



DOING BUSINESS

HONDURAS

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HONDURAS

GENERAL ASPECTS OF THE COUNTRY.

Location: Bordered to the west by Guatemala, to the southwest by El Salvador, to the south-east by Nicaragua, to the south by the Pacific Ocean, at the Gulf of Fonseca, and to the north by the Gulf of Honduras and the Caribbean Sea.

Capital: The city of Tegucigalpa and Comayagüela, together, are the capital of Honduras.

Area: 112,492 km²

Population: 7,326,496

• **Security:**

The State Secretary of Security executes a national policy of internal security, by carrying out safety programs, plans, projections and strategies, reestablishing the public order for the pacific and harmonious CONVIVENCIA. Its actions are oriented towards the prevention, investigation and combat against crimes, faults and misdemeanors, guaranteeing people safety regarding their lives, honor, beliefs, freedoms, goods and rights, helping out in the preservation of the environment, public morality and state goods, migratory control regarding safety issues.

Within the programs that have been carried out over the past couple of years, we find the registry and control of weapons, the custody and administration of penitentiary centers and precincts. The support given to the public authorities is notorious.

• **Economy:**

The Constitution grants as guarantee, the right for individuals from the private sector to carry out all the activities related to the economy, limiting this right in those cases in which public interest has a key role.

Throughout the years, important changes have occurred. Some sectors such as energy production and distribution, telecommunications and water distribution as well as the control and management of international airports, for example, before totally controlled by national entities, as part of the government, either centralized or de-centralized; today, through a process of liberalization, investments from the private sector oriented to these sectors have gone to the private sector.

• Political Stability

Honduras has a political stability, characterized by its Democracy as form of Government, with three branches that govern: Legislative, Executive and Judicial. Elections are held every 4 years, guaranteeing the people's will. The National Congress is composed of 128 representatives, and is the entity in charge of creating the laws of the country. The Executive branch is conformed by a President and three presidential delegates (after a constitutional amend that eliminated the figure of Vice President for three presidential delegates), and the necessary Secretaries of State appointed by the President. These Secretaries of State carry out specific assignments in attention to the people's needs.



There are actually 16 State Secretaries as follows:

1. Secretary of Agriculture and Livestock
2. Secretary of Culture, Arts and Sports
3. Secretary of Education
4. Secretary of Finance
5. Secretary of Government and Justice (Secretary of Internal Affairs)
6. Secretary of Industry and Commerce
7. Secretary of Public Works, Transportation and Housing
8. Secretary of the Presidency
9. Secretary of Natural Resources and Environment
10. Secretary of Health
11. Secretary of Security
12. Secretary of Labor and Social Security
13. Secretary of Tourism
14. Technical Secretary and of International Cooperation
15. Secretary of Foreign Relations
16. Secretary of Defense

The Judicial branch consists of 15 magistrates elected after a selection process, for a 7 year term. They may be re-elected.

• Incentives to Foreign Investment

The need to promote exports and foreign investments has caused many other changes to the applicable rules. Honduras is part and has put into effect the Central American–Dominican Republic Free Trade Agreement (the CAFTA-DR) with the United States. Other countries of the region are also members have also put the treaty into effect. These forms of agreements have required important changes to local laws, as they were not in harmony with the terms of such trade agreements.

There is a law regulating competition, and which is oriented to regulate monopolies and other forms of concentrations that can affect the consumer. This law (“Ley para la Defensa y Promoción de la Competencia”), in effect since February 4, 2006, has as objective the exercise of free competition, for the benefit of the market and the consumer. Practices oriented to alter prices, to limit production or supply of goods, distribution of markets and similar practices are prohibited. Concentrations of capitals are to be also prohibited, unless proven that such concentrations cause efficiency that ultimately benefits the consumer. Mergers and acquisitions will also be subject to approvals.

This law determines that there will be a set of regulations which will define the criteria of application of the law.

