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El Salvador



VIII. El Salvador

A. Foreign investment

i. Authorisations versus limitations

A. GENERAL ABSENCE OF RESTRICTIONS

In October 1999, the Legislative Assembly passed the new Investment Law. The regulation for this law was enacted in 2014. Foreign investments are defined in the law as being those resources or assets, tangible or intangible, provision of services, or finance readily convertible currencies destined for the initiation, additional investment or improvement of economic activities for the creation of goods, provision of services and generation of employment.

Generally, there are no restrictions for foreign investors. However, the law does consider some limitations that apply to foreign investment. These limitations are restricted as follows:

Small trade, industry and provision of services, specifically inshore fishing, are exclusive activities for citizens that are Salvadoran by birth and Central American citizens by naturalisation.

The underground area belongs to the Salvadorian state; however, the state might grant a license for exploitation.

Ownership of rustic real estate cannot be acquired by foreigners whose countries of origin do not grant equal property rights to Salvadorians. This limitation does not apply when the land is acquired for industrial establishments.

An individual or legal entity cannot not acquire more than 245 hectares. This limitation is not applicable to cooperatives and farmers' associations that are subject to a special regime.

The Salvadoran state has the power to regulate and supervise the rendering of public services provided by private enterprise, the approval of their fees, with the exemption of those established in international conventions.

For the exploitation of ports, railways, canals and other constructions of public use, a license issued by the Salvadoran state is needed. This license will be granted under the specific provisions of the relevant law.

All foreign investments must be registered with the National Investment Office at the Ministry of Economy. The El Salvadorian's legal framework for foreign investments is considered attractive for having tax incentives and providing equal treatment for local and foreign investors. Despite this fact, in 2014, El Salvador had an exponential decrease in foreign investment, and was in last place compared with other Central American countries.

B. NATIONAL, FAIR AND EQUITABLE TREATMENT

The aforementioned law also recognises the equal treatment of foreign and national investors and investment (ie, non-discrimination of foreign investments), and allows investment freely in all economic activities, except those restricted by law to national or certain forms of ownership (ie, small business, exploitation of natural resources, and ownership for agricultural purposes, ports, railways and others.)

C. LEGAL FRAMEWORK FOR FOREIGN INVESTMENT

The legal framework to regulate foreign investment is mainly composed of the following:

1. The Constitution

Economic freedom is guaranteed by the Constitution, insofar as it does not oppose the social interest; the Constitution recognises the freedom of contract right of every individual and his/her right to dispose freely of his/her property.

2. The Investment Law

This law has as main and fundamental goal to promote investment in general and foreign investments to contribute to El Salvador's economic and social development. This law pursues guaranteeing equal treatment for national and foreign investment, freedom to invest in almost all activities, except those restricted by law. No discrimination based on nationality, domicile, race, sex or religion will be allowed. There is no repatriation of profit limitation, and in 2001, the US dollar could freely circulate in El Salvador, making it easier to transfer money overseas. Registered foreign investors are entitled to repatriate their investment plus any capital gains and are exempt from tax withholdings on dividends; but investors cannot argue this right to repatriate to avoid their labour, tax, social security, bankruptcy or other legally established obligations.

The Investment Law also allows foreign investors to obtain the status of resident investor when their investment is above 4,000 times the then in force minimum monthly salary. Residency benefits are extended to the family of the investor, if a natural person, or the legal representative and his/her family, if a legal entity. A specialised office was created called the National Investment Office (Oficina Nacional de Inversiones (ONI)). This office is responsible for centralising and coordinating governmental procedures related to national and foreign investors, creating statistics of investments in El Salvador, among other activities.

3. The Legal Stability for Investments Law

The main purpose of this law is to attract and promote national and foreign investment through a legal framework that assures legal stability to the investor. This legal guarantee is effective through the implementation of legal stability contracts. The subjects of this regulation are legal entities or individuals, national or foreign, that carry out investment projects in areas such as aeronautics, electronics, energy, logistic, health services, tourism, agribusiness, strategic structure, telecommunications, manufacturing, long distance corporate services, technology and science.

The legal entities responsible for applying this law are the Ministry of Economy and the Export and Investment Promotion Agency of El Salvador (Organismo Promotor de Exportaciones e Inversiones del El Salvador ('PROESA')). To obtain the benefits, the investment must be equivalent to 4,220 times the minimum wage in the industrial sector for new projects or expansion of those projects.

4. The International Service Law

The principal purpose of this law is to regulate the establishment and operation of service parks, as well as the benefits and responsibilities of owners of companies that develop, manage or use them. The entity responsible for applying this law is the Ministry of Economy, which, therefore, will authorise the establishment, administration and operation of service parks and service centres, as well as grant benefits and tax incentives. On the other hand, the monitoring and effective control of customs and tax regulations of service parks and service centres corresponds to the Treasury Ministry.

