

El Salvador

International Estate Planning Guide

IBA Private Client Tax Committee

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I. Wills and disability planning documents

A. Will formalities and enforceability of foreign wills

1. THE FORM OF LAST WILL AND TESTAMENTS

Under Salvadoran law, a will is a solemn act by which a person disposes of all or part of his or her assets to take effect after death, and it is essentially revocable during the testator's lifetime.

Salvadoran will forms

The Civil Code regulates the following ordinary forms of wills (*testamentos solemnes*):

- solemn open will (*testamento solemne abierto*): in writing, granted before the competent official (typically a notary public) and three witnesses (Civil Code, Article 1009); and
- solemn closed will (*testamento solemne cerrado*): the testator presents a written and signed will in a sealed cover to the competent official in the presence of seven witnesses, with the cover endorsed and sealed according to statutory formalities (Civil Code, Articles 1013–1016).

The Civil Code also recognises privileged wills for exceptional circumstances (eg, military or maritime contexts), which are outside the scope of this chapter and should be analysed on a case-by-case basis.

After the will has been executed, the competent official must submit it to the Notarial Section of the Supreme Court of Justice or, depending on his or her place of residence, to a civil court, so that the Supreme Court of Justice can keep a record of wills. This record of wills may be consulted by any interested party to determine whether a person has executed a will.

Capacity and limitations

As a general matter, testamentary capacity requires legal capacity to act, hence the Civil Code restricts the ability to make a will in certain circumstances (including, eg, persons who are declared under interdiction due to dementia).

1. CODICILS

Salvadoran law does not regulate a separate 'codicil' instrument as an autonomous form of testamentary disposition. In practice, amendments or supplements to a prior will are typically implemented by: (1) executing a new will that expressly revokes or supersedes the prior instrument; or (2) executing a new will whose dispositions are inconsistent with the earlier will, to the extent permitted by the Civil Code.

2. POST-DEATH VARIATIONS

The beneficiaries under a will cannot make a post-death variation of the will. The preparation of a will is a strictly personal matter that cannot be delegated to the beneficiaries.

3. CROSS-BORDER RECOGNITION AND LEGALISATION

The Civil Code expressly recognises wills executed abroad, provided that the formalities of the place of execution are observed and the authenticity of the instrument is proven.

In practice, foreign public instruments used in Salvadoran proceedings must typically be duly legalised (or apostilled, where applicable) and translated into Spanish by an authorised translator, depending on the document's origin and intended use.

B. Will substitutes (revocable trusts or entities)

In the Salvadoran civil law tradition, succession is primarily implemented through wills (testate succession) or by law (intestate succession). The legal system generally does not recognise private arrangements intended to transfer property at death as substitutes for a will for the succession of a complete estate.

There is a practical statutory mechanism that operates differently: when a beneficiary is designated under life insurance (*seguro de vida*), the beneficiary acquires a direct, independent right to the policy proceeds upon the insured's death and may claim payment directly, excluding heirs and creditors as provided by law. If there is no designated beneficiary or any designated beneficiary dies before or at the same time as the insured, the insurance proceeds are payable to the insured's heirs.

An important rule is that any donation or promise intended to be perfected only upon the donor's death is considered and treated as testamentary and must comply with the formalities of a will.

C. Power of attorney, directives and similar disability documents

Representation in private matters is primarily achieved through a power of attorney under the Civil Code. For incapacity planning, the Family Code provides a judicial mechanism for declaring incapacity and placing an adult under tutorship (*tutela*). Certain transactions require express authority; for example, a power of attorney to sell, mortgage or create rights over immovable property must be granted as a special power (or a general power with a special clause) identifying the relevant property and authorising receipt of the price.

El Salvador is a contracting party to the Hague Apostille Convention, which simplifies the legalisation of public documents between contracting parties via an apostille. For powers of attorney to be used abroad, El Salvador is a party to the Inter-American Convention on the Legal Regime of Powers to be Used Abroad, which may facilitate the recognition of properly executed powers among participating states.

As a default rule, powers of attorney are terminated upon the principal's lack of legal capacity (*interdiccion*) among other causes. Accordingly, a standard power of attorney is not, by default, an instrument that survives incapacity.

For adults, the Family Code provides that no one may be declared incapacitated (*incapacidad*) except by judicial judgment, for legal causes, with the intervention of the Office of the Attorney General (Procuraduría General de la República). Once incapacity is declared, the adult may be placed under tutorship. The Family Code establishes an order of

preference for people called to serve as tutor, as well as suitability criteria. The Family Code contemplates testamentary involvement in tutorship arrangements (eg, by allowing multiple tutors when the testator provides), which enables a measure of planning for who should serve as tutor if a tutorship is opened.

II. Estate administration

A. Overview of administration procedures

1. ADMINISTRATION OF THE ESTATE

In El Salvador, the practical administration and settlement of a deceased person's estate is generally carried out through succession proceedings (*diligencias de aceptación de herencia*), which may be conducted either before a notary public or, in certain cases, before the competent civil court. The aim of these proceedings is to formally establish who the heirs are (and whether succession is intestate or testate), and to enable the collection, administration and ultimate distribution of estate assets. From a procedural perspective, notarial succession proceedings are expressly permitted for inheritance acceptance matters, with some key limitations (eg, the declaration of an unclaimed estate [*declaratoria de herencia yacente*] is not handled by a notary or in cases where there is opposition to the heirs that cannot be settled and must be referred to the civil courts).

As a matter of law, the Civil Code regulates the acceptance and repudiation of inheritances, and related protective mechanisms. For example, it contemplates the possibility of accepting the inheritance with the benefit of inventory in certain cases and sets out rules regarding administration and inventory when the estate has not yet been accepted.