It is difficult to detail all changes brought upon the legal system and rules for investment in the past years, however the country is in need of foreign and national investment and has the intent of promoting such investments through the creation of rules that not only make such investments attractive but that are clear and with the necessary guarantees...

A clear example is the Property Law. This law is oriented to solve two important issues: a) a full and definite clarification of title or ownership of real estate in Honduras, and b) the implementation of modern technology in the registration process of the rights upon assets, such as movable assets, real estate, trademarks, vehicles, vessels etc, as well as their transfer, hypothecation, pledging, attachments and other forms in which this title could be affected..

FIDE, a private non-profit agency in Honduras is available to assist foreign companies seeking to develop investment and sourcing programs in Honduras—it is your one-stop office for investment.

FIDE:

1. Prepares detailed itineraries tailored to individual requirements, and coordinates visits to Honduras.
2. Accompanies investors on site-visits to specific manufacturing facilities, industrial parks and sites for tourism development.
3. Schedules meetings with government, banking and foreign officials.
4. Contacts local suppliers, sub-contractors and joint venture partners.
5. Arranges appointments with lawyers, consultants and related support-services entities.
6. Provides industry/sector profiles, current data on transportation facilities and schedules, wage rates, incentives and legislation, economic data, production cost figures and other statistical data.
7. Identifies buildings and sites for rental or purchase
8. Provides follow-up assistance and full support for the establishment of successful operations in Honduras.
9. Provides assistance with immigration procedures, housing, school and other accommodations.

HOW TO SET UP A COMPANY

• **New Corporation**

Foreign companies can participate in the Honduran market through either the establishment of a subsidiary, which is usually done through the Sociedad Anónima (S.A.), or by the establishment of a branch. While the creation of a company in Honduras, such as an S.A, with some exceptions due to regulated areas of commerce, does not require governmental approval, the creation of a branch office does.

• **Branch of Foreign Company**

When the option to create a branch is selected, the principal (foreign company) must request such approval at the Ministry of Industry and Commerce, proving that such corporation may by law and by the terms of its articles of incorporation open a branch in a foreign country,

that such decision has been taken by the corporate authority that may decide so, that they will have a permanent representative in Honduras in order to be responsible of the business, that they have allocated at least Twenty Five Thousand Lempiras as working capital, and that through their representative they have sworn submission to Honduran laws. This process was slow and

lengthy in the past but new laws modernizing the public administration establish that such a petition should be solved in a matter of fifteen working days.

Either entity -the local company or the branch office- must complete the process of creation by inscription in the public registry of commerce and by obtaining the adequate permits and further registrations, as well as the approval of operating permits, corporate and accounting books, the “Registro Tributario Nacional” (the tax identification) issued by the tax authorities, etc.

BUSINESS ENTITIES

• Types of Entities

The Honduran Commercial Code determines that in order to participate in the business sector of this country, you have to either be constituted as an individual merchant, that is, an individual that owns and carries out a business, or a be some form of corporation.

There are five forms of corporations recognized in Honduras and these are:

- a) “Sociedad Colectiva (General Partnership);
- b) “Sociedad en Comandita Simple”;
- c) “Sociedad en Comandita por Acciones (Limited Share Partnership) ”;
- d) “Sociedad de Responsabilidad Limitada (Limited Liability Company)”, and
- e) “Sociedad Anónima (Corporation)”.

In practical terms, the first three are obsolete and no longer are used in the creation of companies as “social merchants”. The traditional forms of corporate structure are: the “Sociedad de Responsabilidad Limitada”, Limited Liability Company (“SRL”), which is a form of a limited liability company and the Sociedad Anónima, Corporation (“SA”), a stock company where also the liability is limited for the shareholders. We could even add, that due to the very formal processes required for the transfer of interest in the SRL’s, as well as the limitation of a maximum of 25 “partners”, this form of corporation is also under a tendency of being used less and less, rendering the SA’s as the more commonly used form of corporations created.



