

Honduras



X. Honduras

A. Foreign investment

i. Authorisations versus limitations

A. GENERAL ABSENCE OF RESTRICTIONS

On May 2011, the National Congress of Honduras passed the Law for the Promotion and Protection of Investments. The law's bylaws were enacted in October 2014. The law and its bylaws specify that the attraction, promotion and protection of investment, whether foreign or national, is of primary interest to the state.

Investment is defined by the law as the legitimate acquisition by a person, persons legal or legal entities of any asset, whether tangible or intangible, that is the property of an investor or controlled by such an investor directly or indirectly, and has the characteristics of an investment, such as capital commitment or other resources, expectations of financial gains or profit and risk undertaking by its owners.

Generally, there are no restrictions on foreign investment. However, the law does establish some limitations that apply to foreign investment. These limitations are detailed below.

Land located on the country's borders, coastal zones on both oceans, up to 40km towards the interior of the country and islands, cays, reefs, jetties, crags, shoals and sandbanks can only be acquired or in possession of Honduran-born citizens, by legal entities held completely by Honduran partners or shareholders and by state entities. A special law regulates the acquisition of urban land located in these zones by foreign citizens. The law states that the area to be acquired must be declared as an area with touristic potential or be located in a tourist zone. The National Land Institute must state if the area is to be declared as urban is not considered within the agrarian reform programme.

The mineral resources belong to the Honduran state, which can grant exploitation licences to legal entities and individuals.

Regarding rustic property, an individual or legal entity cannot hold more than the limit established by the Agrarian Reform Law, which varies according to the location of said property.

For the exploitation of public works and projects by private capital, the Honduran state has approved a law to enable several participation schemes for the development of key areas and sectors.

Foreign investment is to be monitored by the National Council of Investments. The Honduran legal framework has facilitated both national and foreign investment, aligned to the nation's strategic plan for development. Key strengths for the country include low labour costs, proximity to the US market and Puerto Cortés (the largest and most secure port in Central America) and certification in the Container Security Initiative (CSI) programme.

B. NATIONAL, FAIR AND EQUITABLE TREATMENT

The Honduran Constitution allows free and equal investment opportunities for foreign nationals, provided they are not restricted by law, public interest, national security or social convenience.

C. LEGAL FRAMEWORK FOR FOREIGN INVESTMENT

The legal framework that regulates foreign investment in Honduras is as follows:

- **Constitution:** Economic freedom is guaranteed by the Constitution, provided it does not go against the social interest or is immoral, unlawful or breaches national security interests.
- **Law for the Protection and Promotion of Investments:** This law's main purpose is to attract, promote and protect both national and foreign investments in Honduras. The regulation associated with this law specifies the legal mechanisms in place to safeguard said investments, along with associated fiscal incentives that could apply.
- **The Honduran Migration and Foreign Law** provides a residency permit to foreign nationals that invest in any lawful economic activity within Honduras or acquire sovereign or private bonds, certificates or any type of similar financial instruments, provided this investment is for a minimum of \$50,000 or its equivalent in national currency.

There are several key laws and regulations for a number of industries that the Honduran State considers to require special incentives. A brief summary of the laws most commonly applied are below:

- **Free Zone Law and Regulation:** This law grants free zone status to areas of the country with key strengths so that companies can thrive. These free zones have tax exemptions for companies, who instead pay an annual fee for operation on such zones.
- **Temporary Import Regime:** This regime provides export incentives for companies that do not receive benefits from other laws, providing an exemption to sales, income and import taxes for the introduction of raw materials, machinery and other goods needed to export final products to other countries.
- **Law for the Promotion of Electric Power Generation with Renewable Resources:** This law provides specific tax incentives for those companies and individuals that operate power generation projects that use national renewable resources.
- **Law for the Encouragement of Tourism:** This law provides specific tax incentives and administrative simplification for companies and individuals that engage in touristic services and activities previously defined as such by the Honduran Institute of Tourism.

ii. *Treatment of foreign investment in infrastructure initiatives and PPP Projects*

The Law for the Promotion of Public–Private Partnerships was published on 16 September 2010. This law's main purpose is to promote and regulate the processes that allow for the joint participation of private investment on public works and projects. The associated regulation provides specific guidelines as to the request, approval and execution of these works and projects, which are carried out by a private investor. The Commission for the Promotion of Public–Private Partnerships

(Comisión para la Promoción de la Alianza Público-Privada (COALIANZA)) oversees the specific revenue model, bidding and other relevant aspects.

The sectors for public–private investing are divided into national and local projects. National projects include the following areas of interest: infrastructure, urban infrastructure, ports, airports, energy generation, services and mining. Local projects include water sanitation, markets, and terminals and irrigation.

