

DOING BUSINESS



EL SALVADOR 2012

arias & muñoz
The law firm for Central America

INDEX

1. GENERAL ASPECTS OF THE COUNTRY

- Government
- Security
- Economy
- Political Stability
- Incentives to Foreign Investments

2. PERFORMING ACTS OF COMMERCE IN EL SALVADOR

- Incorporation and establishment of a Salvadoran corporation
- Establishment of a foreign company branch

3. TAXES

- Income Tax
- Movable Goods Transfer and Services Tax (VAT)
- Import Duties
- Other Taxes
- Term

4. FREE TRADE ZONES AND SERVICES PARKS

5. EMPLOYMENT LAW

- Legal Background
- Foreign Employees
- Labor Contracts
- Principal Labor Provisions

6. INTELLECTUAL PROPERTY

GENERAL ASPECTS OF THE COUNTRY

EL SALVADOR

Location:	El Salvador borders the Pacific Ocean between Guatemala and Honduras. It lies on the Gulf of Fonseca, as does Nicaragua further south.
Capital City:	San Salvador City, which has approximately 2,100,00 inhabitants.
Population:	Approximately 5, 744,113 inhabitants
Official Language:	Spanish
Area:	21,040 km ²
Main Airport:	El Salvador International Airport, located at San Luis Talpa, La Paz, approximately 30 minutes from the capital city.
Currency Exchange Rate:	U.S. Dollars

• Government

Three branches of powers make up the democratic Government of El Salvador; Executive Branch (President and Ministers), Legislative Branch (Congress), and Judicial Branch (Supreme Court of Justice). Congress is the power responsible for drafting and issuing the laws that govern the country.

• Security

In El Salvador, as well as in many Latin American countries, security policies have undergone a process of important redefinition. Such approach has been characterized by the transition from a vision solely focused on the criminal justice (police and justice) sector as the single actor in the design and implementation of a security policy, towards a more inclusionist and participational perspective of involving the citizenship within the process of definition and creation of such policies.

El Salvador ranks No. 38 globally and second in Latin America, after Chile, in confidence with the police services. The National Civil Police (PNC) is one of the youngest police corporations in the Latin American region.

• Economy

El Salvador is one of the most open economies in Latin America. El Salvador has signed Free Trade Agreements with the United States of America (together with Guatemala, Honduras, Nicaragua, Costa Rica and the Dominican Republic, known as CAFTA-DR for its abbreviation in English), México-Northern Triangle (that includes the Republic of El Salvador, Guatemala and Honduras), Panama, Chile, Dominican Republic, Colombia and Taiwan.

GENERAL ASPECTS OF THE COUNTRY

It is important to mention that El Salvador has recently signed a Free Trade Agreement between Mexico and the Central American countries (Guatemala, Honduras, Nicaragua and Costa Rica) which regulates all bilateral relationships between each Central American country and Mexico; once this agreement is implemented, it will substitute the Free Trade Agreement Mexico-Northern Triangle. Additionally, in May 2010, at the European Union, Latin America and the Caribbean Summit, held in Madrid, El Salvador, along with Guatemala, Honduras, Nicaragua, Costa Rica and Panamá concluded negotiations with the European Union of an Association Agreement; currently, this agreement is in process to be presented to the legislative authorities of each country and to the European Parliament for its ratification, expecting that the Association Agreement enters into force in early 2013. Furthermore, our country is closing negotiations to sign a Free Trade Agreement with Perú. Finally, El Salvador has also entered into Capital Investments Promotion and Reciprocal Protection Treaties with the United States and Germany, among others.

With the enactment of the "Monetary Integration Law" on January, 2001, that allows for the unrestricted and unlimited use of U.S. Dollars within the national territory, there is a fixed exchange rate set at 8.75 Salvadoran colones for each US\$1.00, which stabilizes the Salvadorian economy and reduces the risk to perform future financial projections, given that the currency devaluation, in regards to the American dollar, does not exist anymore. For all intents and purposes, the Salvadoran economy has been "Dollarized".

Any foreign company or individual, regardless of its country of origin, is free to invest, operate, manufacture, render and/or promote its products or services in El Salvador. By law, El Salvador grants National Treatment to foreigners, which means that anyone, whether Salvadoran or foreigner, will be treated the same under the law.

• Political Stability

Since 1992 the country has entered an era of political and social stability, and steadied economical growth, with presidential elections held every 5 years and congress elections every 3 years.

Up to June 2009, El Salvador had been governed by the right-wing party (ARENA), which had been elected for four consecutive presidential periods. Nevertheless, from June 2009 El Salvador is currently governed by a moderate left-wing president from the historical left wing opposition party (FMLN). As for Congress, per the recent legislative elections of January 2009, the FMLN has the largest number of Congressmen of any party (though they do not possess legislative majority).

• Incentives to Foreign Investments

El Salvador is a country interested in promoting economic and social development, which is reflected, among others, in the current "Ley de Inversiones" (Foreign Investment Law), which allows for repatriation of investments at all times, and the "Ley de Zonas Francas Industriales y de Comercialización" (Industrial and Commercialization Free Zone Law) and the "Ley de Servicios Internacionales", which provide several tax incentives for export and maquila activities, as well as for exportation of services, accordingly.