- **Requirements**

The corporation will have the name of preference followed by "Sociedad Anónima" or "S.A." A search must be conducted at the Registry of Commerce in order to confirm availability of the chosen name. The corporate name needs to indicate the main line of business the company will be involved in is desirable designation of its domicile (a city of Honduras) is set

The corporation must have a legal social purpose. In any case, the interested party must define it based on the activities to be carried out in the country. Our recommendation is to set forth a very ample purpose so that future operations are not limited.

To form an SA, a minimum of two shareholders are required as well as a founding capital of Twenty Five Thousand Lempiras (Local currency equivalent approximately to U.S.\$1,400.00 at exchange rate). This capital should be available through a certified check, a cashier's check or a certificate of deposit in a local bank, expressed in Lempiras, any of them, in the name of the new corporation.

The new company can be managed by a board of directors or by a sole administrator (similar to a General Manager of a limited liability corporation).

If a foreign partner is to sign the articles of incorporation, which are prepared in a public instrument, under his own name and interest, all that is necessary is his or her passport as means of identifications, however, if this person is acting on behalf of a third party, an individual or a legal entity, such person must have a power of attorney to certify such representation, duly authenticated by a Honduran Consulate or Apostilled. The lack of authentication would render these documents with no legal validity.

As stated before in some cases, the nationality of the shareholders is an issue to be considered. Generally, the nationality is of no major consequence, but there are some exceptions, such as the case of fishing companies, in which they are only allowed to operate if the majority of the shareholders are Honduran by birth, for example.

Steps that must be followed in the incorporation of a Honduran corporation:

- Choose the Commercial Name of the Company and perform search at the Registry of Commerce to confirm availability.
- Obtain a certified check payable to the Corporation against a Honduran Bank for 100% of the Capital Stock.
- Grant the Public Deed of incorporation of the Corporation before a Honduran Notary Public.
- File the Deed of Incorporation at the Registry of Commerce for registration. The Corporation may start operating after such registration is granted.

LEGAL ISSUES TO HAVE IN MIND WHEN DOING BUSINESS IN HONDURAS

• Taxes

Honduras has tried to promote national and foreign investment through the establishment of conditions that make investments more attractive. Besides creating several tax exempt regimes for companies focused on exports of manufactured goods in Honduras, there have been some changes that have lowered the applicable tax to revenues.

- Free Trade Zones: Companies are exempt from income, city and county taxes.
- Export Processing Zones: Companies are exempt from income, city and county taxes.
- Industrial Parks: No government income, sales or corporate taxes or fees.

Income tax for companies is now a flat 25%, and dividends are now tax free. Individuals have a scale of taxation based on income. For the first L70,000.00, there is a tax exemption (0%); from L70,000.01 to L100,000.00, a 10% tax rate applies; from L100,000.01 to L200,000.00 taxation is of 15%; the portion between L200,000.01 and L500,000.00, taxation is of 20%, and from L500,000.01 and above, 25%. There is a capital gains tax, the applicable rate is of 10% calculated upon the portion of the gain.

Sales tax is charged for all sales of goods and services at a rate of 12%, excluding a list of products considered of basic need, which are tax exempt. Liquor and tobacco products, are taxed at a rate of 15%.

Stamp taxes have been eliminated in Honduras. They no longer have to be attached to agreements and which calculated upon the total amount of the transaction. The only required stamp taxes currently are for some filings of petitions to the government. If the contract has to be registered at a public registry, as stated above, these agreements must be contained in a public instrument for which a special stamp tax is required. Notaries must attach stamps of the Honduran Institute of Notaries, also calculated upon the total value on the agreement.



