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El Salvador
Doing Business In

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This country-specific Q&A provides an overview of doing business in laws and regulations applicable in El Salvador.

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El Salvador: Doing Business In

1. Is the system of law in your jurisdiction based on civil law, common law or something else?

Based on the civil law and commercial law.

2. What are the different types of vehicle / legal forms through which people carry on business in your jurisdiction?

1. **Corporation (Sociedad Anonima or S.A):** It is the type of company most often selected in El Salvador, which may be formed by other entities or individuals or a combination of both.
2. **Limited Liability Company** (Sociedad de Responsabilidad Limitada or S.R.L): This type of company is similar to a corporation, in that it may be formed by other entities or individuals or a combination of both. However, in this type of company, the capital is not represented by shares, but rather by membership interests.
3. **Branches of foreign companies:** These are foreign companies that can perform commercial activities in the Salvadorian territory, establishing their residence in the country through a branch. For such purpose, they must register their capital before the National Investment Office of the Ministry of Economy, followed by their registration before the Commercial Registry.
4. **Simplified Stock Corporation S.A.S**. (Sociedad por Acciones Simplificadas or S.A.S): These types of companies can be formed with a single natural or legal person (single-member), unlike corporations or other types of companies that require the participation of two or more partners or shareholders. It is only necessary to complete the forms provided by the Registry of Commerce. The process can be done entirely online through CreaEmpresa.gob.sv, and it can be completed with either an autograph signature or a certified electronic signature.

3. Can non-domestic entities carry on business directly in your jurisdiction, i.e., without having to incorporate or register an entity?

No, in order to carry out any business, the company should be registered or incorporated.

4. Are there are any capital requirements to consider when establishing different entity types?

Minimum capital US$2,000.00 for Corporations and Limited Liability Company, and for S.A.S. starting from $1.

For Branch: US$12,000.00

5. How are the different types of vehicle established in your jurisdiction? And which is the most common entity / branch for investors to utilise?

A Corporation is the most common type of entity established in El Salvador.

6. How is the entity operated and managed, i.e., directors, officers or others? And how do they make decisions?

Management may be entrusted to a Sole Administrator or a Board of Directors.

7. Are there general requirements or restrictions relating to the appointment of (a) authorised representatives / directors or (b) shareholders, such as a requirement for a certain number, or local residency or nationality?

No there isn't a restriction relating to the appointment of the representatives/directors or shareholders for corporations and Limited Liability Company, and Simplified Companies.

However, for branches the legal representative have to be a Salvadoran or a Foreigner with residence in El Salvador.

8. Apart from the creation of an entity or establishment, what other possibilities are there for expanding business operations in your jurisdiction? Can one work with trade /commercial agents, resellers and are there any

specific rules to be observed?

Yes, there are other possibilities for business operation such as agents, distributor or resellers.

9. Are there any corporate governance codes or equivalent for privately owned companies or groups of companies? If so, please provide a summary of the main provisions and how they apply.

Commercial Code

Regulates the formation of a Corporation, LLC, Foreign Branch and SAS company. In addition regulates the Shareholders or Partners meetings, Corporate Governance, General Shareholders Meeting Notices, and the procedures to modify any of these entities.

10. What are the options available when looking to provide the entity with working capital? i.e., capital injection, loans etc.

Loans, capital injections and capital increase.

11. What are the processes for returning proceeds from entities? i.e., dividends, returns of capital, loans etc.

It depends on the case, but it can be through dividends, payments abroad, or new shares.

12. Are specific voting requirements / percentages required for specific decisions?

The Commercial Code establishes specific percentages for General Shareholders' Meetings for Corporations

In the case of Ordinary Shareholders Meeting:

First call: must be represented by half of the shares plus one. (50%+1)

Second call: any number of shares present.

In the case of Extraordinary Shareholders Meeting, it requires the approval of three-quarters of the shares (75% of the shares)

In the case of Simplified Stock Corporation, when the company has a single shareholder, this person may exercise all the powers conferred. If there is more than one shareholder, the rules of corporations mentioned above will apply.