PERFORMING ACTS OF COMMERCE IN EL SALVADOR

A) INCORPORATION AND ESTABLISHMENT OF A SALVADORAN CORPORATION

In El Salvador, local corporations may be created as either Partnerships or Stock Companies. Partnerships differ from Stock Companies in the sense that the essential condition to form the corporation is, in the former, the personal attributes of its partners, whereas in the latter the essential condition is the economic contribution of its shareholders, which are represented in the form of shares.

PARTNERSHIPS

There are three categories of Partnerships:

- a) General Partnership ("sociedad colectiva"), where the partners are severally and mutually liable for all the obligations incurred by the Partnership without any limit whatsoever;
- b) Special Management Partnership ("sociedad en comandita simple"), where there are two types of partners: the investment partner, who may not participate in the administration of the entity, and is only be liable to the extent of his investment; and the managing partner, who is in charge of managing the entity and is liable for the Partnerships' obligations with no limit whatsoever; and
- c) Limited Liability Partnership ("sociedad de responsabilidad limitada"), where the partners are liable only to the extent of their investment in the partnership.

The commercial name of a Limited Liability Partnership may be either formed by the names of one or more of its partners, or any different name may be agreed upon by the partners. The respective commercial name must be immediately followed by the word "Limitada" or "Ltda."

The failure to mention this word will make the partners severally and unlimitedly liable for the company's responsibilities and obligations.

It takes a minimum of two and no more than twenty-five partners to form a Limited Liability Partnership. Each partner shall only have one "quota" or capital participation. In the event one partner acquires a new quota or makes additional contributions, the value (and not the quantity) of its quota shall increase.

PERFORMING ACTS OF COMMERCE IN EL SALVADOR

STOCK COMPANIES

There are two categories of Stock Companies in El Salvador:

a) Special Management Stock Company ("sociedad en comandita por acciones"), which mirrors the characteristics of the sociedad en comandita simple, with the principal difference falling in the share titles through which the company's capital is represented (shares of stock vs. personal participations); and

b) Stock Company ("sociedades anónimas"), wherein the shareholders are only liable for the company's obligations up to the amount of their participation in the capital stock of the same. This is the standard and most commonly used form of corporation in El Salvador, which is due to several aspects, among which the following must be highlighted:

Its flexibility: In this kind of corporation, the shares are freely transferable by the shareholders through simple endorsement/assignment incorporated into the corresponding share certificate (once they have been completely paid and no amount is due there under). Any agreement contravening the above will be null and void. In the event that shares are not completely paid, they may be transferred but only with the prior authorization from the Company's administrators. Also, Stock Companies may adopt a Variable Capital Regime, whereby the shareholders shall be able to increase or decrease the variable portion of its Capital Stock without any major formalities, other than a resolution by the shareholders agreeing to the same.

PERFORMING ACTS OF COMMERCE IN EL SALVADOR

Limited Liability: Shareholders are responsible for the Company's liabilities up to the amount of their respective shares in the capital stock of such Company.

Main Elements of a "Sociedad Anónima de Capital Variable" in El Salvador

- **Commercial Name:** The Stock Company's commercial name of preference shall be followed by the expression "Sociedad Anónima de Capital Variable" or "S.A. de C.V." A search must be conducted at the Registry of Commerce in order to confirm the availability of the chosen commercial name.
- **Purpose:** The Stock Company must have a duly determined 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.
- **Shareholders:** The law requires a minimum of two shareholders to constitute and create a new Stock Company, whether they are individuals or legal entities (other corporations).
- **Nationality:** The Stock Company shall have Salvadoran nationality regardless of the number of foreigners, who are shareholders or form part of its administration; and after its due incorporation shall be submitted to and governed by Salvadoran law.
- **Term:** Local law requires that a term or duration of the Stock Company be established by the founding shareholders. It is recommended that an indefinite term be agreed upon.
- **Capital Stock:** Currently the minimum capital of a stock company is US\$2,000.00, of which at least 5% must be paid by the founding shareholders at the moment of incorporation. The percentage of capital not paid at incorporation shall be paid the shareholders within 1 year's time. Each share that composes the capital stock shall have a nominal value of US\$1.00 or multiples thereof. The notary public, before whom the stock company's public deed of incorporation deed is granted, must be provided with a certified check against a Salvadoran Bank for the amount of the capital stock that is being paid at such moment, and shall reference the same therein. The check must be issued in favor of the stock company being formed.
- **Administration:** The administration of corporation stock company shall be given either to (i) a Board of Directors comprised of, at least, two directors (commonly, President and Secretary) and their corresponding alternates, or to (ii) a Sole Administrator and his/her corresponding alternate. Although the Legal Representation of the stock company falls upon the President of the Board of Directors, it is recommended that several members of the Board of Directors exercise the same, severally or separately. In the event the administration is granted to a Sole Administrator, he/she shall have the legal representation and, in his/her absence, his/ her alternate would exercise it. The Directors or Sole Administrator may last in their posts from 1 to 7 years, opting for reelection at the end of this period.

External Auditors: They must be appointed either at the moment of incorporation or later through a General Shareholders Meeting.

Steps to Incorporate a Salvadoran Stock Company

(i) Choose the Commercial Name of the Company and perform search at the Registry of Commerce to confirm its availability.

PERFORMING ACTS OF COMMERCE IN EL SALVADOR

(ii) Obtain a certified check payable to the Stock Company against a Salvadoran Bank for at least 5% of the Capital Stock.

(iii) Grant the Public Deed of Incorporation of the Stock Company before a Salvadorian Notary Public.

