the service represented, distributes or procures as an agent the products or services of a national or foreign grantor, in an exclusive or nonexclusive way and, in all or in part of the national territory. The DR-CAFTA specifically stated that this definition of grantee is the same one recognized in the treaty and adds that that the definition also includes "... a person that is a party to the treaty".

Also, according to said legislation, any relationship of representation, distribution or agency must be governed by a contract or agreement which is defined as that by which a natural or national legal person is bound with another, exclusively or not, to represent him in business, to lend him agency services or distribute its goods

or products in the national market and that although it is not celebrated with the formalities that the law prescribes, its existence will be presumed.

The DR-CAFTA defines distributor as a person in representation of a party who is responsible for the distribution, agency, concession or representation in the territory of that party, or merchandise of another party. This definition is not included in the Decree Law 549, therefore the DR-CAFTA is considered a complement of the law on that matter among others.

According to the Honduran law and the DR-CAFTA, these are the requirements to be a grantee:

- A. To be a Honduran national or Honduran corporation (it's considered a Honduran corporation if its capital stock is composed by a predominantly Honduran investment at a rate of not less than 51%)
- B. To be affiliated to the Chamber of Commerce
- C. Have a license issued by the Secretary of Economy

Among the most relevant provisions on the subject, the Decree Law 549 and the free trade agreement (DR-CAFTA), regulate situations as the formalities that apply to the referred contracts, exclusivity, obligations of the parties, payment of commissions, dispute resolutions, registry, etc.

In line with the above, it is compulsory to register all representation, distribution and agency contracts in the Secretariat of Industry and Commerce, which authorizes the following public registries: registry of representatives, registry of agents, registry of distributors and a mixed registry of distributors and representatives registered under the DR-CAFTA. The registry requires that when the agreement is modified with respect to its jurisdiction, products, exclusivity condition and term, a new license and registration should be obtained.

The Decree Law 549 establishes that parties may solve their disputes in first instance by conciliation. In the absence of a contrary agreement, or even if there was a partial agreement, the dispute about the part that has not been resolved, will be submitted to arbitration according to what is established in the Law for the Protection and Promotion of Investments. The DR-CAFTA also provides that any conflict that arises out of the interpretation or application of a written representation, agency or distribution contract will be resolved according to what is established in the contract or in the absence of a contrary agreement following what is established in the Treaty.

The payment of a commission is not specifically contemplated in the Decree Law 549; instead, the Commercial Code establishes that if no special agreement is made, the agent will receive a commission that is proportional to the amount of business that is made by its intervention, according to the custom and usage in that place.



Exclusivity in a representation, agency or distribution agreement is permitted according to the Decree Law 549 and the DR-CAFTA but it has to be expressly agreed in the written contract in order to be valid. Otherwise it will be considered as a nonexclusive agreement.

#### **4. How does the Honduran government regulate proposed merger and acquisition activities by foreign investors and are there any areas of the economy where they are prohibited (e.g., natural resources, energy or telecommunications)?**

The Honduran government regulates mergers and acquisitions by foreign investors specifically through the Law for the Defense and Promotion of Competition, the Investment Law and its regulations.

The law for defense introduces the subject of mergers and acquisitions through the figure of “economic concentration,” defining it as the taking or changing control in one or several companies through shareholding, management control, merger, acquisition of property or any right over shares, equity or debt securities that cause any type of influence in corporate decisions. It’s considered economic concentration as well, any act or acts by virtue of which social shares, trusts or assets that are made between suppliers, customers or any other economic agent are grouped.

For this purpose, the investment law regulation guarantees national or foreign investors the right to participate

without limit in the acquisition of capital of companies, associations and other entities or national negotiations. Despite this, the Competition Law prohibits economic concentrations by merger or acquisition of property or any rights in shares or capital participation whose purpose is to restrict, diminish, damage or impede free competition.

In order for the state to verify that economic concentrations will not have a negative impact on free competition, the Commission for the Defense and Promotion of Competition must be notified.