- **Agency, distribution and representation relationships**

An important change has been introduced to the Agency, Representation and Distribution Law. According to this law, early termination of an agreement with a local agent, representative or distributor could not be done unless a justified cause (as stated in the law) entitled the principal to do so. The denial of renewal of the agreement without such cause was also considered an unjustified termination according to this law. The penalties for termination without the proper justification included: a) All expenses incurred by the concessionary that cannot be recuperated due to the modification, denial of renovation or cancellation of the contract; b) the investments made in benefit of the supplier, in such a way that these could not be used by the concessionary as a credit for fiscal matters, through the depreciation of assets; c) the value of the merchandise that could not be sold by the concessionary, and not collected back by the principal with the corresponding note of credit; d) the equivalent to the gross profit (before taxes and without consideration of expenses) of the distributor from the sale of the goods or services related to the agreement, for the last 5 years. In the case that the relationship had less than 5 years of existence, this amount would be calculated according to the annual average of the profit, multiplied by five; and, e) the amount of credits granted by the distributor related to the business involved in the distributorship agreement. In such case, the supplier is assigned these credits, these credits are limited to credits with less than six months of maturity before judicial claim was filed.

This indemnity was forced by law, unless a different agreement was arranged between the parties. These huge amounts of money in compensation gave many distributors a special leverage in those cases in which a principal desired to appoint a new distributor. The CAFTA-DR has required this law to be amended, leaving the term of the agreement dependent entirely to what it is expressed in the agreement, with out forcing its renewal if it is not desired. However, those agreements entered into before such amend, still abide by the old rules, based upon the principle that the law cannot be retroactive.

LABOR ISSUES

• General provisions

The Honduran Labor Code is applied to all corporations independently if they are situated in a Free Zone or an Industrial Park.

As per the Honduran Labor Code, labor contracts must be in writing and in as many samples the parties wish as well as any amendment or extension thereto. One sample must be for the employer so he can demonstrate it upon request of the authorities.

It is important to mention that the written agreement is a guarantee for the employee and its omission is imputable to the employer.

The labor contract and all subsequent legal obligations are assumed at the beginning of the work relationship, even though the contract was verbal.

Labor contracts may include a trial term for the first 60 days, term within which any of the parties may terminate the relationship without cause. Once these 60 days have passed, the labor contract is considered undetermined, unless the parties have agreed a specific term in the cases permitted by law.

The use of foreign personnel is permitted. However at least 90% of the total labor force should be Honduran nationals and no less the 85% of the total payroll must be paid to Honduran personnel. The Labor Ministry may waive these percentages either up or down of more than 10% y the circumstances require it.

• Work shifts

The Labor Code has established three (3) work shifts:

1. Day Shift: from 5:00 a.m. to 7:00 p.m.
2. Night Shift: from 7:00 p.m. to 5:00 a.m.
3. Mixed Shift: This would be part day shift and part night shift. If more than 3 hours would be part of a night shift, the whole shift is considered a night shift.

• Work Schedule

Day Shift: 8 hours per day; 44 hours per week;*

Mixed Shift: 7 hours per day; 42 hours per week;

Night Shift: 6 hours per day; 36 hours per week.

*In the day shift Schedule the workers labor 5 ½ days and they are paid for 6 full days (48 hours/ week). Employees working at the other shifts are paid for the exact amount of hours worked.

• Overtime

a) 25% additional to the regular daytime salary if the overtime is done during day hours;

b) 50% additional to the daytime salary, if the overtime is done during the night hours;

c) 75% additional to nighttime salary when the overtime are an extension of the regular night shift.

Regular working hours plus overtime may not exceed 12 hours in one day, except under extraordinary circumstances (as established in the labor contract.)

• Holidays

There are 11 paid holidays in a year, even when they should fall on a Sunday, these are.

January 1; April 14; May 1; September 15; October 3; October 12; October 21; December 25; Thursday, Friday and Saturday previous to Easter Sunday during Holy Week.

• Vacations

10 consecutive work days for the 1st year of work;

12 consecutive work days for the 2nd year at work;

15 consecutive work days for the 3rd year at work; and

20 consecutive work days for the 4th and following years at work.



