

Guatemala



IX. Guatemala

A. Foreign investment: legal framework

i. Authorisations, limitations and prohibitions

The current Guatemalan legal framework is both welcoming and protective of foreign investment, allowing foreign investors to hold private property; invest in business; own and develop both local vehicles, as well as company branches abroad; and unlimited disposal of goods and property. Guatemalan law explicitly promotes investment and includes provisions that recognise and guarantee private property rights equally for Guatemalan nationals and foreign investors.

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

1. the Political Constitution of the Republic of Guatemala (Constitución Política de la República de Guatemala), which provides that the State of Guatemala has the obligation to protect the formation of capital, savings and investment, and to enact satisfactory conditions for promoting the investment of both Guatemalan and foreign capital; and
2. Foreign Investment Law (Ley de Inversión Extranjera), which has been valid and binding since March 1998. The law's main objective is to encourage domestic and foreign investment in Guatemala, and it was issued to comply with the fundamental obligation of the State of Guatemala, as indicated in the above paragraph.

Both the Political Constitution of the Republic of Guatemala and the Foreign Investment Law clearly set forth equal treatment between domestic and foreign investors. The Foreign Investment Law expressly forbids all and any discriminatory actions towards foreign investors, and clearly highlights that no restrictions can be placed on foreigners regarding owning any amount of stock in Guatemalan business entities.

Foreign investors and their investment are mainly regulated by the stipulations of the Foreign Investment Law. When foreign investment occurs in a sector of the economy governed by a law of a special nature, the investor must also be guided by the precepts of the latter. Likewise, the foreign investor is subject to all the precepts of general application in the territory of the republic, and can enjoy the same rights and same means of application of the law that are given to domestic investors.

All sectors of the Guatemalan economy are open to both local and foreign investment and ownership; however, some restrictions apply to sectors considered to be of strategic interest, such as telecommunications and some forms of transportation.

Other than applicable taxes, no restrictions apply to the remittance of profits and repatriation of capital. There are no exchange controls in effect.

As a commitment towards the protection and promotion of foreign investment, Guatemala has enacted several bilateral international treaties for the promotion and protection of foreign investment (Acuerdos Bilaterales para la Promoción y Protección de la Inversión Extranjera), with the following countries:

| Country | Enactment Day |
|------------------------|--------------------------|
| Germany | 29/10/2006 ¹⁶ |
| Argentina | 07/12/2002 ¹⁷ |
| Belgium and Luxembourg | 01/09/2007 ¹⁸ |
| Chile | 13/10/2001 ¹⁹ |
| China (Taiwan) | 01/12/2001 ²⁰ |
| Korea | 17/08/2002 ²¹ |
| Cuba | 23/08/2002 ²² |
| Spain | 21/05/2004 ²³ |
| Finland | 06/01/2007 ²⁴ |
| France | 28/10/2001 ²⁵ |
| Israel | 15/01/2009 ²⁶ |
| Italy | 03/03/2008 ²⁷ |
| Netherlands | 01/09/2002 ²⁸ |
| Sweden | 01/07/2005 ²⁹ |
| Switzerland | 03/05/2005 ³⁰ |
| Austria | 01/04/2012 ³¹ |
| Trinidad and Tobago | 23/06/2016 ³² |
| Turkey | 19/10/2017 ³³ |
| Czech Republic | 29/04/2005 ³⁴ |

Together with what has been stated above, Guatemala also has a series of public policies, treaties, government offices and alliances for the promotion of foreign investment. One of those programmes is Programa de Agregados Comerciales, de Inversión y Turismo (PACIT), which was formed to promote and implement the promotion of foreign investment in Guatemala. The Ministry of Economy (Ministerio de Economía (MINECO)) has also led several offices and web portals to promote foreign investment, including the Guatemala Trade and Investment office and the ‘Invest In Guatemala’ website, which continually uploads data to attract potential investors to the country.