Once notified, the Commission for the Defense and Promotion of Competition must define which concentrations must be approved according to the following criteria:

- A. Amount of assets
- B. Participation in the relevant market
- C. Turnover

According to the Investment Law, all national or foreign investors may invest in all economic activities without previous authorization from the Honduran government. However, the law establishes the following exceptions:

- A. The Investment Law prohibits foreigners from engaging in small-scale industry and commerce (small firms with an inferior capital less than L. 150,000.00).
- B. The Constitution of the Republic prohibits foreign ownership of land within 40 kilometers of international borders and shorelines except for the acquisition of lands located in

tourist zones destined for the development of tourism projects or construction of individual houses, with previous approbation from the Tourism Secretariat.

- C. The Fisheries Law establishes that only Honduran residents and legal entities in which at least 51% of the capital belongs to Hondurans, will be granted permits for exploitation or profit purposes as well as fishing licenses.
- D. The Ground Transportation Law of Honduras establishes that the ground transportation, subject to a fee or payment in any of its modalities, is a public service of the State rendered only by the Executive Power or by an authorized Honduran natural or legal person.
- E. Prior authorization from the government will be required for both foreign and domestic investors in the following areas:
  - Health services provided by the private sector.
  - National security.
  - Telecommunications.
  - Generation, transmission and distribution of electrical energy.
  - Air transport.
  - Hunting, fishing and agriculture.
  - Exploitation of forests.
  - Research, exploration and exploitation of mine sites, hydrocarbon quarries and other associated substances.
  - Financial and insurance services.
  - Educational services provided by the private sector.

## 5. How do labor statutes regulate the treatment of local employees and expatriate workers?

The Constitution of the Republic as well as the Law on Migration and Aliens establish that foreigners enjoy the same civil rights as Hondurans with certain restrictions established for reasons of public order, security, interest or social convenience.

The main legal body in labor matters is the Labor Code where the recruitment of national and foreign personnel is expressly regulated. In accordance to said Code, hiring foreign personnel is permitted as long as they do not make up more than 10% of the total workers of the company. However, this condition may be subject to modification with prior authorization from the Ministry of Labor and Social Security, if there is a lack of Honduran technicians in a given activity or when there are cases of authorized immigration controlled by the Executive Power. The authorization for hiring foreign personnel in a higher percentage than permitted by the law will be granted for a maximum duration of 5 years.

Likewise, the Labor Code and the Migration and Aliens Act mandate that every foreign worker must have a special work permit issued by the National Institute of Migration and a work card issued by the Ministry of Labor and Social Security. In compliance with the local laws and regulations, it's under the employer's responsibilities to obtain said permits as well as to guarantee the foreign employees their necessary living means.

The investment law expressly mandates that all investors, national or foreign, are required to pay salaries, wages, and social contributions in accordance with the laws that regulate the matter.

Apart from the legal bodies previously stated, the following laws prescribe obligations and grant rights for both employers and employees:

- A. The Code of Childhood and Adolescence
- B. The Minimum Wage Law.
- C. The Social Security Law
- D. The Law of the Seventh Day and the Thirteenth Month
- E. The Labor Inspection Law (not yet into force)

## 6. How do local banks and government regulators deal with the treatment and conversion of local currency, repatriation of funds overseas, letters of credit, and other basic financial transactions?

The Honduran government regulates the conversion of national to foreign currency, bills of lading, foreign exchange, exports, among other financial transactions through the following regulations:

- A. The Monetary Law
- B. The Law of the Central Bank of Honduras
- C. The Law and Regulation of the National Banking and Insurance Commission
- D. The Financial System Law
- E. The Law of Deposit Insurance in Financial Institutions

- F. The Insurance and Reinsurance Law
- G. The Stock Market Law
- H. The Financial Balance Law
- I. The Special Law against Money Laundering
- J. The Law for Repatriation of Capital (and their respective regulations)

The public and private institutions responsible for conducting basic financial transactions in Honduras are:

- A. Central Bank of Honduras
- B. The National Commission of Banks and Insurance
- C. Institutions of the Financial System
- D. Banks authorized by the National Banking and Insurance Commission

The Law for the Repatriation of Capitals establishes that natural persons or corporations that repatriate capital in foreign currency may deposit or convert it into national currency in any Honduran institution authorized by the National Banking and Insurance Commission for those means. The Central Bank of Honduras is the government entity which determines the foreign currencies that can be deposited in Honduran financial institutions. As a complement to the previously stated law, the Investment Law also permits the opening of accounts in foreign currency in the banks of the national system; nevertheless, this will only be allowed on free convertibility currencies.