(iv) File the Public Deed of Incorporation at the Registry of Commerce for registration. The Corporation may start operating after such registration is granted. The same usually takes from 5 to 7 working days.

B) ESTABLISHMENT OF A FOREIGN COMPANY BRANCH

A foreign company may also operate in El Salvador, through the local establishment of a branch thereof.

In order to establish a local branch of a foreign company, the legal representative or designated attorney of the foreign company would need to file a formal request in the National Office of Investment (ONI) of the Salvadoran Ministry of Economy, attaching to the same the following documents:

(i) Bylaws of the foreign company, evidencing that it has been legally constituted and is currently in existence. Also, a certificate of incorporation issued by the national authority in the country of origin of the foreign company (e.g. Registry of Commerce, Secretary of State, or the like) certifying its legal establishment and good standing;

(ii) Documents supporting that the foreign company is authorized to operate and establish branch offices in foreign countries (if the bylaws and/or the certificate of incorporation mentioned above do not state so), and a certification of the corresponding shareholders' minute or board of directors' minute (as per the Company's bylaws), whereby the foreign company has approved and authorized the establishment of a branch office in El Salvador;

(iii) Power of Attorney granted in favor of the person who shall represent the foreign company in El Salvador; this person must reside in El Salvador. All the above documents would have to be delivered duly notarized and legalized, by the nearest Salvadoran Consulate or with "Apostille";

(iv) Documents supporting that the foreign company has registered in ONI at least the minimum capital required by law to carry out its operations in El Salvador; the minimum capital required by law for a foreign company to carry out acts of commerce in El Salvador is US\$11,428.57;

(v) Initial Balance Sheet certified by a local public accountant/auditor, reflecting the branch office's capital.

Upon filing of the documents detailed above, the ONI would register the foreign company's establishment in El Salvador; afterwards, the aforementioned documents would have to be re-filed before the Salvadoran Registry of Commerce, who would then proceed to register the Company's new branch in the country.

Finally, be advised that the branch office would need to organize its local accounting system according to general accounting standards and principles. The accounting books would have to be authorized by the external auditor of the branch, and approved by its local representative.

TAXES

During the 1990's, El Salvador's Tax System went through a process of reform in order to simplify collection and to optimize efficiency.

Tax revenues perceived by the Government from direct taxes have been reduced to two basic sources: Income Tax and, Movable Goods Transfer and Services Tax (VAT). However, there are other types of direct taxes, such as: Real Property Transfer Tax, Carbonated or Sugared Drinks Tax and National or Foreign Alcoholic Beverages Tax.

Moreover, the Salvadoran tax legislation also includes Import Duties as a source of the Government's income.

In January 2001, the Tributary Code was enacted and incorporated into the national fiscal legislation. One of this Tributary Code's innovations was that it considers non-resident companies which perform business through agencies and branch offices, as resident companies for fiscal purposes and, therefore, such entities are subject to the monthly tax payments. Another novelty was the incorporation of the audited fiscal report as of year 2001, for non-resident companies and for partnerships and stock companies, as long as such entities have an income for the corresponding fiscal year of ¢5,000,000 (US\$571,428.57) and assets to December 31st of each year of ¢10,000,000 (US\$1,142,857.10), and the appointment of the fiscal auditor of these companies must be made during the first five months of each fiscal year. Towards the end of year 2004, Congress approved a series of amendments to the Salvadoran fiscal laws, filed by the Government through its Treasury Ministry, which have been in force since 2005. These reforms were created with the intention of reducing and eliminating legal loopholes, as to combat the existing rate of tax evasion and elusion. It is important to note that the Tributary Code was the body of law which had major changes, as the general norm to which other imposing laws must refer. In general, these reforms included a series of formal duties for the tax payers in order to ensure that the Fiscal Authority obtain the appropriate and useful information for the exercise of its supervision and control duties.

By initiative of the Government of the Republic, the Honorable Legislative Assembly, as of December 17, 2010, adopted an amendment to the Tax Code, which is to establish a withholding of 20% of the income tax in respect of financing services provided between non- resident financial institutions, previously subscribed by the Central Reserve Bank of El Salvador and domiciled individuals, if these are related, within the parameters regulated for that purpose by the tax rule. It was also agreed to repeal the statute by which some non-resident financial institutions, ranked by the Central Reserve Bank, were allowed the withholding of income tax for payments from lending operations.

Recently at the end of December of 2011, the Congress approved a series of reforms primarily to the Income Tax law and the Tax Code, effective since the first day of January 2012, among which stand out: the increase of the Income Tax Rate to 30% for the taxpayers with annual gross taxable incomes greater than US\$150,000.00; the payment of the Income Tax for the dividends received by the shareholder generated since the tax year 2011, subject to a rate of 5%, if the partner or shareholder is not resident nor located nor constituted in a state or territory of no or low taxation or tax haven (which is also applicable to companies constituted under the Free Zone Law or International Services Law). The increase of the monthly income tax payment to 1.75% (the current rate is 1.5%). The establishment of Minimum Income Tax of 1% on the gross incomes. And the payment of 5% as Income Tax on the decreases of capital, in the part corresponding to capitalizations or reinvestment of profits.