The law establishes and defines the only activities that benefit from tax incentives as follows: international distribution, international logistics operations, international call centres, information technology, research and development, repair and maintenance of marine vessels, repair and maintenance of aircraft, business processes, medical and hospital services, and international financial services.

5. The Industrial and Commercial Free Trade Zones Law

This law regulates the operation, benefits and responsibilities of the owners' use and management of a place. The Ministry of Economy is the entity responsible for applying the law. The monitoring and control of the tax regime corresponds to the Treasury Ministry. Regulated under the provisions of this law are free trade zones, known as developer, administrator, user and warehouse for inward processing. This law grants tax exemptions from ten per cent up to 15 per cent of income tax. These exemptions are orientated to the manufacturing and export activity of local companies located in free trade zones.

6. The Tourism Law

This law has as its main purposes to promote and regulate industry and tourist services provided by individuals or legal entities, national or foreign. This law grants benefits and incentives to those projects that are classified as National Touristic Interest. If the investment is over US\$50,000, then the approval of the Treasury Ministry, Ministry of Environment and Natural Resources, Presidential Secretariat of Culture, and Ministry of Tourism will be needed. If the investment is under US\$50,000, only the approval of the Ministry of Environment and Natural Resources and Presidential Secretariat of Culture will be needed.

7. The Incentive for Renewable Energy Law

The fundamental purpose of this law is to promote investment in renewable energy sources through the exploitation of hydraulic, geothermal, wind and solar resources for the generation of electric energy. Companies that perform any of the aforementioned activities may enjoy tax exemptions from custom duties and income tax for five to ten years.

8. PPP Law

The main purpose of this law is to establish the legal framework for the development of PPP projects. According to this law, the Executive Branch and its dependencies, independent institutions and municipalities may carry out PPP projects.

ii. Treatment of foreign investment in infrastructure initiatives and PPP projects

Since May 2014, a new law called Ley Especial de Asocios Públicos Privados was approved by Congress. The main purpose of this law is to establish a legal framework to develop PPP projects for the rendering of public services and infrastructure in an efficient manner. Under this scenario of legal stability, the private sector might provide the essential economic resources and technical skills for the Salvadoran state to develop PPP projects to achieve general benefits. Under the provisions of this law, PPP projects can be carried out by the Executive Branch and any of its dependencies, independent institutions and municipalities.

This law is applicable to all contracts where public institutions entrust to a private investor (national or foreign) the design and construction of infrastructure and related services, repair, improvement, equipment and any other activity involved in the operation and maintenance of the infrastructure. In addition, investment in infrastructure for rendering public services and exploiting the execution of an activity of general interest are part of the scope of application of this law. Projects in health, social security, public security, justice, rehabilitation and penitentiary work, water and education, including the national university, are excluded.

The Attorney General is the legal representative of the state in contracts for PPP projects. These contracts might have different modalities. PROESA was created by Ley Especial de Asocios Públicos y Privados to, among other activities, regulate the execution of contracts for PPP projects. PROESA was created not only to regulate but also to promote investment and legal stability. To execute a PPP project, the Chairman of PROESA has to approve it. The process for approving a PPP project starts with the request for bids or concessions. Generally, the Legislative Assembly do not intervene in this process. However, if the tender process implies any tax contingency for future fiscal years, the Legislative Assembly has to intervene. The supervision of the execution of these contracts is carried out by an institution called Organismo Fiscalizador de Asocios Público Privados (OFAPP). This institution oversees all the aspects of the execution, especially during the exploitation phase.

Among the formalities, contracts for PPP projects have to be granted in public deed and under the terms of the tender basis. Contracts for PPP projects are supervised from the beginning until the end of the PPP project. As a rule, the Treasury Ministry do not intervene in these contracts unless a modification to the contract may involve tax aspects.

In the case in which any dispute regarding the interpretation, application or execution arises as a first stage, the parties must try to reach an arrangement directly. If no arrangement is reached, then a specialist roundtable should be set up. If this roundtable does not achieve an agreement, arbitration is the final stage. Thus far, the effectiveness of this law remains uncertain because no PPP project has been approved.

iii. Treatment of foreign investment in oil and gas, and mining activities

In El Salvador, activities regarding oil and gas are subject to prior authorisation from the El Salvador Government. Since 2017, mining has been forbidden, and therefore, it is not possible to conduct mining activities in El Salvador.

iv. Treatment of foreign investment in real estate

A. FINANCING REAL ESTATE

For the financing for the purchase of real estate, no special rules apply.