13. Are shareholders authorised to issue binding instructions to the management? Are these rules the same for all entities? What are the consequences and limitations?

The Shareholders are the highest authority of the company, therefore they can give instructions to the administration.

The limitations are established either by the company's articles of incorporation or by the General Shareholders' Meeting itself.

14. What are the core employment law protection rules in your country (e.g., discrimination, minimum wage, dismissal etc.)?

According to the Labor Code, working conditions must be respected, the salary cannot be less than the established minimum wage, and no person can be excluded because of their race, color, sex, religion, political opinion, national ancestry, or social origin.

15. On what basis can an employee be dismissed in your country, what process must be followed and what are the associated costs? Does this differ for collective dismissals and if so, how?

The Labor Code establishes the causes for dismissal with justified cause and releases the employer from liability.

However, dismissals without cause have financial responsibility for the Employer. According to the Labor Code the Employer has the obligation to compensate the employee with a salary for each year worked or the fraction of the year worked with a maximum of up to four times the current minimum wage.

16. Does your jurisdiction have a system of employee representation / participation (e.g., works councils, co-determined supervisory boards, trade unions etc.)? Are there entities which are exempt from the corresponding regulations?

Yes, they do exist, however none of them are exempt from complying with labor regulations.

17. Is there a system governing anti-bribery or anti-corruption or similar? Does this system extend to nondomestic constellations, i.e., have extraterritorial reach?

Yes, there is a law to prevent money laundering. The law applies to all entities domiciled in the country.

18. What, if any, are the laws relating to economic crime? If such laws exist, is there an obligation to report economic crimes to the relevant authorities?

Yes, the Law for the Prevention of Money and Asset Laundering contains crimes related to money laundering and other economic crimes.

Yes, there is an obligation to report crimes to the relevant authorities.

19. How is money laundering and terrorist financing regulated in your jurisdiction?

Law for the Prevention of Money and Asset Laundering.

20. Are there rules regulating compliance in the supply chain (for example comparable to the UK Modern Slavery Act, the Dutch wet kinderarbeid, the French loi de vigilance)?

No.

21. Please describe the requirements to prepare, audit, approve and disclose annual accounts / annual financial statements in your jurisdiction.

For all companies, the Commercial Code establishes that oversight must be entrusted to an external auditor. Such auditor shall be appointed at a General Shareholders' or Partners' Meeting.

22. Please detail any corporate / company secretarial annual compliance requirements?

1. Renewal of business license
2. Appoint external auditor
3. Appoint fiscal/tax auditor (if applicable according with the asset of the company)
4. Approve and file the Financial Statements

23. Is there a requirement for annual meetings of shareholders, or other stakeholders, to be held? If so, what matters need to be considered and approved at the annual shareholder meeting?

Annual shareholders meeting should be held within the first 5 months of the year.

24. Are there any reporting / notification / disclosure requirements on beneficial ownership / ultimate beneficial owners (UBO) of entities? If yes, please briefly describe these requirements.

This information is provided only if it is requested.

25. What main taxes are businesses subject to in your jurisdiction, and on what are they levied (usually profits), and at what rate?

a. The Income Tax and related taxes
b. The Tax on the Transfer of Movable Goods and the Rendering of Services (VAT) (13%)
c. Specific and ad-valorem taxes
d. Other taxes, such as special contributions.
e. Municipal Taxes.

26. Are there any particular incentive regimes that make your jurisdiction attractive to businesses from a tax perspective (e.g. tax holidays, incentive regimes, employee schemes, or other?)