The Law on Income from Foreign Exports and its regulations, prescribes that all natural or legal persons

dedicated to the export of goods, must declare in advance to the Central Bank of Honduras each export they make by describing the amount, the value and destination of the goods to be exported, as well as the probable date and currency in which the payment will be received. It is important to mention that the source of funds are susceptible to investigation for tax and anti-money laundering purposes. According to the Investment Law, any bank, exchange house, institution or agency that is authorized by the Central Bank of Honduras for the purchase and sale of foreign currency must attend the investor without discrimination as to whether it is or not its client, the class or amount of the deposits or operations that it realizes. In case one of the previously mentioned institutions neglects without a just cause to sell to the authorized investor, foreign currency or currency of free convertibility in the national money market, the Investment Law establishes a protection mechanism to the investors through the direct denunciation to the Central Bank.

## 7. What types of taxes, duties, and levies should a foreign investor in Honduras expect to encounter?

As of January 1, 2017, a new Tax Code entered into force in Honduras. This tax code did not create new taxes, duties and levies for local and foreign companies; however, one of the most relevant and important changes of this code is that the Honduras tax system changed from a worldwide tax system

to a territorial or local tax system whereby only income generated in Honduras will be taxed. Income received by persons or companies domiciled outside Honduras will be considered as being from a Honduran source if it arises from services or actions that benefit persons or companies located in Honduras, including fees, interest, and royalties. The main taxes that all domestic or foreign investors are obliged to pay in accordance to the Honduran legislation are:

### A. COMPANY INCOME TAXES:

- Company profits are taxed at a rate of 25%.
- Solidarity Tax: The tax rate is 5% calculated over the gross income above USD43,956 and is applicable only to taxpayers opting for taxes on income from lucrative activities (25% income tax regime), with the exception of special regimes of exportation and tourism.
- Alternative Minimum Tax: Legal entities and individual's resident in Honduras must pay 1.5% of gross income equal to or in excess of L. 10 million when the tax that otherwise would apply is lower than 1.5% of reported revenue. The rate is reduced to 0.75% for individuals or legal entities that produce or market the following products or services: production and distribution of cement; public services provided by state-owned entities; pharmaceutical products marketed for human use, at the level of producer or importer; and the bakery industry.

- A 1% of the gross income tax installment applies to taxpayers that meet the following conditions:

- During open tax periods, they have reported operating losses in two consecutive or alternate tax periods.
- In the prior tax period, they derived gross income equal to or greater than L. 100 million (approximately USD4,395,604). The income tax installment is a tax credit that may be applied against income tax, asset tax or the temporary Solidarity Contribution Tax on the filing of the year-end tax return. Companies operating under the following special regimes are exempt from income tax, sales tax, customs duties and certain municipal taxes:
  - I. Free Trade Zone;
  - II. Industrial Processing Zone (Zona Industrial de Procesamiento, or ZIP);
  - III. Temporary Import Regime (Régimen de Importación Temporal, or RIT);
  - IV. Agro-Industrial Export Zone (Zona Agro-Industrial de Exportación, or ZADE);
  - V. Free Tourist Zone (Zona Libre Turística, or ZOLT).

**B. ASSET TAX:** The taxable base for the asset tax will be the resulting difference of the assets reflected in the taxpayer's statement of financial position minus a deduction of L. 3,000,000 (USD131,868), minus the doubtful accounts provisions, payable loans, the accumulated depreciations permitted by the Income Tax Law and

the revaluation of fixed assets, as long as such are not disposed and the values from registered investment expansions, such as projects or fixed assets in progress that are not in operation. Income tax may be credited against asset tax.

