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# Paraguay

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# XII. Paraguay

## A. Foreign investment

### *i. Introduction*

Paraguay has shown strong and stable macroeconomic policies that have strengthened economic performance in the last ten years. As a result, Paraguay's economy has grown at an average of 4.28 per cent per year between 2013 and 2017 and is expected to grow 4.5 per cent in 2018. Inflation rates over the past six years have not exceeded five per cent per year. Paraguay is one of the few Latin American countries that maintain a stable risk rating by three main rating agencies (ie, Moody's, Standard and Poor's, and Fitch).

Paraguayan law guarantees equal treatment for foreign and domestic investment, except for the ownership of land near borders by foreigners. Companies operating in Paraguay may be fully owned by foreign companies or individuals. In general, there are no restrictions on the transfer of funds outside of Paraguay. However, in the case of repatriating dividends to a foreign shareholder, a withholding tax of 15 per cent applies unless the company is benefited with certain special regimes discussed in this document.

Certain sectors reserved for the Paraguayan Government are not opened to private investment (either domestic or foreign). Accordingly, pursuant to the Paraguayan Constitution, Paraguay owns all deposits of hydrocarbons and solid, liquid or gaseous minerals, except for rocky, earthy or calcareous substances, and may grant concessions for their exploitation.

Paraguay has an open economy and is a founding partner of MERCOSUR. MERCOSUR was established in 1991 by the governments of Argentina, Brazil, Uruguay and Paraguay pursuant to the Treaty of Asunción. MERCOSUR's objective is to create a common market and ensure the free movement of goods, services, capital and labour among member countries.

MERCOSUR is the most important of Paraguay's preferential trade agreements. The most important destination of Paraguayan exports is also MERCOSUR, other major destinations include the EU, other countries of LAIA and Russia. Paraguay's main import trade partners are the MERCOSUR members, followed by other Asian countries.

Paraguay has entered into approximately 28 BITs with other countries. Paraguayan BITs cover Italy, Austria, Belgium/Luxemburg, Bolivia, Chile, Costa Rica, Cuba, the Czech Republic, El Salvador, France, Germany, Hungary, Italy, Korea, the Netherlands, Peru, Portugal, Romania, South Africa, Spain, Switzerland, Taiwan, the UK and Venezuela.

### *ii. Paraguay investment promotion laws*

Paraguay has enacted several laws and programmes to promote domestic and foreign investment by means of tax exemptions and other incentives. The most important investment promotion laws are: (1) Law No 60/90; (2) Law No 1064/97 (the 'Maquila Law'); and (3) Law No 5542/15.

The granting of the benefits under such laws is subject to the approval of an investment project prepared in the terms required by the applicable regulation. Investment projects under the Maquila Law and Law No 60/90 have had strong governmental support since their enactment.

A. LAW No 60/90

Law No 60/90 was enacted to promote medium and long-term capital investments to (1) increase domestic productivity of goods and services; (2) create new sources of employment; (3) incentivise export and import substitution; and (4) incorporate new technologies for economic efficiency.

1. Benefits

Benefits provided by the law include tax exemptions applicable to: (1) the import of raw material and fixed assets; (2) local purchase of fixed assets; and (3) provided the investment equals or exceeds US\$5m, the remittances of dividends and payments of interest, commissions and principal abroad.

The benefits under Law No 60/90 may be granted for periods of five to ten years.

2. Requirements

Prospective investors must incorporate a Paraguayan company or must register a branch of a foreign company in Paraguay prior to applying. Paraguayan law does not impose restrictions in terms of the types of products and services that the *maquila* industry may comprise.

In order to obtain the benefits of Law No 60/90, the investing party must submit a project description and investment proposal to the Investment Council, an advisory body to the Ministry of Industry and Commerce (Ministerio de Industria y Comercio (MIC)) and the Ministry of Finance (Ministerio de Hacienda (MH)). Guidelines for the preparation and submission of such documents are provided by the MIC.

3. Application process

The Investment Council evaluates the project and proposal and, if appropriate, grants its approval. Upon being notified of the Investment Council's approval, the MIC and the MH issue a bi-ministerial resolution, which represents the final approval and grants the investment project the benefits of the Investment Incentives Law. The evaluation and approval process normally takes approximately three to four months. The benefits are granted after the approval of the investment project.

B. THE MAQUILA LAW

The Maquila Law promotes the establishment of local industries to carry out activities, such as the transformation, production, reparation and assembly of imported goods, incorporating the local workforce or other domestic resources to re-export the goods upon transformation.