Concerning limitations and prohibitions: in some corporate vehicles, bank-related operations or government public concourses, a local proxy or power of attorney (POA) will be requested. For example, the Law of Public–Private Alliances requires that in order to participate in a public–private project in Guatemala, the foreign investor must incorporate a local vehicle.

16 See www.mineco.gob.gt/sites/default/files/01._appri_alemania_diario_oficial.pdf accessed 12 March 2019.

17 See www.mineco.gob.gt/sites/default/files/02._appri_argentina_diario_oficial.pdf accessed 12 March 2019.

18 See www.mineco.gob.gt/sites/default/files/03._appri_belgica_luxemburgo.pdf accessed 12 March 2019.

19 See www.mineco.gob.gt/sites/default/files/04._appri_chile_diario_oficial.pdf accessed 12 March 2019.

20 See www.mineco.gob.gt/sites/default/files/05._appri_china_taiwan.pdf accessed 12 March 2019.

21 See www.mineco.gob.gt/sites/default/files/06._appri_corea_diario_oficial.pdf accessed 12 March 2019.

22 See www.mineco.gob.gt/sites/default/files/07._appri_cuba_diario_oficial.pdf accessed 12 March 2019.

23 See www.mineco.gob.gt/sites/default/files/08._appri_espana_diario_oficial.pdf accessed 12 March 2019.

24 See www.mineco.gob.gt/sites/default/files/09._appri_finlandia_rubricado.pdf accessed 12 March 2019.

25 See www.mineco.gob.gt/sites/default/files/10._appri_francia_diario_oficial.pdf accessed 12 March 2019.

26 See www.mineco.gob.gt/sites/default/files/11._appri_israel.pdf accessed 12 March 2019.

27 See www.mineco.gob.gt/sites/default/files/12._appri_italia_diario_oficial.pdf accessed 12 March 2019.

28 See www.mineco.gob.gt/sites/default/files/13._appri_paises_bajos.holanda._diario_oficial.pdf accessed 12 March 2019.

29 See www.mineco.gob.gt/sites/default/files/15._appri_suecia_diario_oficial_0.pdf accessed 12 March 2019.

30 See www.mineco.gob.gt/sites/default/files/16._appri_suiza_diario_oficial.pdf accessed 12 March 2019.

31 See www.mineco.gob.gt/sites/default/files/17.appri_austria_diario_oficial.pdf accessed 12 March 2019.

32 See www.mineco.gob.gt/sites/default/files/trinidad_y_tobago.pdf accessed 12 March 2019.

33 See www.mineco.gob.gt/sites/default/files/inversiones_con_turquia.pdf accessed 12 March 2019.

34 See www.mineco.gob.gt/sites/default/files/acuerdo_de_inversion_con_chile.pdf accessed 12 March 2019.

Guatemala is also of interest for its currency exchange system, which is regulated by the Law of Free Negotiation of Currencies. Bank accounts can be opened and maintained in currencies different from the Guatemalan official currency. Foreign investors are allowed to repatriate monies, as well as transfer foreign currency related to or resulting from their investment (this includes royalties, dividends, interests and any similar profits).

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

A. CONSTITUTIONAL GROUNDING OF THE OIL AND GAS AND MINING INDUSTRIES

According to Article 118 of the Guatemalan Constitution, the State of Guatemala has the obligation to orient the national economy using its natural resources and human potential to create wealth, achieve full employment and equitable distribution of national income.

According to Article 125 of the Guatemalan Constitution, the technical and reasonable exploitation of hydrocarbons, minerals and other non-renewable resources is of public utility and need. The State of Guatemala has to set and propitiate the conditions for exploring, exploiting and commercialising products of non-renewable resources.

B. OIL AND GAS

Guatemala mainly produces ‘heavy crude oil’ (with American Petroleum Institute (API) gravity between 10 and 22.3) and ‘bitter’ (with sulphur percentages higher than one per cent).