If the income tax equals or exceeds the asset tax for the tax year, no asset tax is due. If the income tax is less than the asset tax, the difference is payable as asset tax. In such circumstances, the asset tax represents a minimum tax for the year.

**C. CAPITAL GAINS TAX:** The tax involved is 10%, calculated on the net profit of the transaction. Net profit is calculated by deducting the cost of the property plus any related expenses from the sales price.

**D. PERSONAL INCOME TAX:** Individuals residing in the country and receiving income from labor under a dependency relationship are subject to a progressive tax rate as shown below:

From	To	Marginal Rate On Excess
L.0.01	L.141,000.00	0%
L.141,000.01	L.215,000.00	15%
L.215,000.01	L.500,000.00	20%
L.500,000.01	Over	25%

**E. BRANCH PROFITS TAX:** Branches of foreign companies are subject to the same tax rates as Honduran companies.

**F. ADDED-VALUE TAX (VAT):** Services and goods are subject to a 15% added value tax; and 18% on alcoholic beverages, tobacco and first-class air tickets.

**G. TAX ON FINANCIAL TRANSFERS:**

- Tax on checks, debit or credit card and transfers checks, transfers and debit or credit card payments pay 0.30% on the operation base. This is tax is nonrefundable, and the bank will charge it to the company bank account.
- It also applies to the mobile communication that pays a rate of 1%; the industry of extraction of minerals to the protection of the environment pays 5% of the exports FOB (Free on Board). The contribution of the fast food sector under any franchise will pay 0.5% of the monthly sales.

**H. MUNICIPAL OFFICE TAXES:** Paid according to a table and total assets. There are different tables for every city.

- *Tax on Industry and Commerce:* tax paid by any natural person or merchant, whether social or individual, for its commercial, industrial, mining, agricultural, public and private services, electronic communication, urban development, casinos, saving institutions and loan banking, insurance and all those that obtain profits.
- *Real Estate Tax:* the one that falls on the value of real estate assets located in the municipality. i.e. In Tegucigalpa, the table varies depending

if the company is industrial, commercial or other. The real state pays a rate: up to L. 3.50 per every thousand for Urban Real Estate and up to L. 2.50 per thousand for Rural Real Estate.

- *Personal or Neighborhood Tax:* tax that falls on the annual income that natural persons receive within each municipality, whether or not they have domicile in it.

**I. MUNICIPAL REGISTRATION TAX:** All industrial or commercial businesses are required to have an annual license to operate. This tax is paid on the total gross income of a company or individual which exceeds L. 500,001. The amount is L0.40 per thousand to L 30,000,000 and L 0.40 per thousand over this.

**J. SOCIAL SECURITY TAX:** These are payments that are made monthly by employers and employees on the payroll of companies for the purpose of guaranteeing the functioning of the worker social security system benefits at the national level. The table is as follows:

From the Company	From the Employee
7.20% of the salary	3.50% of the salary

In 2016, the Law of Social Protection establishes a new pension plan and directs 3% of the current contributions of RAP (1.5% employer and 1.5% employee) and 3% of the IHSS (1.5% employer and 1.5% employee) to the pension fund. There is also a solidarity contribution of 0.5 % from the state.

**K. PENSION TAX:** These are payments that are made monthly by employers and employees on the payroll of companies for the purpose of guaranteeing the functioning of the employee pension system and retirement benefits at the national level. The table is as follows:

From the Company	From the Employee
1.5% of salary	1.5% of salary

Also, the social security has a special education tax called INFOP Tax which is 1% of the total amount that the company pays (this applies to companies with more than five employees).

**L. TAXES FOR THE DISPOSITION OF PROPERTY:** For the property sales, which will be valued at the market price, the previous owner pays 1.5% of the value of the transaction. For the transfer of immovable property or rights and values carried out with a nonresident, the buyer must withhold 4% of the transfer value.