## 1. Benefits

Assets imported in connection with the Maquila Law are imported under a special customs regime of 'temporary admission'. This regime allows the import of fixed capital, raw material and input into Paraguay while it suspends the obligation to pay customs tariffs and import taxes, provided that the goods imported are subsequently exported.

All domestic taxes are exempt (including VAT and corporate income tax) and the operations of the Maquila Law are subject to a single tax at a rate of one per cent levied on the higher of the following: (1) the added value to the assembled, processed or manufactured good in Paraguay (eg, compensation paid to employees and service providers in Paraguay and goods acquired in Paraguay); or (2) the invoice value, whenever the *maquiladora* issues an invoice to the parent.

## 2. Requirements

Prospective investors must incorporate a Paraguayan company or must register a branch of a foreign company in Paraguay prior to applying. Paraguayan law does not impose restrictions in terms of the types of products and services that the *maquila* industry may comprise.

## 3. Application process

The granting of benefits under the Maquila Law is subject to the approval of a *maquila* programme by the Council of Export Maquiladora Industries (Consejo Nacional de la Industria Maquiladora de Exportación (CNIME)) and a joint Resolution of the MH and MIC. The *maquila* programme generally describes the operations to be performed by the *maquiladora*.

Approval takes approximately from three to four months from the filing of all the required documentation. The benefits are granted after the approval of the programme and the signing of a contract with the Paraguayan Government.

## c. LAW No 5542/15 ON INVESTMENT

This law is aimed at promoting capital investment and other productive activities when they contribute to the generation of employment or economic and social development through the incorporation of added value to local or imported raw materials.

### 1. Benefits

- Corporate income tax in connection with activities of the company is 'stabilised' at the rate in force at the time of the execution of the relevant contract, for a term of: (1) ten years for investment of up to US\$50m; (2) 15 years for investment above US\$50m and less than US\$100m; or (3) 20 years for investment equal or over US\$100m;
- remittance of capital gains, obtained by the sale of shares or rights representing the investment of capital, is exempt from taxes, up to the investment amount; and

- investments that are deemed to be of ‘high social impact’ enjoy the following benefits:
  - (1) exemption from five per cent income tax on the distribution of dividends; and
  - (2) reduction of 15 per cent income tax rate on the remittance of dividends abroad; a reduction of one per cent for every 100 direct jobs generated by the investment and up to a maximum of 7.5 per cent (eg, if 300 direct jobs are generated, the tax rate will be reduced by three per cent).

## 2. Requirements

Companies that meet the regulatory requirements, either by incorporating a new company or adapting an already existing company to such requirements, are eligible under this law. Existing and new investment projects are eligible to apply for the benefits granted under this law provided they comply with the investing requirements provided by the law.

## 3. Application process

The granting of the benefits is subject to the approval of the investment project by the MIC and the MH. Applicable benefits may be combined with those granted for the investment in goods established in Law No 60/90.

The benefits are granted after the approval of the investment project and the signing of a contract with the government.

### *iii. Foreign investment in public infrastructure*

#### A. INTRODUCTION

Government efforts aimed at attracting private investment to develop infrastructure in Paraguay resulted in the enactment of new legislation governing PPPs and turnkey projects, beginning a new phase in the country’s economic development. These new regulations together with the general procurement modalities applicable to public biddings, regulate the procurement process for public infrastructure in Paraguay.

#### B. GENERAL PROCUREMENT MODALITIES

Law No 2,051 and Decree No 21,909/03 regulate the standard public procurement processes in Paraguay. Law No 2,051 regulates the planning, programming, budgeting, contracting, execution, delivery and control of public procurement and leasing in connection with all types of goods, services and infrastructure.

Under this scheme: (1) the Paraguayan Government directly finances the project and must make payments that are not directly linked to the performance of the awarded contractor; (2) the Paraguayan Government assumes risks related to the proper operation of the services or the maintenance of the construction (notwithstanding the Paraguayan Government’s right to apply administrative sanctions to the private contractor or to execute the contractual guarantees); and

(3) the contract must be awarded to the lowest economic bid, provided that it meets the technical conditions set by the contracting agency.

The contracting governmental agency sets a referential offer price. Offers must be below 30 per cent or above 20 per cent of the referential price to be considered, except for exceptional circumstances that are analysed on a case-by-case basis.

The Paraguayan Government has a website ([www.contrataciones.gov.py](http://www.contrataciones.gov.py)) where all public procurement processes are published.

#### C. PPP PROJECTS

Law No 5,102/13 and Decree No 1,350/14 on PPP regulate PPP projects for the design, construction and operations of public infrastructure projects and services with a value of at least US\$4.6m. The private party may also maintain or operate services associated with infrastructure.