By 2013, the total oil production reported by the Ministry of Energy and Mines (MEM) was approximately 4 million barrels; equivalent to around 9,986 barrels per day.

During the past ten years, this subsector has been expanding, producing a total of 84.8 million barrels during the period of 2001–2013; and 2002 representing the best year for this sector, producing 24,671.10 barrels per day.

Yet, in 2018, the national production declined by five per cent.

According to MEM reports, in the first ten months of 2018, the Xan field continued to be the main production area with 2.32 million barrels, which is equivalent to 84 per cent of the total, followed by City Petén with 248,000 barrels.

Nevertheless, a steady supply, combined with the high prices of hydrocarbons on international markets and proven reserves to increase production in the short and medium terms, represent important reasons for foreign companies to invest in Guatemala.

The development of the hydrocarbons industry in Guatemala represents great potential. There are studies that reveal the existence of oil reserves of up to 83 million barrels, but there are indicators that it might be up to 750 million barrels.

Guatemala has yet to build a refinery, exporting its crude oil for further processing. This may represent another opportunity for potential investors to exploit this market in the country.

It is important to mention the infrastructure of this sector, which includes a pipeline of 750km (466 miles) to transport oil to Puerto Barrios in the Atlantic Ocean for further export, and a storage capacity of 600,000 barrels, which raises this sector's investment potential.

Authorities of the MEM announced that in 2019, a cartographic laboratory will be built. This will produce better information to determine the areas of oil exploration and exploitation in the country.

In addition to the announcement of the construction of the new laboratory, the authorities decided to present 'two digital platforms that will be available to users. The first to modernize the fuel price monitoring and the second to digitalize the files of the General Directorate of Hydrocarbons (DGH)'.

The MEM has discovered its biggest oil deposits in the northern region of Guatemala (mainly in the department of Peten), where most of the licences for exploration and exploitation have been issued to date.

Also, different bids recently completed and scheduled by the MEM for the near future are located in northern areas.

It has been proven that Guatemala has oil-exploiting potential in other areas, especially in the Pacific coasts, and will be developed in the following years.

C. OIL EXPLORATION AND EXPLOITATION CONTRACTS

Guatemala is one of the few countries in Latin America that allows private companies to extract and sell hydrocarbons in national territory.

Oil companies are required to pay royalties to the government, as established in the Hydrocarbons Law.

These royalties are determined depending on the average API gravity of the production, according to the following criteria: starting at an API gravity of 30°, the company would have to pay royalties equivalent to 20 per cent of the income.

From this level, any additional API gravity adds one per cent to the royalties, and any less API gravity reduces the royalties by one per cent. It is important to mention that there is a five per cent minimum royalty for all oil companies in Guatemala.

In addition to the royalties explained above, this law also establishes 'state participation' in oil projects.

This participation is directly related to the quantity of barrels produced per day by the company, and its participation is calculated over the net production, after subtracting royalties paid and other costs (including capital costs, exploration, exploitation and development, operation and administrative costs).

This can go from 30 per cent for production of less than 20,000 barrels per day to up to 90 per cent for productions greater than 90,000 barrels per day.

D. CURRENT MINING LAW

Guatemala has a very stable legal framework. The current Mining Law has been in force for 20 years and has not undergone significant amendments.

From a legislative standpoint, the current Mining Law, Decree 48-97, has not been amended; hence, royalties and canons have been very stable throughout the last 20 years.

In 2014, there was an attempt to increase royalties for the exploitation of mining products from the current one per cent to ten per cent, but it was swiftly repealed.

The Mining Law has been subject to several Constitutional Review Proceedings, resulting in the unconstitutionality of the following articles:

1. Article 19, pertaining to the automatic approval of Environmental Mitigation Studies for Recognition and Exploration Licenses Granting;
2. Articles 21, 24 and 27, pertaining to the indefinite depth of mining operations; and
3. Article 75, pertaining to the discharge of residual waters.