Saturday Afternoons:

If an employee Works 44 hours a week, which are the hours required by law for a full day time shift (8 hours from Monday to Friday plus 4 hours on Saturday), the worker is paid for the remaining 4 hours of Saturday.

VII) Salary

Salary includes everything the employee receives such as, cash, payments in kind, premiums, overtime, paid holidays, commissions, etc. The salary paid to an employee can never be less than the minimum established by law for the type of worked performed. The current minimum wage suffered an increase in January 2009, as follows: (a) for economic activities in urban areas, the minimum wage is One hundred and eighty three lempiras with thirty three cents per day (approximately US\$ 9.63) or five thousand five hundred lempiras per month (approximately US\$ 289.17); (b) for economic activities in rural areas, the minimum wage is One hundred and thirty five lempiras with seventeen cents per day (approximately US\$ 7.10) or Four thousand fifty five lempiras (approximately US\$ 213.20). In the textile "maquila" sector, the minimum wage is still being negotiated.

Salary can be calculated per unit of time (month, every fifteenth days, week, day and hourly); per unit labor; and by profit sharing.

The salary paid in cash must be given in equal periods and in legal currency. The salary calculated on a daily basis shall be paid weekly at the most, and salaries calculated on a different basis shall be paid monthly at the most.

- **Assistance Bonus**

An employee is eligible for an additional day's pay for 6 days of continuous work in a week.

- **13th Month salary or Annual Bonus**

This is an additional month's salary that an employer must pay his employees if he/she have worked for the full 12 months of the year. The employee receives this benefit in a proportional form if he/she has worked less than the indicate time. The bonus payment will be calculated based on the average wages received during the time worked in the year in question. This bonus is payable in the month of December.

- **14th Month salary or Social Compensation Bonus**

This additional month's salary or its proportional amount according to the time worked in one year is payable in the month of June of every year, although parties can agree to pay in other date. The payment will be calculated based on the average wages received during the time worked in the year in question.

• Education Bonus

According to law, the worker whose salary is equivalent to two minimum salaries is authorized to receive an Educational Bond per family of Lps.500.00 (USD 30.00 Aprox.) (Effective upon 1997). This bond must be cancelled during the first trimester evaluations of the students, as compensation to the parents whose children are in pre-school level or age, elementary and high school. This amount of Lps. 500.00 must be increased in the same proportion as of an increase of the minimum salary. If an employee has worked less than 12 months, he or she will be granted with this benefit proportionally to the time worked.



• Compensation for Unjust Dismissal

Any employee unjustly dismissed (causes other than those provided in article 112 of the Honduran Labor Code or company's internal regulations or by mutual agreement) is entitled to receive several labor benefits considered as severance pay or "cesantía". These benefits shall be estimated upon the average of the last 6 months salaries.

The aforementioned labor benefits are:

Severance payment equivalent to one monthly salary per every year he/she worked for the company; this payment may not exceed a total of 25 months. If



The employee has not worked for a full year severance payment shall be calculated as follows:

- a) After a period not less than 3 months and not over 6 months of continuous work: an amount equivalent to 10 days of salary;
- b) After a period of 6 months and up to 1 year of continuous work: an amount equivalent to 20 days of salary;
- c) After 1 year of continuous work; an amount equivalent to a month's salary for every year of employment.

• **Notice of Termination**

Any labor contract subscribed for indefinite term can be terminated by giving the other party a notice of termination, with the following anticipation:

a. of 24 hours when employee has served same employer in a continuous manner less than 3 months;

b. of 1 week, when employee has served 3 to 6 months;

c. of 2 weeks, when employee has served for 6 months to 1 year;

d., of 1 month, when employee has served from 1 to 2 years; and,

e. of 2 months when employee has served for more than 2 continuous years.