B. CONSTRUCTION

There are no special restrictions regarding construction. For foreign investors in the construction sector, their treatment will be as if they were nationals. No special limitations exist.

v. Treatment of foreign investment in agribusiness activities

In the agribusiness area, El Salvador is considered as a regional leader in the production of juices and snacks. El Salvador offers opportunities for the establishment of production centres, and processing and distribution of foods orientated to being exported. For agribusiness investors that seek to produce and export, El Salvador offers attractive opportunities in the following sectors: fruit farming, aquaculture, ornamentals, nourishment and beverages. El Salvador offers equal treatment of foreign and national investors. In addition, El Salvador offers tax incentives for importing and exporting agricultural products.

vi. Treatment of foreign investment in rendering public services

A. CONCESSION REGIME

The award of concessions regarding power generation and the distribution of energy, telecommunications, paid and open television, ports, airport operations and construction in maritime zones are governed by sector-specific laws and are subject to different rules. El Salvador has an open and non-discriminatory government procurement system, under which nationals and foreigners can freely participate and bid for public contracts. All foreign companies can participate by setting up a subsidiary, or registering a branch in El Salvador, entering into a joint venture arrangement with local or foreign companies already established in El Salvador or just by having a Salvadoran legal representative. The award of concessions regarding power generation and distribution, telecommunications, paid and open television, ports, mining exploration and extraction are governed by sector-specific laws and are subject to different rules.

B. CONTRACT LAWS

All foreign investors, when contracting with the Salvadoran state are subject to the Ley de Adquisiciones y Contrataciones con la Administración Pública. Generally, no special restrictions apply. However,

usually, the tender basis establishes that foreign providers have to have at least a legal representative in El Salvador. Another basis determines that a physical presence is needed to participate in the tender process. In addition, foreign providers have to demonstrate they are duly registered and in compliance with all regulations in their country of origin.

Recently, the Law of the Contentious Administrative Jurisdiction (*Ley de la Jurisdicción Contencioso Administrativo*) was enacted, changing significantly the judicial rules and procedures by which courts deal with claims against governmental entities. This includes disputes regarding the public tender process and contracting with the state.

B. Rendering of public services

i. General framework

In El Salvador, a law that considers the concept of public services does not exist. However, Salvadoran case law establishes that, to consider a service as public, three aspects must be considered:

1. A necessity or interest shall be satisfied: This element is fundamental. The interest or need to be satisfied must be collective. A collective interest is understood, in Salvadoran case law, as ‘the sum of all individual necessities or interests’.
2. The ownership of the service provider: For Salvadoran case law, in the term ‘public service’, the word ‘public’ alludes to the addressee not the provider of the service. Therefore, the service can be provided by the state or a private party.
3. Legal regime. Based in the nature of the service, these types of services must be regulated under the scope of public law. Public law is orientated to prevent or avoid any type of abuse coming from the service providers.

Thus, when a service is orientated to satisfy collective needs, is regulated under public law and is provided either by the state or a private party, it is considered as public. However, not all private parties can carry out activities that shall be performed by the state. To render these types of services in Salvadoran territory, a concession or privatisation process must exist. The Salvadoran state renders some services, such as waste collection. The rendering of other services is designated to private parties to carry out the service through a concession granted by the Salvadoran state.

The privatisation process began in El Salvador in 1989 with Salvadoran banking. This process was conceived as a demand to liberalise the financial system. The belief was that macroeconomic stability and trade opening would be reached. This process entailed the creation of a new legal framework and new institutions. The Superintendence of Financial System (*Superintendencia del Sistema Financiero*) was created to supervise and regulate all financial activities. The Central Reserve Bank of El Salvador’s powers were diminished.

Currently, banking is a service rendered by private and public parties. Foreign financial conglomerates are dominating the market of banking services. This is a regulated sector. The fundamental law that regulates financial services is the Banking Law (*Ley de Bancos*), enacted by the

Legislative Assembly in September 1999. This law repealed the Banks and Financial Entities Law (Ley de Bancos y Financieras).

In 1996, the privatisation process was orientated to other sectors, such as power distribution, telecommunications and pension funds. The process entailed the creation of a new legal framework for telecommunications and electricity sectors. The Legislative Assembly enacted three main laws in 1996 that were conceived as the basis of the legal framework for rendering these services: the Law for the Creation for the General Superintendence of Electricity and Telecommunications (Ley de Creación de la Superintendencia General de Electricidad y Telecomunicaciones ('SIGET')), the General Electricity Law (Ley General de Electricidad) and the Telecommunications Law (Ley de Telecomunicaciones) to regulate the energy and telecommunications markets.