In addition, the Current Regulations to the Mining Law, Government Agreement 176-2001, have been very stable. These regulations have been amended only once, in 2003, through Government Agreement 537-2003, which repealed the preset values to determine a royalty's payment.

Any legislative changes or amendments cannot be envisioned, either to the Mining Law or the determination of royalties.

According to Article 63 of the Mining Law, royalties are equivalent to one per cent of the value of the commercialised mining products.

From this one per cent, 0.5 per cent corresponds to central government and 0.5 per cent to the municipalities hosting the mining project, and is due in the first 30 calendar days of each year.

The determination of royalties relies completely on the licensee, who has to file an affidavit stating the quantities of mining products commercialised and the value of these products according to its invoicing.

On 26 January 2012, through the Extractive Industries Guild (Gremial de Industrias Extractivas GREMIEXT)), the Government of the Republic of Guatemala and the Industry Guild (Cámara de Industria) entered into a framework agreement to voluntarily raise the royalty rates.

All the members of the GREMIEXT, by means of their membership, are compelled to enter into specific voluntary royalty agreements with the MEM.

It was agreed that precious metal miners would pay a supplementary and voluntary additional royalty equivalent to three per cent of the value of the commercialised mining products.

Eighty per cent of this supplementary and voluntary additional royalty should be distributed within the municipalities hosting the mining projects. The remaining 20 per cent should be paid to central government.

Therefore, precious metals miners should pay a four per cent royalty on their commercialised mining production, except for Montana Exploradora (a branch of GoldCorp), which, given the great importance that the Marlin Mine in San Marcos represents to the communities hosting the project, would have to pay an additional four per cent (five per cent total).

According to Article 66 of the Mining Law, the licensee has to pay a surface cannon annually.

The value of the unit for 2017 was established by Governmental Decree 08-2017, and for precious metals equates to 1,000 quetzals per unit.

The Surface Cannon value was doubled in 2017 with respect to 2015, which was the last time that the value of the unit was established, by Governmental Decree 387-2015. This measure affects small-scale mining in particular.

The state of Guatemala has been a member of the Extractive Industries Transparency Initiative (EITI) since 2012.

E. THE WATER SITUATION

The Guatemalan Civil Code regulates the ownership of water.

There is no specific law pertaining to the ownership and usage of water in Guatemala.

In the Congress of the Republic of Guatemala, there is a bill addressing this situation – Bill 3702 – which obtained a favourable opinion in 2008, but has not yet been discussed by congressmen.

F. CHALLENGES TO THE MINING AND OIL AND GAS INDUSTRIES IN GUATEMALA

These industries face most of their challenges in the communitarian aspect.

This is related to the development of an international politically progressive agenda, which has been exercised by international NGOs and local NGOs funded by international instances.

There are two particular matters that are being disputed in the courts pertaining to mining and oil and gas in Guatemala:

1. right of opposition to the granting of a mining licence; and
2. right of the indigenous communities to be consulted on the oil and gas and mining developments.

The Constitutional Court of Guatemala has heard several cases with respect to the right of opposition according to the Mining Law.

The most interesting feature of these rulings is what is considered the exercise of collective rights and what is considered the exercise of diffuse rights.

Guatemalan law and the Guatemalan Constitutional Court do not acknowledge the exercise of diffuse rights but do admit the exercise of collective rights under the premise that the person filing the complaint or the constitutional injunction has to be affected by the alleged circumstances.

Pertaining to communitarian consultation, the state of Guatemala became party to the International Labour Organization (ILO) Convention 169 on Indigenous and Tribal Populations in 1996 through Decree 9-96 of the Congress of the Republic of Guatemala.

Guatemala has been party to ILO 169 for over 20 years without implementing an ordinary law regulating the aspects of the communitarian consultation set forth in Articles 2 and 6 of the Convention.