Conflicts and disputes are to be resolved using the arbitration process defined in the project’s specification sheet.

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

Investment in oil, gas and derivate products is under the scope of the Hydrocarbon Law, which describes the framework required to carry out activities related to the exploration and exploitation of oil and its derivatives, as well as fiscal incentives.

The General Mining Law regulates mining activities and its regulation, applicable to the mining sector and overseen by the Honduran Institute of Geology and Mines (Instituto Hondureño de Geología y Minas (INHGEOMIN)), which evaluates, approves and grants mining concessions in Honduras.

iv. Treatment of foreign investment in real estate

A. FINANCING REAL ESTATE

There are no restrictions on foreign investment in real estate. Depending on the circumstances, location, employment generation and purpose of the property, investment in real estate could be considered for special tax incentives. The only limitation is with regard to Article 107 of the Constitution, which establishes that properties located in the border zone to neighbouring states, or in the littoral of both seas, at an extension of 40km towards the interior of the country, and those of the islands, cays, reefs, caves, rocks, sand bars and shoals can only be acquired, possessed or held in any capacity by Hondurans by birth and by companies formed by Honduran partners.

B. CONSTRUCTION

There are no specific restrictions for this activity.

v. Treatment of foreign investment in agribusiness activities

The Honduran government considers agribusiness a key sector within the Honduras 2020 development plan given the country’s competitive advantage due to its geographical location and growth potential in agribusiness, which companies can leverage through the many economic trade zones available. The Honduran government’s goal is to enhance Honduras competitively, and to attract new business and foreign investment.

vi. Treatment of foreign investment in rendering public services

A. CONCESSION REGIME

Sector-specific laws and regulations regulate the approval of concessions for public services. Concessions are overseen by the Superintendency of Public–Private Partnerships, which is the entity in charge of supervising public–private partnerships.

Government procurement of goods and services is regulated by the State Contracting and Acquisitions Law. In addition, the Honduran government has to comply with the requirements in order to carry out business as a company or individual. Disputes regarding the Honduran government’s procurement of goods and services are to be resolved by the procedures established in the Law for the Contentious-Administrative Jurisdiction.

B. Rendering of public services

i. General framework

The general framework for public service rendering enshrined in the Honduran Political Constitution is the responsibility of the executive power, whereby the Office of the President renders public services and takes any measure needed to provide them. Administrative bodies of law, such as the General Public Administration Law, the entities’ organic law or concession agreements regulate and determine the terms and proper distribution of such services.

The National Commission of Banks and Insurance and the Central Bank of Honduras regulate monetary and financial guidelines, and oversee standards to ensure they are kept.

The Honduran state has a monopoly in several industries for reasons of national security or public interest, such as weapons sales, postal services, railroads and energy distribution. Former state monopolies include telecommunications, public services and, currently, the energy and pension funds sector, which are in the process of being opened to private investors.

ii. Governmental monopoly versus private initiatives

The Honduran Constitution expressly forbids the creation of monopolies, monopsonies, oligopolies, hoarding and any similar practices in the business and industrial sectors.

In practice, however, several high-potential sectors have a state monopoly, especially the weapons and explosive industries and postal services, among others.

There has been a move towards liberalisation, with several state monopolies being gradually opened to private investors in order to provide the Honduran people with quality services and cheaper prices.

iii. Privatisation rules

Private participation in public projects is regulated by the Law for the Promotion of the Private–Public Partnerships, and can take one of the following modes:

1. construction/operation and transfer or maintenance of public works or services;
2. upgrade of existing public works/services;
3. total or partial delivery of a public service, preceded or not by the construction of public works;
4. execution of public works, with or without the delivery of a public service, for leasing by the state;
5. administration as fiduciary of goods and services; and
6. any other mode of operation that is legal and allowed under the law.

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

The rendering of public works and services in Honduras has no other limitation than those stated in the law or specific regulations by industry.

C. Real estate

i. Holding title to real estate

A. WHO CAN HOLD THE TITLE?

The Honduran Constitution guarantees the right to private property to citizens and foreigners alike. This warranty is also extended to non-profits or profit-based legal entities, thereby recognising it as a social function; however, it could be affected by reasons of need or public interest. In such cases, expropriation is a possibility, and the owner is entitled to fair compensation from the state.

There are no restrictions on the holding of property other than the constitutional limitations stated earlier.

B. RECORDATION OF TITLE

Public property rights are handled by the Property Institute (Instituto de la Propiedad), which assigns a record number to each property. This record contains all the rights and liens associated to the property, providing a chronological log of all the relevant legal actions regarding the property, which is accessible to the public through the National System of Public Property Administration (Sistema Nacional de Administracion de la Propiedad (SINAP)) website.