In relation to power generation, the Salvadoran state was the largest power generator through the national company called Comisión Ejecutiva Hidroeléctrica del Río Lempa ('CEL'). Nevertheless, because of the process, private parties were also allowed to participate in the power generation market. This participation needed to be regulated. Participation was regulated in the General Electricity Law, and the Tariff List was approved every year. Regarding power distribution, the privatisation process was carried out between April 1997 and January 1998.

Four companies resulted from the restructuring of the power distribution system: Compañía de Alumbrado Eléctrico de San Salvador, SA de CV (CAESS), Compañía de Luz Eléctrica de Santa Ana, SA de CV (CLESA), Distribuidora del Sur, SA de CV ('DELSUR') and Empresa Eléctrica de Oriente (EEO). Each of these companies owns a distribution network that orientates their service by region. Thus, currently CAEES is distributing power in the central-north region, DELSUR in the central-south region, CLESA in the western region and EEO in the eastern region.

Until the mid-1990s, telephone services were mainly provided by the state. The Salvadoran state rendered the service through a national company called Administración Nacional de Telecomunicaciones ('ANTEL'). Because of the privatisation process, the company was divided into two corporations: Compañía de Telecomunicaciones de El Salvador, Sociedad Anónima de Capital Variable ('CTE') and Compañía Internacional de Telecomunicaciones, SA de CV ('INTEL'). A legislative decree established that the majority of the shares would have to be sold to strategic partners with the financial and technical capabilities required to render and invest in telecommunications services and the related infrastructure. The remaining shares would have to be sold either to eligible employees or through a public auction. Therefore, ANTEL was promptly dissolved. The Telecommunication Law was enacted to regulate the transition from a public monopoly regime to competition and private investment.

Currently, foreign companies dominate the telecommunications market. The concept of telecommunications does not only consist of telephone, radio and television services. Telecommunications also include mobile services and internet services. Furthermore, the operators are also internet service providers. Unfortunately, the Salvadoran legal framework is not sufficiently advanced. There are no specialised laws that regulate internet service providers, their behaviour in relation to the consumers and their liabilities.

Regarding water supply, this service consists of providing drinking water and managing aqueducts and the sewage system. The operation of the water supply market has a particular characteristic.

This characteristic is that the provision of drinking water is shared between the national company and private parties. The national company is called Administración Nacional de Acueductos y Alcantarillados ('ANDA'). However, only this company has the power to manage the sewage systems. The rendering of this service is also subject to special laws, and other national entities may participate, depending on the activity that is being carried out. For instance, if the activity is power generation SIGET and the Environment and Natural Resources Ministry (Ministerio de Medio Ambiente y Recursos Naturales (MARN)) may take an active part in the regulation of the activity.

Other public services, such as the management of pension funds or transport, can be either rendered by the state or a private party. In the case of the management of pension funds, a national entity called Instituto Nacional de Pensiones de los Empleados Públicos still exists. Notwithstanding, public employees are not obligated to pay contributions to this institution. The service may also be rendered by private parties known as pension fund managers (Administradoras de Fondos de Pensiones (AFP)). Regarding public transport, until recently, the service was provided only by third parties. However, since March 2014, the state started rendering this service. The so-called Sistema Integrado de Transporte del Área Metropolitana de San Salvador ('SITRAMSS') is an articulated transport system for the metropolitan area of San Salvador, which is the capital city, and its surroundings.

Public service providers must comply with the Consumer Protection Law (Ley de Protección al Consumidor (LPC)), which establishes several provisions regarding quality of services, fundamental consumer rights, providers' obligations, transparency of information and sanctions in the case of contravention. The Consumer Protection Office (Defensoria del Consumidor) oversees the law's enforcement, and is actively addressing consumers complaints and disputes with providers. Public service providers have the burden of proof regarding the compliance of their obligations and duties with consumers in the case of disputes. Sanctions range from 50 to 500 current minimum wages depending on the severity of the infraction.

ii. Governmental monopoly versus private initiative

The concept of monopoly is not defined but prohibited in the Competition Law. Article 110 of the Salvadoran Constitution regulates a monopoly as a prohibition, but also as an authorisation. Thus, two types of monopoly are established in this article. The first is known as a monopoly itself and is prohibited for being considered detrimental to collective interests. The other type is known as a social monopoly.

Because there is no concept of monopoly in the Competition Law, the Constitutional Chamber of the Supreme Court established in its case law has helped to define Article 110. Case law states that only social monopolies can exist in El Salvador, giving a definition of the term. For the Constitutional Chamber, a social monopoly 'can only be created through a law in its formal and material law and directly in favor of the State or the Municipalities, when social interest makes it essential to the sole purpose to protect the social interest of the population acting as consumers'.