In 2009, Bill 4051 was submitted to Congress. This bill contains the Consultation to Indigenous Communities Law. In October 2009, this bill obtained a favourable opinion, but Congress has not discussed it yet.

Another perspective that has to be taken into consideration is municipal consultations contained in the Guatemalan Municipal Code.

The Guatemalan Municipal Code grants the right to any organised community (ten per cent of the population of the community) to request that the municipality performs a consultation on important matters or situations affecting community rights.

This has had an impact on two industries:

1. the mining industry; and
2. the power generation industry (specifically affecting hydraulic generators).

Almost all municipalities in Guatemala have produced regulations to conduct communitarian consultations.

Some of these regulations have been intended to grant binding effects to the results of a communitarian consultation, involving the operators of power generation and mining projects, and the mining and energy authorities.

This situation has been discussed with the Constitutional Court of Guatemala, which has heard several cases on this matter and consistently ruled that the municipal communitarian consultations do not have binding effects on third parties, but only on the community and the municipality (see rulings in the following files: 1179-2005, 1408-2005, 2143-2007 and 2432-2011/2481-2011).

In 2013, the Constitutional Court commenced breaking from the aforementioned criteria.

This all commenced when Rigoberta Menchú Tum, Nobel Prize Laureate, alongside other indigenous leaders, filed a request for a constitutional review of the totality of the Mining Law under the premise that it violates human rights and ILO 169.

Menchú's constitutional review request was overruled by a ruling dated 28 February 2013 in the file 1008-2012.

Independently, the Constitutional Court knew of the constitutional review request of the communitarian consultations regulations of the municipality of Mataquescuintla, Jalapa.

This ruling is very interesting as it states that municipal communitarian consultations are not binding, but for the first time, the discussion of ILO 169 was raised by the Constitutional Court, which stated that even if ILO 169 is not regulated by ordinary law, the State of Guatemala and the authorities should perform the respective consultations provided that communities had the right to be consulted previously.

The court extended the consultation right not only to indigenous populations but also to any community that could be affected by a certain activity or industry under the Pro-Homine Principle.

The Constitutional Court of Guatemala has also ruled with respect to this consultational matter in two projects of major importance to the country:

- power generation plants Oxec and Oxec II, located in Santa María Cahabón; and
- Tahoe Resources subsidiary, Minera San Rafael, mining tenement 'El Escobal' in San Rafael las Flores, Santa Rosa.

The Supreme Court of Guatemala ruled on the matter in the first instance and granted constitutional protection to a community leader, Bernardo Caal.

Caal claimed the MEM authorised the Hydric Generation Project without performing the respective previous communitarian consultation under the provisions of ILO 169.

The Supreme Court ruled in favour of Caal and suspended the authorisation of the power generation projects until the communitarian consultation was performed.

Similarly, this occurred with 'El Escobal'.

This ruling is very important because it sets the standard of communitarian consultations. For the Supreme Court, the consultation proceedings have to be in good faith, congruent with the culture and ways of the communities, validated by communities and with the participation of communitarian leaders.

This ruling brings certitude to the industry that projects will not be revoked, even if the communitarian consultations were not held before the development of the project, but suspended until communitarian consultations are performed under the standards set in the ruling.

iii. Treatment of foreign investment in real estate (rural and urban properties)

With a vast extension of land in the region (108,889km²), real estate is regulated by the Civil Code, Decree 106. Real estate follows a cadaster system organised by the Registry of Cadaster Information (Registro de Información Catastral), and every real estate property must be registered at the General Property Registry (Registro General de la Propiedad). The General Property Registry also registers ownership, disposal, transfer, contribution, succession, judicial annotations and encumbrances, all of which are accessible to the public.

The law does not require that, in order to own property or dispose, inherit or encumber any property, a person must be of Guatemalan nationality. Therefore, all property rights can be fully enjoyed by foreign investors in the country.

iv. Treatment of foreign investment in agribusiness activities

Agriculture is one of the main industries in Guatemala and one of its most important sources of income. Although it employs 31.2 per cent of the Guatemalan workforce, it ends up contributing

11.3 per cent of the national GDP.³⁵ Other studies state that agriculture encompasses around 51 per cent of the workforce.

