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# Honduras

## International Estate Planning Guide

### Private Client Tax Committee

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*Updated 1/2024*

## I. Wills and disability planning documents

### A. Will formalities and enforceability of foreign wills

#### 1. THE FORM OF LAST WILL AND TESTAMENTS

In Honduras, will creation is a formal process, primarily facilitated by a civil law notary to ensure legal compliance. Two types of wills are recognised under Honduran law:

##### a. Formal wills

Formal or solemn wills represent the standard form for wills in Honduras. They are characterised by a process that involves a Honduran civil law notary. Formal wills are categorised into two types:

##### *Nuncupative wills*

The nuncupative will (*testamento abierto*) is the most common form of last will and testament. It is executed in the presence of a notary and three competent witnesses in the form of a public deed. The will may be written in advance by the testator. Wills in languages other than Spanish may be translated. The notary retains a complete copy of the will.

##### *Closed envelope wills*

The closed envelope will (*testamento cerrado*) is a private form of last will and testament that requires the testator to write his or her will on paper, seal it in an envelope, and then present it to a notary and five competent witnesses. The testator declares that the envelope contains his or her will, but its content remains confidential and is not disclosed to the notary or witnesses. The envelope is sealed to prevent access to the will without breaking it and the testator's signature is required on the will itself. After the will is executed, it can be kept by the testator, entrusted to someone or left with the notary for safekeeping. On the testator's death, the will must be presented to a judge or notary for probate of will provisions.

##### b. Privileged wills

Privileged or less solemn wills (*testamentos menos solemnes o privilegiados*) in Honduras are categorised into three types, which are to be used in urgent or exceptional circumstances and do not require a notary's assistance:

##### *Wills without notary assistance*

Such a will is applicable in situations like imminent death or epidemics, where a testator can make the will verbally or in writing before five witnesses (in imminent death scenarios) or three witnesses (during epidemics). The will is valid even without witnesses who can

write, but must be formalised into a public deed by a judge or notary within a specified period post the testator's death to remain valid.

#### *Military wills*

Military wills are specifically designed for Honduran armed forces personnel and associated individuals during wartime.

#### *Maritime wills*

Maritime wills are tailored for individuals serving or travelling on Honduran warships on the high seas.

### 2. CODICILS

Under Honduran law, codicils as separate legal instruments are not recognised in the same way as in common law jurisdictions. Instead, amendments to a will are typically handled through the creation of a new will or by explicitly modifying the existing will.

### 3. POST-DEATH VARIATIONS

Wills in Honduras are generally considered final and unchangeable after the testator's death, with only limited exceptions. The concept of post-death variations of wills by beneficiaries, as commonly understood in common law systems, is not typically permissible in Honduras. The exception is the judicially supervised reform will petition (*acción de reforma del testamento*), which is specifically designed to protect the rights of forced heirs, such as the surviving spouse or dependents, who may not have been adequately provided for in the will. Apart from this exception, the content of a will is considered final once the testator passes away.

### 4. ENFORCEABILITY OF FOREIGN WILLS

Under Honduran law, a will made in another jurisdiction is recognised as valid and can be enforced if its form complies with the internal law of the country where it was made and if it has been authenticated via standard legal procedures.

#### *B. Will substitutes (revocable trusts or entities)*

Succession planning can be based on other alternatives, in addition to wills, whether by donating assets; setting up nominee arrangements (eg, *fideicomisos*); private foundations and corporations; or by means of purchasing life insurance policies, for example.

#### *C. Powers of attorney, directives and similar disability documents*

On the death or loss of capacity of the grantor, powers of attorney and all mandates are automatically revoked and cease to be effective. This makes them unsuitable for estate planning because they do not continue to operate after the grantor's death.

In addition, specific legislation concerning directives in estate planning, such as living wills or healthcare proxies, does not currently exist. Instead, the general rules of the Civil Code regarding mandates are applied. These general rules allow individuals to grant others the authority to act on their behalf, but this framework is not tailored specifically to healthcare decisions or end-of-life care scenarios.