Projects may be presented by the Paraguayan Government but also by private parties. If the project was presented at an initiative of the Paraguayan Government, the selection of private participants is made by public tender procedures or other competitive procedures.

The financing of projects may be made by the private party alone or jointly with the governmental agency. Payments are generally linked to performance.

Projects that can be carried out by means of PPP include:

- waterways, dredging, signalling and maintaining the navigability of the Paraguay river or other rivers;
- international airports;
- construction, rehabilitation and maintenance of national routes and highways;
- construction, extension and operation of the railway line service;
- construction and maintenance of national and international bridges;
- drinking water supply, sanitation services and treatment of effluents;
- generation, transmission, distribution and commercialisation of electric power;
- road infrastructure in urban areas;
- social infrastructure, including hospitals, health centres and educational centres;
- jails or criminal conviction institutions;
- improvement, equipment and urban development with the participation of the contracting governmental agency;<sup>20</sup>
- aqueducts, polyducts, pipelines and gas pipelines;

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<sup>20</sup> According to the PPP Law, the contracting entity may be a governmental agency, as well as state-owned companies that have the competence to enter into PPP contracts.

- production of goods and provision of services that are carried out by state-owned companies;
- production and commercialisation of cement;
- production, refinement and commercialisation of hydrocarbons, fuels and lubricants; and
- telecommunications services.

To carry out a PPP project, bidders must provide two guarantees: (1) a maintenance guarantee (during the bidding process); and (2) a guarantee of performance in connection with the implementation of the infrastructure project.

#### D. TURNKEY PROJECTS

Law No 5,074/13, recently modified by Law No 5,396/15 and Decree No 1,434/14, regulate a particular modality of public procurement for public infrastructure projects in which the bidder may design, construct, equip and finance a project.

Bidders compete for technical quality, price and financing conditions. The offer must comply with a 25 per cent Paraguayan participation requirement, which may consist of services or workforce.

The Paraguayan Government issues: (1) construction certificates; and (2) upon completion of certain milestones, payment certificates ('CRPagos'). CRPagos are issued with the sovereign guarantee of the Paraguayan state and constitute the public-external debt of Paraguay. The certificates are irrevocable, unconditional and assignable. Therefore, the right to receive payments under CRPagos and the right to receive compensation, in the case of early termination of the contract, may be assigned to third parties as collateral for financing purposes (eg, securitisation structures). The assignment of collection rights may be complete or partial, and can be done at any time after the execution of the contract with the government agency, provided the assignment is previously authorised by the contracting agency.

The parties may freely choose the applicable law and respective jurisdiction of the assignment agreement. However, any matter related to the project contract or CRPago is governed by Paraguayan law and subject to the dispute resolution mechanism established in the contract.

Law No 5,074/13 provides general aspects of contracting. The main provisions governing each project are determined in the tender documents on a case-by-case basis.

#### *iv. Foreign investment in mining and oil activities*

##### A. MINING

All mineral resources in their natural state are considered the property of the Paraguayan state, which may grant permits (available for prospecting or exploring) and concessions (available for prospecting, exploring and extracting for commercial purposes) to private parties for a limited time. Mining activities and concessions are generally regulated by Law No 3,180/07 (the 'Mining Law'). Permits and concessions for mining activities do not transfer ownership over any mines or the land



they are located on; they are limited to the transfer of rights to prospect, explore and extract mineral resources, as applicable, for a limited time.

#### 1. Permits

Permits are issued by the Ministry of Public Works and Communications (Ministerio de Obras Públicas y Comunicaciones (MOPC)) through a ministerial resolution, and grant the holder exclusive rights to explore a specific area for a period of two years, which may be extended a single time for an additional one year. Each permit may cover a single area of up to 50,000 hectares. Any minerals obtained as a result of the permitted prospecting or exploring are considered investigative extractions, and are subject to review and analysis by the MOPC. In order to extract minerals for commercial purposes, a permittee must apply for and obtain a concession, as described below.

#### 2. Concessions

Unlike permits, concessions require a concession contract between the applicant and the Paraguayan Government, authorised by a decree, and a law authorising the concession as described in the concession contract, enacted by Congress.

An applicant may request a concession covering prospection, exploration and commercial extraction (in which case the concessionaire is able to proceed from phase to phase provided requirements to proceed are met), or exploration and commercial extraction only (once prospection under a permit has been completed and requirements to proceed to exploration and extraction have been met and MOPC approval has been obtained), or commercial extraction only (once prospection and exploration under a permit have been completed and requirements to proceed to extraction have been met and MOPC approval has been obtained).