Agricultural business is not under the control or supervision of any comptroller. However, the Guatemalan government includes, among the main cabinet ministries, the Ministry of Agriculture, Livestock and Food (Ministerio de Agricultura, Ganadería y Alimentación (MAGA)), which plays an administrative role in the agricultural industry. The MAGA is allowed to issue regulations on imports and exports, as well as product control and plant protection.

Foreign investors have no limitations regarding engaging in agricultural activities and agriculture-related business. The exportation and importation of agroindustry products is not limited to locals only.

v. *Maritime legal framework: general considerations*

Guatemala has been part of the International Maritime Organization (IMO) since 1982. Over time, the evident economic change in Guatemala, the trade evolution and globalisation have made it necessary for maritime and port activity to be updated at the commercial and technological pace. Thus, the main international conventions have been ratified, among which the following can be mentioned: Safety of Life at Sea (SOLAS); International Ship and Port Facility Security Code (ISPS Code); Maritime Pollution (MARPOL); Civil Liability Convention 1992 (CLC 92); and others that have allowed for the goods that correspond to 90 per cent of the country's imports to be transported by sea. It has allowed the entry and establishment of 23 shipping companies, port operators and many subjects that have been part of the maritime operation and services provided.

A. PORT SITUATION

With its privileged position of being located under world powers (Canada, Mexico and the US), logistically close to one of the most important canals worldwide and directly connected to the Atlantic and Pacific Oceans (it is within the historically called 'American bridge'), Guatemala currently has only one terminal capable of handling ships with a draft of up to 14 metres and length of 310 metres.

There are three ports with high activity (Santo Tomás, Puerto Barrios/Atlantic Ocean and Quetzal/Pacific Ocean), but with very limited development (ships with a four-metre draft can enter). For investment purposes, it is important to take into account board agreement number JD-7-45-2015 issued by Empresa Portuaria Quetzal (state entity, decentralised and autonomous) and board resolution number 05/04/2019 issued by the board of directors of the Free Zone of Industry and Commerce 'Santo Tomás de Castilla', which are legal instruments that allow the development of projects that support maritime-port activity in ports located in the Atlantic and Pacific, where investment can be developed by the investor and certain amounts are paid in terms of usufruct or a lease. Investment would be quite profitable because it allows income in services that are not provided (eg, loading and unloading of vessels with greater draft and beam dimensions), cargo handling for a larger size and specialisation of terminals.

³⁵ See www.fao.org/capacity-development/news-list/detail/en/c/1140409 accessed 14 March 2019.

vi. Offshore and local business structures

A. GENERAL CONCEPT

Foreign investment in Guatemala is usually carried out by establishing a local company or a branch of a foreign company. No special business permits are needed for rendering regular services. Special services that may require special permits include mining, oil, health and education providers, banking and financial services, communication and transport.

B. LOCAL BUSINESS STRUCTURES

The Commercial Code of Guatemala (Código de Comercio) provides several types of corporations. The most commonly used are as follows:

1. Corporations or stock companies (*sociedad anonima*): an entity that has its capital divided and represented by stock. No bearer shares are permitted. A minimum of two persons, individual or legal entities, are necessary to form a corporation. The responsibility of each stockholder is limited to the payment of the stock that has been subscribed. Dividends, whether paid to local or foreign shareholders, are subject to an income tax at the rate of five per cent. Minimum paid capital is 200 quetzals (\$30) and registration takes approximately 15 labour days.

The differences between the various types of business organisations relate mainly to registration procedures and financial liability of the participants.

2. Branch office: a corporation legally established abroad, which may obtain registration and authorisation to operate and conduct business in Guatemala. The registration of foreign commercial entities may be permanent or temporary (for up to two years).