Before the privatisation process, a governmental monopoly existed. However, since private parties could participate in the rendering of public services, the governmental monopoly has been diminished. Currently, private parties are rendering most public services. Nevertheless, a social monopoly still exists. The monopoly relies on the managing of the sewage system. Only ANDA

provides this service. To date, no private party has been interested in rendering this service. Regarding the market for providing water supply, for the service of providing drinking water, ANDA holds most of the share market, without committing any anti-monopoly practices. ANDA holds the leading position in the market and is the supplier that also holds 55.05 per cent of the complaints filed before the Defensoría del Consumidor, which is the entity responsible for safeguarding consumers.

On the other hand, in services such as power generation, distribution and telecommunications, private parties have the leading positions. The participants in the telecommunications and power markets need special authorisation granted by the state to provide services. This authorisation is called a concession. The telecommunications sector holds second place in the top ten list of sectors that have the most complaints regarding consumer protection as of December 2014. In addition, two of the leading operators in this market are also in the top ten of service providers with the most complaints in the same period.

In addition, there are markets, such as the management of pension funds and the healthcare system, that are being shared by the state and private parties. However, in the market of the management of pension funds, private parties known as AFP hold most of the market share. By contrast, for healthcare rendering services, the state holds most of the market share. This leading position is not based on the quality of services but the level of income of the population. Most of the population cannot afford health insurance or pay for private healthcare.

iii. Privatisation rules

The El Salvadoran Government decided that the privatisation process of the telecommunications and power sectors must follow some basic rules. However, no general rules for the privatisation processes were enacted. The process of the privatisation of ANTEL was a special case. The rules of the privatisation process of ANTEL were included in the Ley de Privatización de la Administración Nacional de Telecomunicaciones. The law stated that, to be dissolved, ANTEL had to be divided into two corporations: CTE and INTEL.

All assets, rights and obligations of ANTEL necessary to keep the company operating had to be transferred to CTE. In addition, all rights over frequencies owned by ANTEL to operate the mobile personal communication system of 1,950 to 1,965 MHz and 1,870 to 1,885 MHz had to be transferred. The rights to use the frequencies to operate the wireless telephone system from 880 to 890 MHz and 835 to 845 MHz had to be transferred to INTEL.

The privatisation process was supervised by a special commission that included the Economy Minister, the Finance Minister and a special representative appointed by the President, where the latter was the president of the commission. The sale of both corporations' assets and stock required that strategic partners, that is, investors with the financial and technical capabilities to invest in telecommunications services and the related infrastructure, needed to be the majority shareholders. The remaining shares were sold either to eligible employees or through a public auction.

Specifically, the distribution of CTE shares had to be offered under special rules, with 51 per cent to a prequalified strategic partner, ten per cent to active and retired employees and 14 per cent to the

public auction, and two per cent of the shares had to be sold by the state in a public bid through an international or national stock exchange. Regarding INTEL shares, 51 per cent had to be sold to a prequalified strategic partner and 49 per cent to the public.

In the case of power generation, two parts of the business of CEL, the government-owned electrical energy supplier, were segregated into two corporate entities: one that operated the electrical transmission system and the other maintaining it. Corporations derived from the privatisation of CEL's assets that were tasked with the generation and distribution of electrical energy had to be awarded a concession by SIGET to continue operating. CEL's distribution and thermal energy generating assets were auctioned off. Concessions for the rendering of electrical energy had to be modified pursuant to the General Law on Electricity because some of them were awarded before the privatisation of CEL's assets.

iv. Limitations and/or prohibitions to private parties in the rendering of public services

The rendering of public services by private parties in El Salvador has no major limitations or prohibitions, except some laws require the state to provide that services, such as power generation, cannot be performed by individuals, only by corporations.

C. Real estate

i. Holding title to real estate

A. WHO CAN HOLD THE TITLE?

The El Salvadoran Constitution recognises property rights as fundamental rights. Under the El Salvadoran Civil Code, any person, legal entity or individual, national or foreign, can hold a title to real property, with no more restrictions established by law or the will of the owner. Based on this, the essential characteristics of property are that it is exclusive, absolute and permanent. However, case law of the Constitutional Chamber of El Salvadoran Supreme Court determined that property cannot be deemed as absolute because the social function may be considered as a limit. In addition, property cannot be considered as exclusive because there are a few restrictions, such as easements, that may affect the use of the property. In addition, it cannot be considered as permanent because expropriation events may occur.

There are not many restrictions for ownership in El Salvador. The restrictions are covered in the El Salvadoran Constitution. The first restriction is addressed to foreigners only. Foreigners may own property in El Salvador if their country of origin's law allows El Salvadoran citizens to hold title to property in that country. The second restriction arises because of political processes. In the early 1980s, the El Salvadoran Government enacted the Agrarian Reform Law, with limitations pertaining to the transfer and ownership of land that conforms to certain features listed in that law, which are still in force. However, a constitutional provision states that a single plot of land more than 245 hectares cannot belong to single individual or legal entity. The third restriction is orientated towards civil or religious non-governmental organisations (NGOs). These entities may not hold in property any real estate other than that destined and related to the main purpose of the entities.