Income Tax

The Income Tax Law determines that all individuals, successions and trusts domiciled in the country and obtaining annual incomes above US\$4,064.01, must pay income tax in accordance with the percentages determined in a progressive chart ranging from 10%, 20%, and 30%. In the case of individuals, successions and trusts not domiciled in the country, the fixed rate of 30% over their net income obtained in El Salvador is applied. In the case of corporations, regardless of their domicile or nationality, these must pay income taxes consisting of a flat or fixed rate of 30%, if their annual gross incomes surpass US\$150,000.00 or 25% if their annual gross incomes does not surpass US\$150,000.00. It is important to notice that taxpayers, whether individuals or entities, must deduct 1.75% monthly over their net income, as advanced income tax payment.

In addition, please also note that a 20% income tax withholding must be applied to any payments made from El Salvador to an individual, corporation, succession or trust, domiciled abroad, on any income perceived locally by such non-domiciled individual, corporation, succession or trust resulting from activities performed, assets located in, capital invested in, and services either rendered or used in El Salvador or a 25% rate if such non-domiciled subject is constituted, located or resident in a country, state or territory of no or low taxation or a tax haven. Besides, it is important to keep in mind that since the first day of January two thousand twelve, the dividends received by the shareholder are subject to the Income Tax under a tax rate of 5% and 25%, depending on whether the person receiving them is constituted, located or resides in a country, state or territory of no or low taxation or tax haven.

• Movable Goods Transfer and Services Tax (VAT)

The Movable Goods Transfer and Services Tax (known in various countries as Value-Added Tax) was introduced in our tax laws scheme in September, 1992. It began with a fixed rate of 10% over the transfer, importation, entry (Central American area), and consumption of movable and corporeal goods, and over rendering, importation, and self-consumption of services. The tax was later increased to 13% (as it stands to this day).

As an incentive to exports, all export transactions have a tax rate of 0%. However, taxes are collected when producers acquire goods and services necessary for manufacturing products or providing services that are exported. It should be noted that, as of December 17, 2010, the Legislative Assembly agreed to repeal the Reactivation of Exports Law, whose content established the benefit of the return of 6% of the FOB (Free on Board) for exporters, which entered in effect and is law of the Republic, since the first day of February 2011.

Individuals, corporations, successions, trusts, cooperative associations, or joint venture corporations, Government institutions, organizations and enterprises are taxpayers of the VAT, as long as they are carrying out any act, which generates the same.

• Import Duties

The Uniform Central American Customs Code (CAUCA) and the Regulations for the Uniform Central American Customs Code (RECAUCA) comprise basic dispositions of custom legislation common to the signatory countries, and which regulates the organization of their custom services and their customs administrations, in accordance with the requirements of the general common market of Central America's integration economy.

TAXES

The Importation Tax or Tariffs Rights are calculated according to the Central American Tariffs Program common to all the countries in the region. At the present time, a gradual lowering of duties and tariffs is being carried out to become more competitive with international markets.

• Other Taxes

In addition to the two principal taxes detailed above (Income Tax and VAT), there are other taxes, which generate an important percentage in relation of all Salvadoran tax revenue. For instance, the Real Estate Transference Tax taxes the transfer of real estate when their value exceeds US\$28,571.43, with a flat 3% rate.

There is also a tax on vehicle circulation, which is annual and is paid every time the owner renews the vehicle's permits to circulate within the country or when it is definitely imported from abroad.

In addition, El Salvador has specific taxes corresponding to Alcoholic Beverages, Cigarettes and Carbonated Drinks. It is important to mention that since the commercialization of these products corresponds to certain corporations, the Tax application is not very complex and the control on behalf of the Tax administration is efficient and appropriate.

FREE TRADE ZONES AND SERVICES PARKS

Salvadoran legislation contemplates the existence of export processing zones, called Free Trade Zones, as provided for under the Industrial and Commercialization Free Zone Law.

Under the Industrial and Commercialization Free Zone Law, a wide range of incentives and tax breaks are afforded to businesses working within established free zones. Any owner, individual or Corporation, national or foreign, that qualifies can receive benefits such as: (i) exemption from import duties on all products manufactured and exported; (ii) exemption of import duties on machinery equipment, tools, and spare parts to be used within the free zone; (iii) free entry of raw-materials, parts, and various components into the free zone; (iv) exemption from Income Tax for the company; (v) exemption of taxes levied on property and goods associated with the export activities; and (vi) exemption of VAT as long as 100% of the goods are exported.

Furthermore, the Industrial and Commercialization Free Zone Law also provides for the same fiscal incentives and benefits for businesses dedicated to production, assembling or "maquila", manufacture, processing, transformation or commercialization of assets and services for direct or indirect export to the Central American region or abroad, that are not located in Free Zone due to technical reasons, under the regime of a Active Improvement Warehouse ("Depositos de Perfeccionamiento Activo").

On December 20, 2007, the Industrial and Commercialization Free Zone Law was reformed with the purpose of excluding certain activities which were incorporated to its content and now regulated under the International Services Law, and to adapt provisions of a customs and fiscal nature, for the appropriate operation of the activities developed under a Free Trade Zones Regime.

With these reforms, the activities to be regulated in the Industrial and Commercialization Free Zone Law are the production, assembling or "maquila", manufacture, processing, transformation or commercialization of goods, which may be destined for direct or indirect exportation to the Central American area

may be destined for direct or indirect exportation to the Central American area or abroad, or for their further nationalization in compliance with legal requirements.

The reforms included a transitory provision that provided for a term of 6 months for businesses that performed commercialization of merchandise activities regulated under the Industrial and Commercialization Free Zone Law, to install its operations within a free trade zone, with the exception that if the activity was related to craftsmanship, textile industry, textile "maquila" or clothing workmanship, the business could operate in an Active Improvement Warehouse.