The requirements for establishing a branch include providing evidence of being duly organised in its country of origin; the appointment of a representative in Guatemala with power of attorney; the obligation of the parent company to guarantee branch operations with its worldwide assets; and a \$50,000 guarantee bond. All documents that come from abroad have had to include the apostille (instead of the chain of legalisation of foreign documents) since 18 September 2017.

Operations that require no registration in Guatemala:

The Commercial Code of Guatemala includes a provision that enumerates a list of activities in which the foreign commercial entity may engage in Guatemala without the need for registration (but any further activities trigger the registration requirement). This list of activities includes: (1) being part of a judicial or administrative process; (2) opening and operation of bank accounts (however, due to their internal policies, banks in compliance with anti-money laundering regulation usually require proof of registration before opening a bank account); (3) assigning the purchase of selling orders to agents in Guatemala; (4) receiving purchase orders through a local agent when confirmation or acceptance is made outside Guatemala; (5) granting loans to local entrepreneurs; (6) issuing,

endorsing or holding securities; and (7) purchasing goods or real estate (provided these are not part of a commercial endeavour or regularly traded real estate properties).

C. STRENGTHENING THE ENTREPRENEURSHIP LAW (LEY DE FORTALECIMIENTO AL EMPRENDIMIENTO)

It is important to point out that on 29 October 2018, ‘Strengthening Entrepreneurship Law’ Decree No 20-2018 was published in the Guatemalan Official Gazette, and it came into force on 28 January 2019.

This decree introduces a new type of company to Guatemalan mercantile legislation called an ‘entrepreneurship company’. This new type of mercantile company may be incorporated with one or more natural persons who are only obliged to pay their contributions represented in shares, forming a legal entity different from that of its shareholders.

The purpose of this law is to encourage and strengthen the development of entrepreneurship in Guatemala by establishing technical and financial support for entrepreneurs, as well as facilitating the process of formalisation of entrepreneurs, creating a new legal entity to reduce the time and cost of their registration.

They are constituted by means of an electronic system before the Commercial Registry, and are exempt from its incorporation through a public deed. They can only receive monetary contributions. Their total annual income cannot exceed 5m quetzals (approximately \$660,000); otherwise, they must be transformed into another corporate regime or mercantile entity.

They are not subject to the obligation to separate any percentage of their profits to form a legal reserve.

The Ministry of Economy, through the Vice Ministry of Development of Microenterprise, Small and Medium Enterprises, will create the ‘Unit for Strengthening Entrepreneurship’, which will promote the right conditions to attract investors and promote the competitiveness and quality of enterprises in Guatemala.

Even though this new type of mercantile company is indeed innovative, interesting and has reduced a large number of formalities, it can also lead to possible fraud: there are no formalities to modify the articles of incorporation of the company; there is no obligation to form a legal reserve; the contributions are only monetary – there cannot be real estate or movable property; and there cannot be an industrial partner. The shareholders respond individually. The law does not indicate the definition of entrepreneur or parameters to be considered. There is no oversight or body that will perform an audit if the legal representative does not comply with the financial situation. How shares will be sold is not established, nor if they can be sold.

The Commercial Registry has a couple of months to create an electronic portal (currently there are no indications that this will happen).

D. DEVELOPMENT OF INTEGRATED CAPITAL MARKETS AND JOINT ACTIVITIES BETWEEN LATIN AMERICAN COUNTRIES

1. Stock exchanges

Since 1987, the National Stock Exchange (Bolsa de Valores Nacional, SA (BVN)) has provided the place, infrastructure, services and regulations that allow stockbrokers to carry out the operations of buying and selling securities in an effective and centralised way, for their own account and on behalf of their investment clients.