B. RECORDATION OF TITLE

El Salvador has established a nationwide public recordation system, where all matters regarding real property are registered. This recordation system is managed by the Registro de la Propiedad Raíz e Hipoteca of the Centro Nacional de Registros. Once a titled property is filed before the Registro de la Propiedad Raíz e Hipotecas, a filing number is assigned. When the registration process is being carried out, a corresponding file is opened. This file contains all registered records pertaining to the title to property, such as encumbrances and liens or any other instrument that may modify the status of the property.

The registry's staff review public deeds, which affect the status of a registered property, before any change to the affected property's record is registered. Records include information regarding the name of the property's owner, area, liens and filing of instruments pertaining to the property, and the percentage of the property encumbered by any lien or belonging to different titleholders. Once the registration process is finished, a registration number is given to the titled property.

Any potential buyer can verify the record for a given property by accessing the corresponding system at the National Registry Center's offices. Actual buyers can record their acquisition of any property by registering the corresponding public deed. This instrument contains the terms of the purchase and the sales contract of the property, triggering the registry to change the property's record to reflect the change in ownership.

Another way to acquire real estate is through prescription, which, attending to the circumstances of the possessor of a determined property, can lead to the possessor acquiring the title to the property after requesting the competent court to render a decision ordering the change in ownership, after being in possession of the property for ten or 30 years. The court's sentence is then registered at the Centro Nacional de Registros and the change in the title holder is recorded.

C. HORIZONTAL PROPERTY

El Salvador's Legislative Assembly enacted a law establishing a horizontal property regime to which buildings and projects that wish to be regulated in a condominium-style format can adhere to. The purpose of the regime is to regulate the rights and obligations of owners of property built on land that belongs to all, such as parks and sidewalks. Thus, for example, the regime divides these properties into common and private areas, and establishes the rights, obligations and limitations that each unit owner has with respect to these areas. The law also requires that property that is meant to adhere to this regime must be registered as such in the Registro de la Propiedad Raíz e Hipotecas.

Unlike other legal systems, in El Salvador, condominiums lack legal personality. The law also requires that for individual condominiums to have each a different owner, they must comply with certain structural characteristics, such as having direct access to the outside of the building or access to a common area that leads to the outside. Buildings under construction can adhere to the horizontal property regime, as well as finished buildings.

The Horizontal Property Regime Law requires that owners of buildings or projects intended to adhere to the regime develop regulations, called the administration rules, that will apply to the property, which must be registered at the Real Property Registry. The enforcement of these rules is

entrusted to an assembly of owners, constituted of owners or lessors of property within the building. The rules should include, among other things, the use of common areas and objects; proprietors' contributions to common and administrative expenses; requirements for the election of the building's administrator and causes for its destitution; payment of the administrator; powers given to the administrator; establishment of the date when the administrator is required to render accounts; method for the call to install meetings of the assembly and their periodicity; and majority necessary for ordinary and extraordinary sessions, as well as for the adoption of decisions where the law requires no majority.

ii. Transferring real estate

A. RECORDATION OF TRANSFER

All transfers of real property must be registered in the Registro de la Propiedad Raíz e Hipotecas to be effective against any third parties. Any document pertaining to any change in a property's registry record must be executed in a public deed witnessed and sealed by a notary public. Thus, contracts for the sale of real property must adhere to these requirements, as well as other formalities required by the Civil Code. The same applies to documents that deal with real property transfers, for example, encumbrances. When a transfer of property is going to take place, a tax of three per cent must be paid if the property exceeds US\$28,571.43. In addition, registration fees will have to be paid. The fees are calculated at US\$0.63 per hundred dollars.

B. INSTRUMENTS OF CONVEYANCE

The transfer of property is documented in a definitive purchase and sale agreement, which must be executed in a public deed before a notary public, and is registered in the Registro de la Propiedad Raíz e Hipoteca. The registration of the deed of sale in the registry is essential to effectively execute the transfer of title to the purchaser; otherwise, the public deed only contains an agreement to sell with no actual practical effects.