### B. OIL AND GAS

Deposits of solid, liquid and gaseous hydrocarbons in a natural state also belong to the Paraguayan state. Currently, the activities of prospecting, exploration and commercial exploitation of hydrocarbons in Paraguay are regulated by Hydrocarbons Law No 779/95. The performance of such activities by private parties is subject to permits or concessions granted for a limited time.

#### 1. Permits

The party interested in performing prospect and superficial reconnaissance must obtain a permit from the MOPC in the form of a ministerial resolution. Prospecting rights permits are granted for a term of one year, renewable for an additional one-year term. The permit can cover up to 2,400,000 hectares. The beneficiary of the permit has priority to apply for exploration and exploitation rights within the prospecting area.

#### 2. Concessions

The party interested in performing exploration or exploitation activities must file for a concession. Once the request for concession is approved by the MOPC, the party filing for exploration or

exploitation must execute a concession agreement with the Paraguayan Government that must be enacted by Congress by means of a Concession Law that approves the concession agreement.

Exploration concessions are granted for a term of four years, renewable for a two-year term, and include the exclusive right to explore an area of up to 800,000 hectares divided into lots of 40,000 hectares.

Following the exploration, the concessionaire can initiate the exploitation phase. Exploitation is granted for 20 years, renewable for a ten-year term. Exploitation lots shall be of an extension of not less than 20 hectares, nor more than 5,000 hectares.

### 3. Environmental laws and licences

Projects that involve a modification of the environment (ie, that affect life in general, biodiversity, quality or use of natural or environmental resources, or require a significant amount of the modification), are required to undertake an evaluation of environmental impact, and obtain an environmental licence (EL) issued by the Environmental Secretariat (Secretaría del Ambiente de Paraguay ('SEAM')) to operate. ELs do not expire but the undertakings are required to carry out periodic audits or to submit a sworn statement at least every five years, in accordance with the terms of the relevant EL to comply with environmental regulations.

The SEAM is the governmental entity responsible for: (1) coordinating, monitoring and implementing support for the country's ecological system and environment in general; (2) supervising and enforcing environmental policies; and (3) monitoring undertakings that may have a negative impact on the environment. Infrastructure projects are usually required to obtain ELs.

## B. Rendering of public services

### *i. Introduction*

The rendering of public services is generally carried out by a state-owned company under a natural monopoly. Most state-owned companies operate independently from the Paraguay Government, but coordinate their operations with the central government throughout the Ministry of Public Works and Communications.

### *ii. Water*

Although Law No 1,614/00, which establishes the general framework for the provision of the public service of water supply and sewer, determines that the service may be provided directly by the Paraguayan Government or third parties (should they be authorised by concessions or licence), the Paraguayan Government is currently the sole supplier of water and sanitary sewer in Paraguay. Concessionaires and licensees are subject to oversight by the Regulatory Agency for Sanitation (Ente Regulador de Servicios Sanitarios ('ERSSAN')), which determines the range of applicable prices for water supply services.

Licences can only be granted to private parties in communities with no more than 2,000 inhabitants within a limited area. They can be granted for a period of ten years, which can be extended for periods of equal duration. Licences can be granted by means of administrative authorisations issued by the executive power (ie, central government) or by departmental or municipal governments.

Empresa de Servicios Sanitarios del Paraguay SA (ESSAP) is a state-owned company responsible for serving communities with populations of more than 10,000 inhabitants. In jurisdictions with fewer than 10,000 inhabitants and rural communities, the service is provided by private associations and the National Environmental Sanitation Service (Servicio Nacional de Saneamiento Ambiental ('SENASA')), a public agency that is part of the Ministry of Public Health and Social Welfare, provides technical assistance and financing.

### *iii. Telecommunications*

The transmission of electromagnetic communication signals is considered to be state-owned and in the public domain. Nevertheless, Law No 642/95, which regulates telecommunications, guarantees free access and supply of telecommunications services.

Basic telecommunications services, such as conventional telephone lines are rendered by state-owned companies through a monopoly by the Paraguayan Communications Company SA (Compañía Paraguaya de Comunicaciones ('COPACO')). Broadcasting services and other services may be provided by private parties under a licence or authorisation issued by the National Commission of Telecommunications (Comision Nacional de Telecomunicaciones ('CONATEL')), which is the governmental agency that regulates telecommunications.

Licences and authorisations are subject to the payment of an annual fee, which must be paid within a period of 60 days of being granted or renewed. Also, the commercial operation of the services is subject to the payment of an annual rate of up to one per cent of the gross income of the provider.