In 2011, the BVN subsidiary called Central de Valores Nacional, SA (CVN) became the entity in which securities issued locally and in foreign markets are safeguarded; transactions carried out at BVN are settled; and the economic rights deriving from securities in custody are collected. Before 2011, these services were provided by the Caja de Valores Department of the BVN.

The BVN is an organised market in which suppliers and securities applicants meet in order to determine the most efficient price of the instruments at all times.

It offers greater possibilities and opportunities to every productive effort, both for the investment of individual or legal persons and the financing of companies. Additionally, it centralises and disseminates information regarding the purchase and sale of securities, guaranteeing purity and transparency in operations.

The BVN is a public limited company with more than 45 shareholders, of which 16 are stockbrokers.

The stockbrokers are members of the BVN and carry out operations either on their own behalf or on behalf of their clients (companies or individual persons).

After carrying out the transactions, these are settled at CVN, where the securities and the respective funds are delivered to the stockbrokers involved.

The law that governs the stock market, including the BVN, is the Securities and Merchandise Market Law (Decree 34-96). Additionally, the BVN develops internal regulations. Both the stockbrokers and issuing entities must adhere to and respect, at all times, the regulations pertaining to the stock market. The Department of Supervision, Audit and Risk of the BVN is responsible for supervising stockbrokers to verify that operations have been carried out in compliance with the applicable regulations.

The issuing entities are the companies that issue their securities through the BVN in order to obtain funds to finance their operations through the sale of their securities to the investing public. In accordance with the law, prior to the securities being traded on the BVN, these must be registered in the Securities Market Registry.

The volume of operations carried out in different markets are made known daily to the general public through an internet page and an electronic report called the Daily Report, which reaches a diverse range of people.

In November 2009, BVN was designated by the Association of National Numbering Agencies (ANNA) as the National Numbering Agency for Guatemala.

The International Securities Identification Number (ISIN) code is developed in international standard ISO 6166 for the identification of values at an international level, used in the financial markets of the world, and incorporated into the liquidation and custody processes. This code is composed of 12 alphanumeric characters.

The Classification of Financial Instruments (CFI) code is developed under international standard ISO 10962, and classifies and allows knowledge of the abbreviated characteristics of securities and financial instruments at an international level. This code is composed of six letters.

In 2013, \$332m was traded in the primary market in bond debt securities issued by Guatemalan companies, of which 25 per cent was in US dollars and the rest in quetzals.

The trade volume comprises activities from banking, industry and agriculture.

2. Latin American Integrated Market (MILA)

In 2014, the Guatemalan stock market underwent a series of reforms that allowed local stockbrokers to purchase shares of listed companies in developed markets.

Guatemala is not affiliated with MILA and remains an observer.

3. Pacific Alliance

Guatemala remains an observer of the Pacific Alliance.

vii. Offshore vehicle providers in Latin American countries: general concept

Offshore, out-of-bounds, foreign jurisdiction or international companies are not forbidden by domestic regulation. Offshore companies provide operative and protective benefits that Guatemalan local companies cannot provide. One of those operative benefits is creating companies with a sole proprietor (unipersonal shareholder).

Other benefits claimed by frequent offshore owners include corporate protection (corporate veil and shareholder anonymity), eased bank transactions, speed of incorporation and **rapidity** concerning corporate processes. Corporate LLCs are the most incorporated vehicles, followed by private interest foundations.

Concerning jurisdiction, most common offshore companies are incorporated in Panama. Following Panama are Caribbean islands, such as Anguilla, the Bahamas and the British Virgin Islands, and foreign jurisdictions, such as the Seychelles. Most recently, offshore companies have been incorporated in the Belize territory.

The main purposes of offshore companies in Guatemala are often asset protection, wealth management and asset distribution, while private interest foundations mainly serve hereditary purposes. With regard to taxes, asset holding companies are not subject to local taxation. However, operative offshore companies must be registered as stated previously and must obtain a Tax Identification Number (Número de Identificación Tributaria (NIT)) and are subject to tax payment in accordance with the selected regime and business.