On October 11, 2007, the International Services Law ("Ley de Servicios Internacionales") was approved by Congress, and the same was published in the Official Gazette on October 25, 2007. Legislative decree number 43. The Regulation to the International Services Law ("Reglamento de la Ley de Servicios Internacionales") was published in the Official Gazette on December 12, 2008. Legislative decree number 131.

FREE TRADE ZONES AND SERVICES PARKS

This legislation is the result of the obligations acquired by El Salvador in the "Agreement on Subventions and Compensatory Measures" to which El Salvador is party as member of the WTO. Under this agreement, El Salvador undertook the obligation to eliminate all subventions to exports from industrial sectors. In order to overcome the impact that this international commitment would have, and as not to affect the services sector also benefited by the Industrial and Commercialization Free Zone Law, the Government worked on the draft of the new law.

With this law, services are excluded from the Industrial and Commercialization Free Zone Law, being now regulated by the International Services Law. Likewise, service providers which at the time of enactment of the said law enjoyed the benefits and fiscal incentives of the Industrial and Commercialization Free Zone Law, either as users or under and Active Improvement Warehouse regime, where automatically to enjoy the fiscal benefits and incentives of the International Services Law, with the following exceptions: providers which can only provide their services in service parks, and distributors or logistics operators who are subject to additional formalities.

The object of the International Services Law is to regulate the establishment and operation of Service Parks and Service Centers, which are demarcated areas within the country where the goods introduced and services provided therein are considered to be introduced and rendered outside the national customs territory in relation to importation taxes and duties.

The following are some of the activities benefited by the International Services Law: (i) international distribution, (ii) logistic international operations, (iii) international call centers, (iv) information technology, (v) research and development, (vi) repair and maintenance of maritime vessels, (vii) repair and maintenance of aircraft, (viii) business processes, (ix) medical and hospital services, and (x) international financial services. It is important to mention that the services regulated under the International Services Law must be exported, i.e.: the services are to be used and/or rendered abroad or outside the customs territory.

The fiscal benefits and incentives contemplated by the International Services Law for both users of Service Parks as well as for Service Centers include:

FREE TRADE ZONES AND SERVICES PARKS

	Service parks	Service Centres
Import Duties	Free admission of machinery, equipment, tools, parts, accessories, movable assets and office equipment and other goods necessary for the incentivized activity.	Full exemption of duties and other taxes imposed to the importation of machinery, equipment, tools, parts accessories, movable assets and office equipment, and other goods necessary for the incentivized activity.
Income Tax	Exemption of income tax, exclusively for income perceived as a result of the incentivized activity.	Exemption of income tax, exclusively for income perceived as a result of the incentivized activity.
Municipal Taxes	Exemption of Municipal taxes on the company's assets.	Exemption of Municipal taxes on the company's assets.

The Ministry of Economy shall administer and overview the compliance of the International Services Law, while the Ministry of Treasury through the Customs Office and the General Office of Internal Taxes shall have the surveillance and effective control of the customs' and fiscal regime of Services Parks and Centers.

EMPLOYMENT LAW

• Legal Background

El Salvador enacted its current Labor Code in 1972, with the main purpose of harmonizing relations between employers and employees through the establishment of their respective rights and obligations, based on principles that provide the welfare of the living conditions of employees, especially those set in Articles 37 to 52 of the Constitution.

The Labor Code regulates the working relationship between private employees and their employers and between the State, Municipalities, autonomous and semi-official institutions and their employees.

In case of conflict in the implementation of labor laws, the rule most favorable to the employee will prevail ("in dubio pro worker").

• Foreign Employees

Although foreigners can work in local companies there are some restrictions that apply to them. At least 90% of employees in all companies must be Salvadoran or of Central American origin and their salaries should have a minimum wage of 85% paid by the company. However, the Ministry of Labor may grant authorization for a specific company to recruit more than 10% of foreign employees under special circumstances and with the purpose of giving employment to people who are difficult or impossible to replace nationally. In this case, employers are required to train personnel in El Salvador for a period not exceeding five years, under the supervision of the Ministry.

However, this does not apply to those professionals who perform technical or administrative services in foreign companies or international companies whose function is to direct, control and manage companies established in different countries. To qualify for this exemption, foreign or international companies must obtain the appropriate authorization from the Ministry of Labor.

To calculate the percentage mentioned above concerning national employees and their salaries, foreigners will not be considered up till four, if they provide their services as directors, managers, administrators or have administrative functions within the company.

Foreign workers are entitled to the liberty to work as employees of El Salvador, with the legal restrictions mentioned above.

• Labor Contracts

According to the Salvadoran Labor Code, employment contracts, as well as any amendments or extensions thereof, shall be undertaken in writing in triplicate, each contracting party shall make one of these (employer and employee), and the third should be submitted by the employer to the Ministry of Labor in a period of eight days after its conclusion, amendment or extension (subject to administrative fines for failing to do so).

It is important to note that the written employment contract is a guarantee for employees, and its failure is attributable to the employer (for example, in the case of a labor action, all facts alleged by the employee with respect to employment conditions, shall be deemed true, unless the employer proves otherwise.)

EMPLOYMENT LAW

The existence of an employment contract is presumed once the person provides services to another person or entity for more than two consecutive days. If this dependence is shown, then the existence of an employment contract is presumed.