This file contains all registered records pertaining to the title to the property, such as encumbrances and liens, and any other instrument that may modify the status of the property.

Another way to acquire real estate is through prescription, which, according to the circumstances of the possessor of a determined property, can lead to the possessor acquiring the title to the property after requesting that the competent court renders a decision ordering the change in ownership after being in possession of the property for ten or 20 years. This sentence is registered and a deed stating the change in property is issued.

C. HORIZONTAL PROPERTY

Horizontal property is regulated by the Law of Horizontal Property, which includes several types of condominiums recognised by Honduran law, and also establishes guidelines for the creation and use of condominiums and common use areas. The registration of condominiums is done at the Property Registry in a separate book due to the different nature of the property.

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

i. Customs union with Guatemala and El Salvador

On 10 April 2015, Honduras and Guatemala entered an agreement to establish a Customs Union. The objectives of the Customs Union are to ease the movement of goods and persons within Honduras and Guatemala, and to reduce the red tape associated with imports and exports. The customs posts at Agua Caliente, Corinto and El Florido became test subjects to harmonise the requirements, forms and information systems required to guarantee smooth operation.

El Salvador formally joined the Customs Union on August 2018 and plans to be operational by December 2018. Together, the three countries' economies constitute 70 per cent of Central America's commercial activity, along a territory that comprises 242,000km² and a market of 31.9 million people.

The Customs Union has achieved tangible results, such as:

- reduced the waiting time at designated borders from ten hours to 15 minutes to transit from one country to the other;
- consolidated documental requirements;
- reduced paperwork;
- improved and expanded avenues of collaboration among participants; and
- leveraged the region's privileged geographical position.

ii. Pacific Alliance

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

In the first trimester of 2018, Honduras, along with other Central American countries, signed a free trade agreement with South Korea. This agreement is to be ratified before the end of the year by the Legislative Assembly.

E. Offshore vehicle providers in Latin American countries

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

The Transfer Pricing Law and its regulation were enacted in order better to control transactions between related parties, usually with holding companies established in tax havens that carry out business transactions that fall under the following categories:

- an individual or legal entity that participates directly or indirectly in the direction, control or capital of another's equity, where this participation is duly documented and legalised;
- the same individuals or legal entities that participate directly or indirectly in the direction, control or capital of another's equity, where this participation is duly documented and legalised;
- legal entities that individually constitute a unity of decisions, where one society is another's partner and is related to the first according to the following criteria:
 - has voting majority rights;
 - has the power to name or remove most of the administrative board;
 - has voting majority rights compared to other partners; and
 - has named most of the administration board exclusively through its voting rights;
- carries out commercial and financial operations, directly or indirectly; the former being defined as those whose objectives are to reduce the taxable income between companies located in Honduras and individuals or legal entities whose tax residency is located in a tax haven;
- an individual or legal entity that has permanent operations in Honduras; and
- other legal entities with the same directors or administrators.

The most common offshore vehicles in Honduras are legal entities incorporated or chartered in Panama due to privacy and lax regulation. Less common alternatives are legal entities based in Belize and Costa Rica, and those incorporated in states that have a bilateral tax treaty with Honduras.

ii. *Limited liability companies*

Honduras's legislation recognises and regulates limited liability companies that engage in economic or commercial activity in Honduras. In the context of the members' limited liability, there are two traditional companies available: (1) *sociedad de responsabilidad limitada* (S de RL), which is a share-participation form of company, where the personal dimension of the partners is an essential component of the entity and their share in the entity's capital is divided into personal participations (*participaciones sociales*); and (2) *sociedad anónima*, which is a stock participation form of company,

where the shareholders' participation in the entity's capital is divided into stocks (*acciones*). In Honduras, companies no longer need to be formed and maintained by at least two members due to new legislation that permits single-shareholder or partner companies; and the members' corporate liability is limited to the amount of their respective share participation in the entity's capital.

iii. Foundations and trusts

Regarding foundations, Honduras's regulation lacks the private foundation regime that is available in other jurisdictions, but does regulate the form of foundation, which seeks the public interest (*fundación*).

Regarding local trusts (*fideicomisos*), these are of limited use in Honduras because the administration of a local trust – the fiduciary duty of the trustee – may only be delegated to and exercised by a bank duly authorised and licensed in Honduras. Local trusts and their amendments are generally subject to inscription at their respective registries.

Pursuant to Honduras's tax legislation, an offshore trust – even if regulated by foreign law – is deemed a taxable subject in Honduras if most of the beneficiaries reside, and are taxable subjects in, Honduras and/or when the activities of the trust involving local assets give rise to taxable events imposed on the trust's beneficiaries as per the current Tax Code's Territorial Income principle.