C. SPECIAL LIMITATION

Because of political processes in the 1980s, the Agrarian Reform Law prohibits the sale of rural land granted to cooperative associations and eligible workers to other individuals or legal entities not entitled to that land under that law.

iii. Financing real estate acquisitions

Real estate acquisitions in the Republic of El Salvador can be financed by local or foreign lenders. The buyer usually provides security to the lender in the form of a real property mortgage over the property. Mortgages must be granted in the form of a public deed before a Notary Public in El Salvador and registered at the Real Property Registry at the National Registry Office to create the encumbrance over the property.

iv. Leasing real estate

El Salvador's Civil Code is the main legislation regulating leasing agreements; however, a special Financial Leasing Law exists. This law regulates other leasing agreements when the lessor is a business whose main commercial activity is the purchase and leasing to third parties of real property and the Real Estate Lease Law applies to residential and commercial leases, as described below.

A. TYPES OF LEASES

Applicable legislation establishes different obligations to both the lessor and lessee according to the type of property being leased. As such, leasing agreements in El Salvador can be classified in the following way:

Leases that exceed US\$22.45 per month must be executed in writing.

Rural or urban property: Essentially, the lessor is required to give the leased property to the lessee in the condition necessary for its intended use under the corresponding leasing agreement and protect the lessee's peaceful possession of the property. Likewise, the lessee is required to return it when the lease expires, in the same condition. Certain variations on these basic rights and obligations are applicable, depending on the nature of the leased property.

Leases under the Financial Leasing Law and Civil Code: As described above, financial leasing agreements grant the lessee the right to purchase the leased property. On the other hand, the lessor is a merchant operating in the real estate market, purchasing property and leasing it afterwards.

Leases under the Real Estate Lease Law: Certain residential and commercial leases fall under the scope of this law, which protects the lessor much more robustly than the Civil Code. The protection consists in the safeguard of certain rights that the lessor can exercise against the lessee because of the lessee's individual features or occupation, or the leased property's intended use. In all cases, the lease agreement is required to be in writing and the lack of a document is imputable to the lessor.

B. LEASE AGREEMENTS

Lease agreements should contain, among others, the following provisions:

The right of the lessee to waive the agreed lease term and terminate the agreement at any time. This termination must be made through a written notice sent at least within a term equal to the time that transpires between installments.

Whenever the lessor agrees, the lessee has the right to sublet the property.

Lease agreements can be automatically renewed. The renewal will be understood in the same terms, for three months, when the leased property is of an urban nature and for the time necessary to finish commenced works and collect the natural produce of rural real property. Whenever a lease expires or is terminated, the lessor has the right to require the return of the property.

In residential leases, the lessee has the right to exercise his/her profession within the leased property, unless it exclusively uses the leased property for that purpose instead of housing.

Lease agreements are generally executed by means of a private document that is authenticated afterwards in another document, which is sealed and signed by a notary public. Leases, both residential and commercial, can be recorded at the National Registry Office so third parties can ascertain the existence of the lease. Note that leasing agreements have to be executed, as described previously, when the total value of the lease is undetermined or more than US\$22.85 per month.

v. Construction

Investors planning to execute construction projects in El Salvador are required by laws, regulations and municipal ordinances to submit the construction plans to the local municipal Urban Planning Office to have them approved. In addition, the Vice-Ministry of Urban Development may approve the plans if the corresponding municipality does not have an Urban Planning Office. These plans must be signed and executed into a finished building by a duly accredited and registered civil engineer or architect. After being submitted to the competent authority, the plans are studied, and their feasibility and compliance with applicable construction regulations analysed. Once the plans are approved, construction personnel may begin work. An environmental permit also must be approved. Once the construction permit has been awarded by the competent public office, the finished building can be occupied. When the construction is finished, a permit granted by the Health Ministry must be issued.

vi. Expropriation events

El Salvador's Political Constitution establishes expropriation as another limitation pertaining to the title to property in real estate. The Constitution establishes that whenever urgent social interest or public utility require it, expropriation may be made effective after payment of just compensation made to the affected title holder. Compensation for expropriation can be paid in a lump sum or in instalments; however, when certain circumstances occur, it is possible to be compensated after being expropriated.

D. Development of integrated capital markets and joint activities between Latin American countries

i. Merger of stock exchanges

At the end of the last century, stock exchange mergers were uncommon. In the present century, however, these unions have become a global phenomenon. Companies seeking to enlarge their market presence benefit from being listed on a domestic exchange and in foreign markets through arrangements that cross international borders. When stock exchanges merge, the benefits can be significant for the exchanges, listed companies and investors.

Currently, and historically, El Salvador has had one sole stock exchange: Bolsa de Valores de El Salvador. Unfortunately, currently, domestic legislation and regulation on stock exchanges and securities do not specifically contemplate the merger of stock exchanges.