If the tasks required of the employee are of permanent employment, contracts will be considered as indefinite or however it has been agreed to by the parties. To include a specific time and validity period in an employment contract it must meet the following requirements: (i) the employment contract should reflect that the task to be performed by the employee is classified as transient, temporary or casual, and (ii) circumstances or events that would lead to the termination of employment shall be included or considered.

Nonetheless, employment contracts may provide for a trial period of 30 days, the period during which either party may terminate the relationship without justification or liability. After these 30 days, the contract is considered indeterminate, unless the parties have agreed a specific time limit in cases where the law allows.

When an employment contract is terminated, together with the reasons for termination, the employer must give the worker a certificate specifying:

(i) start and end dates of work, (ii) the type of work performed, and (iii) monthly salary earned by the worker at the time of termination. If the employee so requests, the record may also include the efficiency and conduct of the worker and the cause or causes of termination.

• Principal Labor Provisions

The following are important provisions found in the labor legislation:

- Working day and work week

- Daytime shifts are between 6 a.m. and 7 p.m. the same day, and night shifts are between 7 p.m. and 6 a.m. the next day. An ordinary working day shall not exceed 8 hours a day, or by night, 7. The workweek hours shall not exceed 44 hours, or by night, 39.

If unhealthy or dangerous tasks are performed, identified as such by law, a day shift shall not exceed 7 hours per day or 39 hours a week and the night shift may not exceed 6 hours per day or 36 hours week.

Working hours can be split. If they are not divided, the work schedule should include time for lunch and recess periods for workers. These breaks should last 30 minutes; however, if due to the nature of the work this is not possible, the employer must allow workers to take their food without affecting the normal development of their work.

Between completion of an ordinary day, or by the addition of overtime, and the commencement of the following day, a period of no less than 8 hours would be observed.

Overtime can be arranged only occasionally, when required, due to unexpected circumstances, special or necessary. However, firms operating 24 hours a day can establish a permanent overtime hour to be made by employees on night shift. For this to be valid it must be approved by the Director General of Labor.

Additionally, you can arrange an extra hour every day for the employer and employees, with the sole purpose of replacing the four hours of the sixth day of work, so that employees can rest on Saturdays and Sundays. For this to be valid an approval of the Director General of Labor will be required.

EMPLOYMENT LAW

• Wages

The salary of an employee includes: (i) payment for the provision of its services, (ii) payment for overtime work, and (iii) payment for the provision of services during weekly rest days or holidays.

Wages and benefits are considered by law as priority claims, in reference to other claims against the employer and therefore have a classification of priority over other secured or unsecured creditors.

Employees performing similar tasks in a company or enterprise, in similar circumstances are entitled to receive the same salary, regardless of gender, age, race, color, national origin, political identification, or religious beliefs. Employees may sue for equal pay, if any discrimination with regard to these matters is observed. The salary cannot be compensated, but up to 20% can be retained to cover overall maintenance obligations, union dues, tax and social insurance.

Employers are required to maintain formal forms of payments and provide receipts for payments to employees, detailing all wages earned (e.g., wages for regular work and overtime, wages for the provision of services during days off weekly rental, commissions, etc..).

The salary of a full regular working day cannot be less than the minimum wage, which is set periodically by the National Minimum Wage Counsel.

The minimum wage in force since May 2011 are as follows: a) in the areas of trade and services, U.S. \$ 7.47 per day; b) in the industrial sector, U.S. \$ 7.31 per day; c) in the maquila sector textile, U.S. \$ 6.25 daily, and d) for agricultural activities, of \$ 3.50 to \$ 5.07 per day, depending on the activity.

Finally, night work is paid with a surcharge of 25% of base salary for work during the day shift. Overtime is paid at 100% surcharge on the base salary.

• Weekly Rest Day

All employees are entitled to one rest day per week of work completed, paid with 100% of their daily wage.

Work performed during this rest day is paid at 50% surcharge on every hour worked, and the employee is also entitled to enjoy a compensatory day of rest during the next immediate week immediately.

Employees, who have not completed their work week without just cause, lose their right to remuneration for their rest day.

Usually the weekly rest day is Sunday, but companies that perform continuous work provide a public service, or normal activities force them to work on Sunday, have the power to give their employees another day off per week.

In any other case, companies that need to assign another weekly day of rest other than Sunday, must request authorization from the Ministry of Labor.

• Vacations

All employees are entitled to 15 days of paid vacation after one continuous year of work under a single employer. The years of work are calculated beginning with the date the employee began providing services to the employer and ending on the same date each year.

EMPLOYMENT LAW

To qualify for paid vacation time, the employee must have worked at least 200 days in one year. The vacation cannot begin on a holiday or day off. However, if holidays or weekly rest days are included in the vacation period, the employee can not extend its duration. These 15 days are paid at the employee's base salary, plus a surcharge of 30%, and should be given to the employee prior to the vacation period. By law, the employer must indicate when the employee must spend their vacations, and will notify at least 30 days in advance.

If the employer provides the employee with room and board, payment for holidays shall be increased by 25% for each benefit, if these are ceased during the vacation period (mostly for domestic staff).

Under Salvadoran law, monetary compensation for vacation or retribution of any kind is prohibited. In addition, it is forbidden to divide or accumulate vacation periods. The employer is obliged to give workers vacation and workers must take them.