Licences for broadcasting services are granted for a period of ten years, which can be extended for periods of equal duration. Authorisations for other services are granted for five years, which can also be extended.

Fees for the provision of broadcasting services and other services are freely established and subject to market fluctuations. However, they are subject to the control of CONATEL.

### *iv. Power*

Generation and transport of electrical energy are regulated and subject to government oversight. For electricity generation, Paraguay relies in two hydroelectric plants, that is, Itaipú (operated with Brazil) and Yacyretá (operated with Argentina), which provide over 99 per cent of the country's electricity and generate a large electricity surplus for export. The treaties concerning those projects were ratified by Law No 389/1973 (Itaipú) and Law No 433/1973 (Yacyretá).

Private participation in the generation and transport of energy is expressly permitted by Law No 3,009/06 (the 'P&TE Law'). The law seeks to promote private investment in the generation and transport of electrical power in a free market.

Administración Nacional de Electricidad (ANDE) is a publicly owned electricity company, responsible for: (1) the generation, transmission and distribution of electricity; and (2) verifying and developing national policies on electricity in Paraguay.

Relationships between energy producers and ANDE for the independent generation of energy are determined on a case-by-case basis in a licence agreement or JV agreement. Requests for a licence for the independent generation or transport of energy must be filed by the interested party to the Minister of Public Works and Communications. JV contracts are awarded by international public bidding.

Although the P&TE Law has been in force since 2006, as of today, ANDE has not signed contracts with private parties for the independent generation of energy.

## **C. Real estate: limitations**

### *i. Introduction*

The Paraguayan Constitution guarantees the right to private property, whose content and limits are established by law, attending to its economic and social function. Projects carried out in urban or rural properties are required to comply with environmental regulations, and are subject to the same environmental assessments and licensing process described above.

### *ii. Urban properties*

#### A. APPLICABLE TAX

The tax base for urban properties is the value of the property that is calculated pursuant to the commercial value of the land and the type of street (ie, earth, stone pavement or asphalt), among others. Urban properties are valued per square metre. Real estate tax over urban property is levied at a rate of one per cent over the value of the property

#### B. REGULATORY PLANS

The main restrictions with regard to urban properties are those emerging from urban planning and zoning regulations, which are regulated by the municipalities.

Each municipality regulates land use planning and infrastructure coordination. These regulations cover matters related to residential areas, commercial and service areas, industrial areas, transition areas, specific use areas, mixed points, housing points, use of specific and special areas, as well as everything related to permitted uses, height of buildings, parking for vehicles, adequate road design and, in general, everything related to the use of land located in urban areas.

The regulatory plan includes a zoning map of the city.

## C. CONSTRUCTION PERMITS

Every construction or modification of structures in urban properties must be previously authorised by the municipal government by means of a licence. The municipal authorities verify compliance with applicable land use regulation and other technical features.

### iii. *Rural properties*

#### A. APPLICABLE TAX

The tax base for urban properties is the value of the property that is calculated pursuant to the commercial value of the land, location, and so on. Rural properties are valued per hectare.

Rural real estate tax is levied at a rate of is one per cent over the value of the property. Rural properties of less than 5 hectares are subject to a tax rate of 0.50 per cent if the proprietor evidences that it is the only property destined for agricultural activities.

#### B. INDIGENOUS COMMUNAL OWNERSHIP OF LAND

Indigenous people are granted social ownership of land for the preservation and the development of their lifestyle. The Paraguayan Government has the constitutional obligation to provide land for free and guarantees that this property is non-seisable, indivisible, non-transferable, imprescriptible, not susceptible to guarantee contractual obligations and not to be leased; and exempt from taxes.

#### C. BORDER TERRITORIES

In general, there are no restrictions on the acquisition of property by foreigners, which are given the same treatment as nationals. However, Law No 2,532/5<sup>21</sup> stipulates that legal entities comprised mostly by foreigners from any of Paraguay's bordering countries cannot be owners, co-owners or beneficial owners of rural property located in the border security zone, which consists in an area of 50 kilometres adjacent to the international border.

### iv. *Expropriation events*

The Paraguayan Constitution provides that expropriation can only take place due to: (1) public interest, for example, for the establishment of a public service, construction of roads or public infrastructure in general; (2) social interest; and (3) unproductive *latifundia* (ie, large-scale land ownership) destined for agrarian reform.

Expropriation must be previously authorised by Congress, providing the legal grounds that motivated such expropriation.

The Paraguayan Government also guarantees the payment of fair compensation in cases of expropriation.

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<sup>21</sup> Law No 2532/05 that establishes the Paraguayan borders' margin of security.





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