Such notice has to be given in writing. If notice is not properly given, the employer is compelled to pay the amount equivalent to the employee's salary for the period that would have corresponded to the notice not given. If notice is not properly given by employee he/she is compelled to pay half of his/her salary for the period that would have corresponded to the notice not given.

National Institute of Vocational Training (Instituto Nacional de Formacion Profesional - INFOP) Employees contribute to INFOP with 1% of the total form of the company. The government makes a contribution to INFOP whit a 0.5% of the total form.

• **Social Security**

The government of Honduras has a health system called Social Security. According to the Social Securities new Law, this covers illnesses and maternity, invalidity, old age and death.

Amongst the Services offered by the Honduran Institute of Security they are:

Illnesses, non professional accidents and maternity, industrial Accidents and professional illness old age and invalidity, Subsidy Death to familias, widowhood and orphan hood.

The contribution of the employers to the Social Security is the same as the 7% of the total form of the company (considering a high of Lps.2,400.00 (USD 126.00 Aprox.) of every de monthly salary of the employee.).

The employees and the Government also contribute with the Social Security System (3.5% each).

- **Special Benefits**

Maternity: The employer should provide 42 days before and 42 days after the birth of the baby and a daily hour for breast feeding (during lactancy) for 6 months.

Illness: The employee will be granted incapacity to labor according to the medical indications of the doctor who attended him.

- **Internal Rulings**

A private employer, who has more than 5 permanent employees in the commerce sector, must draft and submit for approval to the Ministry of Labor, the Internal Ruling of his business.

This Ruling must be in accordance with the provisions of the Labor Code, other laws, agreements and conventions that affect it; and its purpose is to clearly establish the binding technical or administrative rules, required for the business.

Some of these rules are: admission requirements, working hours and time for meals, payment day and place, appointment of a person to whom any claims can be directed, safety regulations, disciplinary sanctions, etc.

PROPERTY

- **Acquiring a Property**

The Property Law states a full and definite clarification of title or ownership of real estate in Honduras and the implementation of modern technology in the registration process of the rights upon real estate and other sorts of property.



The registration fees at the Property Institute are equivalent to One Lempira and Fifty Cents, per Thousand Lempiras of such value. Taxes derived from the transfer of Real Property, are now equivalent to 1.5% of the sale price.

Regarding Environmental Issues, Honduran Laws promote activities toward practices that are compatible with the preservation and protection of the environment as a whole.

INTELLECTUAL PROPERTY

• Industrial Property

In Honduras Industrial Property is regulated by the Ley de Propiedad Industrial (Decree No. 12-99-E), which regulates everything related to Inventions, patents, industrial designs, trademarks, industrial secrets, and its object is to:



- 1) Establish the bases so that the industrial and commercial activities in the country, there is a permanent system to perfect of these processes and products;
- 2) Promote inventions of industrial application, and the technical improvements or advances, and the diffusion of technological knowledge within the productive sectors;
- 3) To favor and prompt the quality of goods and services of industry and commerce, in relation to the interest of the consumers;
- 4) To favor the creativity for the design and presentation of new and useful products;
- 5) Protect Industrial property through the regulation of inventions patents, industrial designs, trademarks, and commercial signs, denominations of origin and industrial secrets; and,

- 6) Prevent acts that endanger industrial property or constitute disloyal competition against it; and establish penalties against these.

The implementation of these Laws corresponds to the Secretary of State in the Offices of Industry and Commerce, through the offices of Registry of Industrial Property, dependency of the General Direction of Intellectual Property.

- **Authors rights/Royalties**

On the other hand, regarding to author rights or royalties the Ley de Derechos de Autor y de los Derechos Conexos (Decree No. 4-99-E) protects the authors of literary, artistic works and software and any other type of authors that have created any other type of work. This law protects the rights of national artists, and foreigners that live in Honduras and foreign autistics creations that will be published for the first time in Honduras.