Finally, our Labor Code allows for collective vacations, within a period of paid annual leave. In this case it is not necessary that the employee completes a year of service or 200 days. The employer may also, if agreed to by most workers in the company, split the vacation period in two or more periods within a year of work. In this case, if the vacations are divided into two periods, each period will last at least ten days and if it is divided into three periods or more, each period will last at least seven days.

• Holidays

There are 11 days a year in which the employee is entitled to rest with full remuneration (January 1, Thursday, Friday and Saturday of Easter Week, May 1, August 3, 5 and 6, in San Salvador, September 15, November 2, and December 25). Work during holidays is paid with base salary plus a 100% surcharge. If the holiday coincides with the weekly rest day, and if any work is done during these dates, in addition to the charge referred to herein, the worker is entitled to a compensatory rest day.

• Annual Bonus

All employees who have worked for an employer for one year, calculated from December 12 to December 12 of the year immediately following, are entitled to bonuses. Those who still have not completed one year of work for an employer from December 12 are entitled to a proportional bonus.

The bonus must be paid between December 12 and 20 and the minimum amount payable in accordance to the law in this concept is as follows: (i) 10 days of base salary if the employee has worked for the employer between 1 and 3 years, (ii) 15 days of base salary if the employee has worked for the employer between 3 and 10 years, and (iii) 18 days of base salary if the employee has worked for the employer for more than 10 years.

An employee loses the right to their bonus if they have two unexcused absences in two months, consecutive or otherwise, between December 12 last year and December 12 of the year in which they will receive the bonus, even if absences are for half a day.

When a contract is terminated with responsibility for the employer, or when the employee is terminated without cause, by 12 December, the employee is entitled to receive a proportional bonus for their work.

EMPLOYMENT LAW

• Compensation and Severance for Unjust Dismissal (without cause)

All contract employees hired indefinitely and who are dismissed without just cause (as specified in the law), shall be given a severance package which shall include a sum equivalent to one month's salary for each year of work. However, for these purposes, by law, no monthly salary will be more than four times the minimum wage in force for each year of service; such compensation shall be subject to the minimum wage for the sector that he belongs to (trade, services, industry or textiles).

Just causes for dismissal include: employee's repeated negligence, failure to fulfill his duties for more than 2 consecutive full days, lack of labor discipline, intoxication or other misconduct in the workplace, disrespect to the employer or a fellow worker, among others.

The severance package granted under law also includes payment of the Christmas bonus and vacation pay proportional for time worked. Also, if at the time of dismissal the employee has completed one year of work for his employer, and is entitled to paid vacation time, but still has not enjoyed it, he must be compensated with an amount equal to the corresponding vacation period.

• Social Security and Pension Funds

All employees must be registered in the Salvadoran Social Security Institute and a Pension Fund Administrator (AFP). By law, the employee and the employer must pay its contribution to the Salvadoran Social Security Institute and the Pension Fund Administrator chosen by the employee. The part of the employer is equivalent to 13.35% of the employee's salary.

The Salvadoran Social Security Institute covers, among others, the following risks, to the extent that they protect the employee, and in some cases, members of his family, common diseases, common occupational injury and maternity.

A Pension Fund Administrator covers the following risks: temporary or permanent disability, old age and death.

Unemployment payments have not yet been introduced to the system.

• Maternity

During pregnancy, women workers cannot perform tasks requiring physical effort incompatible with their condition.

The employee is entitled to job security during pregnancy and, by disposition of law, a maternity leave of twelve weeks, six of which are mandatory after birth (once a woman becomes pregnant, she cannot be dismissed by his employer until after the maternity period of 12 weeks). 100% of the salary of the employee during her maternity leave will be paid by the Salvadoran Institute of Social Security, to the limit of US \$ 514.50 dollars (the employer is not obligated to cover the difference in salary of the employee, should the aforementioned limit not cover the employee's base salary).

For an employee to be entitled to the economic benefits listed above, she must have worked for the same employer for a period of at least six months prior to the date of delivery. In any case, she is entitled to maternity leave and protection of her jobs.

EMPLOYMENT LAW

• Labor Unions

Both the Salvadoran Constitution and the Labor Code, regulate the right of private employers and employees to join professional associations or to form trade unions.

The Members of Union Boards must be Salvadoran by birth, and enjoy certain privileges during the election period and their term of office, for example, cannot be dismissed or suspended for disciplinary reasons, transferred, or affected in its labor conditions, unless there is previously approved cause by a competent authority. These benefits will remain valid one year after the completion of its term. Employees have the right to strike and employers the right to lock-out.

Employers can hire non-unionized or unionized employees, but clauses excluding non-union employees in collective bargaining agreements are prohibited. If a collective bargaining agreement is executed, its provisions apply to all employees who signed it, even if they do not belong to the union and those new employees who join the company during the period of the agreement. The Constitution and Labor Code dictate that labor disputes must undergo direct negotiation, conciliation and arbitration before the strike is declared.

• Internal Labor Regulations

A private employer, with more than 10 permanent employees, shall prepare and submit an Internal Regulation document for their company to be approved by the Ministry of Labor.

This regulation shall be in accordance with the provisions of the Labor Code, other laws, agreements and conventions that affect it, and its purpose is to establish clear standards and guidelines, technical regulations, and administrative obligations that are subject to both the company and employees.

Some of these rules are: admission requirements, hours of work and meal time, date and place of payment, assigning a person to whom you direct any complaints, safety regulations, disciplinary, etc.