## **II. Estate administration**

### *A. Overview of administration procedures*

In Honduras, succession takes place on the decedent's death. However, to verify and take possession of the inheritance, it is necessary to open a probate procedure before a court or public notary. In both scenarios, the estate is directly managed by the heirs or their legal representatives. Before distribution, the unsettled estate must undergo a specific set of deductions, which include funeral expenses, probate costs, debt settlements, taxes, forced maintenance allocations and the *porción conyugal*.

### *B. Intestate succession and forced heirship*

Intestate succession is carried out in the full or partial absence of a will.

In such cases, the designated heirs, by order, are: (1) the decedent's descendants; (2) the surviving spouse or domestic partner in a legally recognised union; (3) the decedent's ascendants; (4) the decedent's collateral relatives; and (5) the municipality where the decedent had his or her last domicile.

In the absence of descendants, a surviving spouse or domestic partner, ascendants and siblings, collateral relatives up to the sixth degree inherit according to set rules. If there are no heirs, the municipality of the deceased's last domicile inherits.

The beneficiaries of court-ordered maintenance have forced heirship rights that correspond proportionally to the support they were awarded by the court. In addition, the surviving spouse who lacks the means to sustain him or herself adequately has forced heirship rights equal to a quarter of the decedent's estate.

### *C. Marital property*

Under Honduran family law, a couple may choose to marry under one of the following regimes for marital property.

#### 1. JOINT PROPERTY

In this arrangement, all assets and debts acquired during the marriage are jointly owned by both spouses. They are shared equally in the event of divorce or the spouse's death.

## 2. MARITAL PARTNERSHIP

Similar to the joint property regime, assets and debts acquired during the marriage are considered to be joint. However, pre-marital, inherited or gifted assets remain separate. On divorce or death, marital assets are divided equally.

## 3. SEPARATE PROPERTY

Under this arrangement, each spouse maintains ownership and control over his or her individual assets and debts, both acquired before and during the marriage. There is no joint ownership. In the case of separation or divorce, each spouse keeps his or her own assets.

### *D. Tenancies, survivorship accounts and payable-on-death accounts*

In the case of property that is jointly owned by two or more owners, a vesting or takeover clause can be agreed between the co-owners. As a result of such a clause, on the death of one of the owners, the other owners acquire or have the right to take over the deceased's share in the common property. A vesting or takeover clause may stipulate that the other owners are compelled to compensate the deceased owner's estate.

As a result of death under a life insurance agreement or any third-party insurance, a beneficiary can acquire endowment insurance or a life annuity.

## **III. Trusts, foundations and other planning structures**

### *A. Common techniques*

In Honduras, a civil law jurisdiction, the trust concept as known in common law systems is not native. Instead, nominee arrangements (*fideicomisos*) exist. These arrangements involve transferring asset ownership to the *fideicomiso*, managed by a Honduran bank (*banco fiduciario*) that must execute a specific set of instructions laid out in the *fideicomiso* agreement. *Fideicomisos* can be constituted both during the grantor's lifetime or on the grantor's death.

Foundations are forms mainly associated with activities other than businesses, for example, charitable, cultural and social activities. Foundations are recognised in Honduras. This also applies to foundations governed by another jurisdiction's laws.

A foundation is to be incorporated through the execution of a notarial deed by a Honduran civil law notary; such a deed must contain the articles of association of the foundation. The foundation and its board members must be registered with the Public Registry of Civil Associations administered by the Honduran Ministry of Government, Justice and Decentralization.

When considering a foundation, one should bear in mind that, pursuant to statutory law, a foundation: (1) may not make distributions to its incorporator(s) and the members of its corporate bodies; and (2) may only make distributions to other persons if such distributions are of an idealistic or social nature. These restrictions pertain to the distributions of profits, capital and/or reserves. They do not prevent the foundation from entering contracts with such persons, pursuant to which it is required to make payments.