**M. RATE OF TOURISTIC EVENTS:** The individuals pay a tax of 4% for daily accommodation in hotels, car rentals and tour operators.

**N. WITHHOLDING TAXES:** Royalties, leasing of movable and immovable property, public entertainment shows, mining royalties, fees and commissions, videos and films, salaries, services and fees paid to foreign corporations for work done in Honduras are subject to a 25% income tax

withholding rate. Dividends, interest, commissions, air, sea and land transport, reinsurance, branch remittance tax, other, paid to foreign recipients are subject to a 10% withholding tax.

**O. INTEREST INCOME:** Banks will withhold 10% income tax on interest income. Loans given by local companies to its stockholders, related parties, headquarters, or residents/ companies located in tax havens are subject to a 10% income tax withholding. If the loan is made by a foreign company, an income tax will be withheld at the rate of 10%.

In line with the commitment of the Honduran government to encourage and develop public or private investment, a number of incentives have been established in this area, such as:

**A. Exportation and Draw Back**

Activities: Some incentives such as exemption of importation taxes, income and value-added taxes for industrial and commercial outfits established under the incentive to exportation and draw-back incentive law do exist.

**B. Free Trade Zone and Touristic Zone:** Companies operating in Free Zones or under the Law of International Services are tax-exempt on profit derived from sales to foreign countries, for the next 10 years after the companies have been approved by the Ministry of Economy and Commerce. Income tax will be free from 10 to 20 years, municipal income tax for 10 years.

**C. Investment in Renewable Energy Sources:** Ten years of exemption of importation, twelve years in income tax, ten years' income and value-added taxes exist by way of the incentives for development of renewable energy projects.

**D. For projects under the modality of public-private alliance (APP):** Each project will have its own benefits and exemptions, such as the Government Civic Center and the "Palmerola International Airport" which were contracts signed under the public-private modality, by means of which these projects of taxes and rights are exempted.

**E. For investment projects as a priority interest:** According to the Law for the Promotion and Protection of Investments, they may enjoy tax benefits, if the Executive Branch, through SEPLAN, declares the investment project as a priority interest and establishes the following incentives:

- Amortization of the preoperative expenses incurred, within a period of 5 years.
- Normal and accelerated depreciation.

**KEY TAX POINTS**

- Companies and individual residents in Honduras must pay Alternative Minimum Tax of 1.5% of gross income equal to, or in excess of L.10 million, when the tax that otherwise would apply is lower than 1.5% of reported revenue.

- Transfer Pricing (TP) policies are applicable in Honduras. If the Company does not have a TP study, the government is entitled to determine differences between related party transactions, and a transaction done by independent parties. If a difference is detected, this would not be deductible for income tax purposes and a 15% or 30% tax would be paid on the difference.
- No restrictions are imposed on foreign-trade operations or foreign currency transactions.
- Losses incurred in any given year can be taken as a valid deduction only for the current year. There is no carry forward of losses. Companies engaged in agriculture, manufacturing, mining and tourism may carry forward net operating losses for three years; however, certain restrictions apply. Net operating losses may not be carried back.
- Foreign sourced income is not subject to income tax.
- Honduran law does not allow the filing of consolidated income tax returns or provide any other tax relief to consolidated groups of companies.
- No restrictions are imposed on foreign-trade operations or foreign currency transactions.

### **8. How comprehensive are the intellectual property laws of Honduras, and do the local courts and tribunals enforce these laws regardless of the nationality of the parties?**

The efforts to protect the universally recognized right to intellectual property and free competition are reflected through the Copyright and Related Rights Law and the Industrial Property Law, these being the primary rules in charge of its regulation in Honduras. However, the Investment Law and its respective regulations, as well as the Law for the Defense and Promotion of Competition, among others, establish guidelines on intellectual property in attention to national and foreign investors; therefore, these laws are applicable regardless of the nationality of the parties.