To promote foreign investment, certain laws have been created that grant benefits to different sectors and facilitate the registration and execution of these investments. These laws are as follows:

1. **Investment Law:** One of the main advantages of this law is that it facilitates the registration, and especially the repatriation, of foreign investments by investors. It guarantees foreign investors the right to transfer abroad funds related to their investments, provided that they comply with the tax, labor and social security obligations, in addition to the obligations generated by law.
2. **Law of Industrial and Commercial Free Trade Zones:** It regulates the operation of free trade zones and inward processing warehouses, as well as the benefits and responsibilities of the owners of companies that develop, manage or use them.
3. **International Services Law:** This law has the objective

of regulating the establishment and operation of industrial parks and service centers engaged in, among other activities, international distribution, logistics, call centers, repair and maintenance of aircraft, business processes and BPOs.

27. Are there any impediments / tax charges that typically apply to the inflow or outflow of capital to and from your jurisdiction (e.g., withholding taxes, exchange controls, capital controls, etc.)?

Capital gains:

The gains resulting from the sale of fixed assets, personal property and real property, so long as they constitute non-habitual transactions, are considered to be income subject to the determination of capital gains or losses, at a rate of 10%. When the asset is realized within the twelve months following the acquisition date, the net capital gain should be calculated as ordinary income.

Distribution of dividends or payments of profits:

The payment or crediting of profits to shareholders, be they residents or non-residents of El Salvador, is subject to a definitive income tax withholding at a rate of 5%, which can increase to 25% if the company receiving the dividends is domiciled in a territory of low or zero taxation or a tax haven.

28. Are there any significant transfer taxes, stamp duties, etc. to be taken into consideration?

Payments made to foreign parties

As a general rule, individuals or legal entities that pay or credit to non-resident parties sums of money resulting from any type of income obtained in the country, be they payments for services provided from abroad and used in the national territory, or amounts paid and credited due to the transfer of intangible assets under any title whatsoever, even if they refer to advance payments, are obligated to make an income tax withholding of 20% on these amounts as definitive payment of the tax. Notwithstanding the above, different rates will apply to payments or credits to non-resident parties residing in countries classified as tax havens by the Tax Administration. In these cases, a withholding rate of 25% applies.

29. Are there any public takeover rules?

Yes, according to the law of public acquisition.

30. Is there a merger control regime and is it mandatory / how does it broadly work?

For a Non- Regulated Company, there isn't any specific control. The rules are provided by the Commercial Code, therefore, any company is allowed to merge as long as this is not against the Competition Law and antitrust practices.

Specific types of companies (e.g. banks, insurers among other) are subject to supervision by the Financial System Superintendency (SFF) and the applicable rules are established by specific laws.

31. Is there an obligation to negotiate in good faith?

Yes.

32. What protections do employees benefit from when their employer is being acquired, for example, are there employee and / or employee representatives' information and consultation or co-determination obligations, and what process must be followed? Do these obligations differ depending on whether an asset or share deal is undertaken?

There are no special protections for employees. If there is an employer substitution, the rights acquired by the employees must not be diminished by the new employer.

33. Please detail any foreign direct investment restrictions, controls or requirements? For example, please detail any limitations, notifications and / or approvals required for corporate acquisitions.

Competition law, establishes some restrictions for merger and acquisitions of companies.

34. Does your jurisdiction have any exchange control requirements?

No.

35. What are the most common ways to wind up / liquidate / dissolve an entity in your jurisdiction?

Please provide a brief explanation of the process.

The most common way to dissolve any entity is by the liquidation of the company. The process of dissolution and liquidation for commercial companies takes approximately 18 to 24 months.

Since the process begins with the agreement of the partners or shareholders to liquidate the company, this agreement must subsequently be published and registered in the Commercial Registry. Once registered, the liquidation balance sheet is issued and subsequently the deed of liquidation of the entity.

It is important to mention that the liquidation process of the company is delayed by the fact that the tax administration begins a process of inspection of the company, this inspection process can take approximately between 12 to 18 months.

In the case of Simplified Stock Corporation a simplified procedure is established for the dissolution of these, provided there are no outstanding accounts payable or obligations to fulfill. The liquidators must distribute the social assets within a period of thirty business days.

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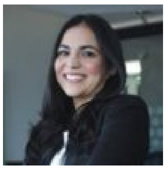

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