Even though the local stock exchange has not merged – nor is it anticipating a merger – with other exchanges, it has established cooperation agreements with the stock exchanges of other Central American countries, including Guatemala, Honduras, Costa Rica and Panama.

ii. MILA

MILA is a product of the Pacific Alliance. This market is the result of an agreement signed between the stock exchanges of Colombia; Santiago, Chile; and Lima, Peru. Since 2009, these stock exchanges began the process of integrating the equity markets of the three countries. MILA officially started operations on May 2011. One of MILA's formation objectives related to its ability to compete with other regional stock markets. MILA represents Latin America's second-largest trading venue by market capitalisation after Brazil's BM&FBOVESPA. However, by number of listings, MILA is the largest trading venue in Latin America, ahead of BM&FBOVESPA.

El Salvador does not form part of MILA; however, jointly with the stock exchanges of Costa Rica (BNV) and Panama (BVP), it has established AMERCA. This initiative aims to standardise the rules of negotiation of the markets in these jurisdictions and offer an efficient mechanism for cross-border trading, where local intermediaries could operate in any such markets using a single trading platform. It seeks to broaden the spectrum of issuers registered in all three markets, increasing investment opportunities, portfolio diversification, convergence of intermediaries, liquidity, product diversity and competitive pricing. However, AMERCA does not contemplate a merger of the three stock exchanges into one. Further, its actual implementation remains on hold while local regulators negotiate a final legal framework.

iii. Pacific Alliance

Although El Salvador does not form part of the Pacific Alliance, it is part of the Central American Common Market (Mercado Común Centroamericano). This 'common market' has existed since 1960 between El Salvador, Guatemala, Honduras and Nicaragua, while Costa Rica joined a few years later. The main objective was to create a common market among member countries, achieving a free trade zone in 2001, excluding certain agricultural products. El Salvador has also entered into FTAs with Chile, the Dominican Republic, Colombia, Panama, Taiwan, the US and Mexico.

In the first trimester of 2018, El Salvador, along with other Central American countries, signed an FTA with South Korea. This agreement is expected to be ratified before the end of the year by the Legislative Assembly.

E. Offshore vehicle providers in Latin American countries

i. General concept: legal framework and scope of general activities

Offshore companies are foreign entities that do not engage in any economic or commercial activity in El Salvador, characterised by establishing themselves in a foreign country, generally a tax haven. Offshore companies are also known as non-resident companies.

From a fiscal perspective, it is important to note that residents who execute commercial operations with persons domiciled/resident in tax havens shall transact under market prices. Some of these operations also require special disclosures to the Treasury Ministry. Further, payments made by residents to offshore entities are generally subject to a 20–25 per cent income tax withholding, and a 13 per cent VAT withholding.

In El Salvador, the most commonly used offshore vehicles are: (1) Panamanian entities or foundations, due to their straightforward and flexible incorporation laws, easy corporate bookkeeping and secrecy laws, among others; (2) Delaware entities (eg, LLCs), essentially for the same reasons above – note that the Panamanian corporation regulation is based on the same model as that under the State of Delaware; and (3) Spanish entities, principally due to the existence of a bilateral fiscal treaty between Spain and El Salvador, which establishes certain preferential tax rates and seeks to avoid double taxation.

ii. LLCs

El Salvador legislation recognises and regulates LLCs that engage in economic or commercial activity in the country. In the context of members' limited liability, there are two traditional companies available: (1) the *sociedad de responsabilidad limitada*, which is a share participation form of company, where the personal dimension of the partners is an essential component of the entity, and their share in the entity's capital is divided into personal participations (*participaciones sociales*); and (2) the *sociedad anónima*, which is a stock participation form of company, where the shareholders' participation in the entity's capital is divided into stock (*acciones*). In El Salvador, LLCs need to be formed and maintained by at least two members; and the members' corporate liability is limited to the amount of their respective share participation in the entity's capital.

iii. Foundations and trusts

Regarding foundations, El Salvador's regulations lack a private foundation regime such as that available in Panama for the *fundaciones de interés privado*, but do regulate the form of foundation that seeks the public interest (*fundación*).

Regarding local trusts (*fideicomisos*), these are of limited use in El Salvador because the administration of a local trust – the fiduciary duty of the trustee – may only be delegated to and exercised by a bank duly authorised and licensed in El Salvador. Salvadoran trusts have, in general, a 25-year term and shall be remunerated. Local trusts and their amendments are generally subject to registration at the Registry of Commerce, and for the case of real estate trusts, filing with the local Real Estate and Mortgage Registry is also necessary.

Note that the setting up of a foreign trust on a cross-border basis is not a regulated activity in El Salvador. However, pursuant to El Salvadoran tax law, an offshore trust – even if regulated by foreign law – would be deemed a taxable subject in El Salvador if most of the beneficiaries reside and are taxable subjects in El Salvador, and/or when the activities of the trust involving local assets give rise to taxable events imposed on the trust's beneficiaries.



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