Among the primary objectives of these norms are those to prevent acts that infringe industrial property or that constitute unfair competition. Thus, all the rules dictated in matters of intellectual and industrial property are aimed at avoiding such situations for local and foreign entities with no distinction.

The Office of Intellectual Property is the entity responsible for keeping the register of trademarks, patents, distinctive signs, copyright and related rights, and will not grant any of these when their content or form infringe morality, good customs or if they contravene the laws regardless of the nationality of the applicants.

Likewise, in the case of disputes concerning intellectual property and unfair competition, in addition to the administrative appeals process before the Trademark Office, the Civil Procedure Code establishes specific judicial procedures for the resolution of any controversy in such matters. According to the principles governing procedural rules in Honduras, the right of access to justice for the protection of Intellectual Property Rights is in no way restricted or limited for any foreign person or entity, which are afforded the same rights as Honduran persons or entities.

### **9. If a commercial dispute arises, will local courts or will international arbitration offer a more beneficial forum for dispute resolution to foreign investors?**

In case of disputes, Honduran legislation dictates specific rules regarding alternative methods of conflict resolution. The decision to go to local courts or international arbitration will depend on the terms agreed by the parties and that are reflected in the corresponding contracts that regulate the relationship between the parties. For disputes arising between investors, they may settle their resolution through arbitration in accordance with the provisions of the Conciliation and Arbitration Law.

The Law for the Promotion and Protection of Investments, and its

regulation, establishes that investors are guaranteed the full recognition of international arbitration awards issued in accordance with the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), the Inter-American Convention on International Commercial Arbitration (Panama Convention) and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention) and the reciprocal investment protection treaties approved and ratified by the State of Honduras.

The law also establishes that the choice of law of a foreign jurisdiction is valid in contracts signed in Honduras between foreign and domestic investors, or between investors and the government. Insofar as international treaties do not contravene this, disputes arising in connection with the application of the Law for the Promotion and Protection of Investments between natural persons or corporations and national or foreign holders of an investment and the government, shall be resolved if possible, through negotiation, conciliation or mediation.

In those cases in which an agreement is not reached through the means of negotiation and conciliation, foreign investors whose nationality corresponds to a Government that has signed and ratified the Agreement

Establishing the International Center for Settlement of Investment Disputes (ICSID), or subsequently acceded to this agreement, may resort to one of the following conflict resolution mechanisms:

- a. International arbitration before the International Center for Settlement of Investment Disputes (ICSID) in accordance with its Articles of Agreement and its internal rules;
- b. National or international arbitration before one of the Conciliation and National Arbitration Centers; or
- c. Ordinary Justice.

Once the action is initiated using any of the options established in the previous paragraphs, the chosen mechanism cannot be changed if it is not agreed between the Investor and the State. When the arbitration is national, it will be understood that the applications submitted to a specific center require the parties to abide by the rules and regulations of the same.

### **10. What advice can you provide for how best to negotiate or conduct business in Honduras?**

The most important recommendations to achieve a successful negotiation, as well as to achieve the establishment of a prosperous business in Honduras, are that the investor must be fully aware of the local environment in the country, such as national security,

political environment, economic incentives, openness to foreign investors, rights of nationals and foreigners over property, government permits and tax matters among others.

It is very important to request the services of a legal and tax firm with a good reputation and with extensive experience on the proposed investment to provide advice on government regulations, administrative procedures, tax and municipal matters, customs, real estate, labor, among other matters.

It is also recommended that the investor make a comprehensive analysis of all the risks, benefits and incentives that Honduras offers for businesses, and this can be done by means of the online resources that some private entities such as FIDE ([www.hondurasinfo.org](http://www.hondurasinfo.org)), AMCHAM ([www.amchamhonduras.org](http://www.amchamhonduras.org)), ANDI ([www.andi.hn](http://www.andi.hn)), and COHEP ([www.cohep.com](http://www.cohep.com)) can offer.

It is essential to acquire as much knowledge as possible and to stay updated throughout the entire process of investment, on the legislation referred to investments, legal procedures required to operate in Honduras and the incentives granted to investors, among other important topics.

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