Other popular choices for estate planning in Honduras include placing assets under the name of corporations, with share certificates passed on to the heirs on the grantor's death and, the anticipation of inheritance by means of a donation, where special provisions, such as the institution of usufruct in favour of the donor, can be included.

#### *B. Fiduciary duties (trustees, board members, directors, etc)*

Under a nominee arrangement, such as the *fideicomiso*, Honduran bank duties exist solely by virtue of the arrangement and may not be construed. On the other hand, the board members of a foundation have a duty of care and a duty of good faith. In Honduras, duty of care entails the duty to 'properly perform' management duties. A breach of these duties may give rise to action by the foundation. The duty of good faith is part of the reasonableness and fairness requirement that Honduran law imposes on the relationship between the foundation and its board members.

Finally, directors in Honduran corporations are bound by duties of loyalty, care, diligence and acting in the company's best interest. They must avoid conflicts of interest, transparently manage related-party transactions and stay well-informed about company affairs. They're liable for any damage to the company or third parties due to negligence, legal contravention or breach of fiduciary duties. While the liability initially targets directors, general managers may also be held accountable if directors were negligent in their oversight.

#### *C. Treatment of foreign trusts and foundations*

Honduran individuals may establish foreign trusts for assets located domestically or internationally. Honduras, like most Latin American countries, hasn't ratified the Hague Trust Convention, so trust governance is subject to private international law principles per the Honduran Civil Code, barring specific bilateral treaties. Typically, a trust's governance aligns with the law chosen by the parties or, absent an agreement, the law of the contract's principal performance location. Foreign foundations and associations are recognised per their incorporation laws but must adhere to Honduran legal standards.

### **IV. Taxation**

#### *A. Domicile and residency*

In Honduras, individuals are subject to taxation based on a territorial system. This means they are taxed only on income and wealth generated within the country. Non-residents are only taxable on certain types of income and wealth with a Honduran source.

Under this system, an individual or entity's tax domicile is primarily its residence or place of business. For those outside Honduras, it's where they conduct business or their legal representative resides. The tax domicile influences where taxes are paid and is declared to the tax administration. Only one tax domicile is recognised for tax and customs purposes.

### *B. Gift, estate and inheritance taxes*

Honduras currently does not impose gift, estate or inheritance taxes. Instead, capital gains tax is levied on the acquisition of assets through gifts or inheritance, ensuring taxation occurs at the point of asset transfer rather than accumulation.

### *C. Taxes on income and capital.*

Corporate income tax (CIT) and personal income tax are direct taxes on income levied in Honduras from legal entities and natural persons, respectively. There is also a separate capital gains tax.

#### 1. PERSONAL INCOME TAX

Personal income is taxed progressively. Earnings up to a certain threshold are exempt, followed by brackets with rates of 15 per cent, 20 per cent and 25 per cent. Additionally, domiciled individuals earning 10m Honduran lempiras (HNL) or more are subject to a 1.5 per cent tax on gross income if it exceeds the amount due under the progressive rates.

#### 2. CORPORATE INCOME TAX

In Honduras, resident companies pay CIT at 25 per cent on territorial income. A minimum tax of one per cent applies to entities earning over a gross income greater than HNL 1bn, with a reduced rate for specific sectors. Additionally, a five per cent Solidarity Contribution is levied on taxable income exceeding HNL 1m. Anti-evasion measures include one per cent tax on gross income for entities reporting losses in specified periods, with this tax creditable against annual liabilities.

#### 3. CAPITAL GAINS TAX

Typically, capital gains in Honduras incur ten per cent tax, applicable to residents and non-residents alike. Tax payments should be made within ten business days following the finalisation of the transaction amount. In cases involving non-residents, the buyer is required to withhold four per cent of the transaction value as a preliminary tax payment, submitting this to the government within ten business days of the transaction's completion.