INTELLECTUAL PROPERTY

Due to increased globalization in commercial activity, El Salvador has amended, modified and reformed its legal framework to be able to have an active participation in international markets. Intellectual Property has been a field in which the Salvadoran government has made considerable efforts to meet international standards.

On May 7, 1995, El Salvador became part of the World Trade Organization, and as a result thereof acquired, among others, the commitment to adopt the protection standards established by the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS).

In order to comply with such commitment, El Salvador was required to strengthen some issues regulated by the then existing laws governing intellectual property matters (i.e. the Central American Convention for Industrial Property Protection signed by El Salvador, Guatemala, Nicaragua and Costa Rica).

Between 2000 and 2001, Guatemala, Nicaragua and Costa Rica enacted local laws for each country, which are currently in force.

INTELLECTUAL PROPERTY

In El Salvador, the new Trademarks Law was enacted on July 2002. The purpose of this law is to regulate the acquisition, protection, maintenance, amendment and licenses of trademarks, commercial advertising expressions and all aspects related to commercial names, as well as the prohibition of antitrust in such areas. Some of this law's novelties are:

- The concept of a "notoriously known" and/or "famous" trademark is now duly contemplated by law, obligating the Registry of Intellectual Property (the local authority) to automatically deny any petition of trademarks which are identical or very similar to notoriously known or famous trademarks.
- The previous law only regulated oppositions against identical or similar trademarks, with respect to goods or services within the same classification of goods or services. Currently, oppositions are also allowed against trademarks of different classes, but whose goods or services are of the same nature (similar or related) (i.e.: coffee trademark, in class 30, against milk trademark, in class 29).
- No petitions will be admitted for trademark registration which consists of a name of a vegetation variety protected in the country or abroad if the trademark is used for products or services related to such variety.
- Similar trademarks coexistence is permitted in the same class, as long as there is a written agreement between the interested parties, unless the Registry of Intellectual Property considers that such coexistence may cause errors by consumers.
- Trademark related proceedings concerning renewal, assignment and change of name and address, have been reduced and are less expensive (publication requirements have been eliminated). The assignment of "trademarks in registration process" is now permitted.
- The transfer of a trademark related to one or some of the products and services that the trademark protects are allowed, in other words, the division of a registration is permitted.
- The acquisition of a right over a Commercial Name is acquired by "first use in business", and only with respect to the commercial activity of the identified company or establishment. However, we always recommend registration before the Registry of Intellectual Property, since this may be used as judicial evidence in the event of a suit.
- A rate of US\$30.00 shall be paid for submitting oppositions. The law refers to this as a "bond", but it is actually an official fee.
- A trademark's licensee or exclusive distributor may stop the importation by non-authorized third parties with commercial purposes of a legally marked product. A trademark's owner may stop the sale of such products that due to the conditions of the balances or irregular export production qualities exclusively contracted to companies abroad are sold within the Salvadoran market without the corresponding authorization of the trademark's owner. Customs' actions have been reinforced, specifically with respect to the suspension of imports or exports of products which do not comply with the owner's trademark rights.
- In general, registration fees have an increase from 50% to 100%.
- "Collective Trademarks", where the owner is a legal entity that groups different people authorized by the owner to use the trademark based upon a ruling (i.e.: cooperative entities) are now regulated.
- An extension of six months has been provided for the filing of a trademark renewal application.

On January 21, 2006, amendments to the Trademark Law were enacted. Such amendments are mainly related to the compromises acquired by El Salvador as a result of the Central America- Dominican Republic and USA Free Trade Agreement (CAFTA). The most relevant changes were:

INTELLECTUAL PROPERTY

- The registration of olfactory, sound and certification trademarks are now permitted.
- Co-existence agreements with respect to similar trademarks in the same international class will be accepted by the Registry of Intellectual Property with no exceptions.
- The registration requirement for license agreements is eliminated; therefore a license will be enforceable against third parties from execution (without any registration requirement).
- The cancellation of trademarks for lack of use is now contemplated under law. The term to file a cancellation action for non use is 5 years. This action can be initiated from January 21, 2011.
- The domain name administrator in El Salvador shall create the procedures to resolve controversies related to the administration of the country-code top-level domain (CCTLD) based on the principles established in the Uniform Domain Names Resolution Politics (UDRP), to fight cybernetic infringement of trademarks.

On August 17, 2006, the Patent Cooperation Treaty (PCT) was enacted in El Salvador; which simplifies the protection process of inventions.

On November 14, 2008, the "Trademark Law Treaty" (TLT), which regulates among others, the formal requirements for the filing new trademark applications, was enacted. The most important details thereof are:

- The Treaty shall apply to marks relating to goods (trademarks) or services (trademarks), consisting of visible signs including three-dimensional marks; this Treaty shall not apply to hologram marks and/or to marks not consisting of visible signs, in particular, sound marks and olfactory marks.
- Single application for goods and/or services in several classes (Multi-class application): One and the same application may relate to several goods and/or services, irrespective of whether they belong to class or several classes of the Nice Classification.
- Division of application: Any application listing several goods and/or services may be divided by the applicant into two or more applications ("divisional applications"); the divisional applications shall preserve the filing date of the initial application and the benefit of the right of priority, if any.
- Division of registration: as in the application cases, the registration may be divided by the applicant. In both cases, a fee must be paid.
- Evidence may be required during the course of the examination of the application, in order to confirm the veracity of any indication or element contained in the application.