In practice, estate administration typically involves the following workstreams (even when the exact sequence varies depending on the asset mix and family structure):

- initial documentation gathering to initiate succession proceedings: death certificate, civil registry certificates (birth/marriage), evidence of domicile, and an initial asset and liability map (optional);
- determination of heirs and will verification: confirming whether a will exists and identifying the applicable heirship basis before the Notarial Section of the Supreme Court of Justice;
- required publications and notices, including edicts;
- asset securing and interim administration to the heirs;
- inventory and valuation, as needed;
- debt settlement and identification of obligations; and
- partition/adjudication and execution of the required instruments for registrable assets (notably real estate).

Notarial proceedings for inheritance acceptance include specific notarial statutory steps, including a mandatory inquiry to the Supreme Court of Justice to confirm whether parallel proceedings exist, publication of edicts and protocolisation steps prior to issuing the

corresponding public deed of declaration of heirs (*escritura pública de declaratoria de herederos*).

2. CERTIFICATE OF INHERITANCE

Unlike some jurisdictions that issue a single standardised 'certificate of inheritance', Salvadoran practice typically relies on a set of instruments arising from the succession proceedings. Such documents include:

- the public deed of declaration of heirs, issued within the relevant notarial succession proceedings; and
- the ruling issued by a civil judge in a succession proceeding that was brought before the courts, rather than through notarial proceedings.

For registrable assets, such as real estate property, heirs will need to file before the public registries the deed or the court ruling to reflect the change of title. Other third parties (banks, contractual counterparties and corporate registries) typically require these instruments before releasing balances, changing account holders, updating corporate share ledgers or recording any relevant transfer.

3. EXECUTOR AND ADMINISTRATOR

In El Salvador, there is no such thing as an executor (*albaceas*) as the administrator of the estate. The heirs are responsible for implementing the testator's instructions, including preserving the estate's assets, paying debts and distributing legacy (*legados*) assets in accordance with the will and the applicable provisions of the Civil Code.

Separately, the Civil Code contemplates protective roles and mechanisms when an estate has not been accepted, including inventory safeguards and the possibility of appointing a curator for an unclaimed estate (*curador de la herencia yacente*) under certain circumstances.

B. Intestate succession and forced heirship

1. INTESTATE SUCCESSION

When a person dies without a valid will, the estate is distributed pursuant to the Civil Code rules on intestate succession. The Civil Code identifies the individuals called to inherit and provides an order of succession, including (among others) descendants, ascendants, the surviving spouse and the surviving cohabitant (*conviviente sobreviviente*), followed by more remote relatives in the order prescribed by law; and ultimately, in the absence of eligible relatives, certain institutions may be called.

As a practical estate administration point, succession proceedings typically require solid registry and family documentation to evidence kinship and civil status. Where a non-marital union is present, documentation and evidentiary strategy should be considered early, given its potential impact on heirship. The Civil Code further provides that certain conduct may affect intestate rights, including rules under which a spouse who abandoned the deceased without just cause may lose the right to inherit under intestacy.

2. STATUTORY DIVISION

Salvadoran law does not provide a direct equivalent to the 'statutory distribution' mechanism found in some other civil law systems. Instead, intestate distribution follows: (1) the statutory order of heirs; and (2) allocation rules applicable to the heirs who effectively inherit. As such, the hereditary mass is distributed among the heirs. In practice, this requires an early characterisation of assets and liabilities and, where relevant, liquidation of the marital regime before any final partition or co-ownership of the hereditary mass.

3. FORCED HEIRSHIP RIGHTS

The Civil Code provides that the law governs the succession of assets not disposed of by the deceased via a will and it establishes a closed order of heirs called to inherit, prioritising close relatives (including, in the first order, descendants and certain immediate family members, and then more remote relatives in successive orders). There are no forced heirship rights on intestate estates apart from the order of heirs established in the Civil Code.

4. DISINHERITED SPOUSE

In the intestate context, the Civil Code provides that a spouse who abandoned the deceased without just cause may lose the right to inherit. This is a provision of the Civil Code that applies generally and, for it to be applied, should be proven before the civil courts.

5. LAST WILL AND TESTAMENT

A common objective in Salvadoran estate planning, particularly for spouses with children, is to ensure that the surviving spouse can retain practical control and economic enjoyment of the family estate after the death of the first spouse, while also preserving the children's long-term entitlement. Salvadoran law allows this to be achieved through a combination of testamentary dispositions and real rights (most notably, usufruct), implemented through a will executed with the applicable formalities.

One frequently used approach is a will in which the testator grants the surviving spouse a life usufruct (*usufructo vitalicio*) over part of the estate (or over key assets, eg, the family residence and income generating property), while the children (or other heirs) receive the bare ownership (*nuda propiedad*). Under this structure, the surviving spouse, as usufructuary, may generally use the assets and receive their fruits and income during their lifetime, while title ultimately consolidates in the bare owners upon extinction of the usufruct (upon the spouse's death). This technique is often designed to reduce administrative friction and to avoid an immediate fragmentation of enjoyment and cashflow among multiple heirs, while keeping the succession outcome predictable.

C. Marital property

1. COMMUNITY OF PROPERTY REGIME

In El Salvador, estate administration is closely connected to the applicable matrimonial property regime, given that the Family Code requires identifying which assets form part of the spouses' marital patrimony and which assets are the deceased spouse's own. Under the default deferred community regime, the economic outcome upon termination is that the net

'community' remainder is divided by halves between the spouses or, in the event of death, between the surviving spouse and the deceased spouse's heirs, following liquidation and the corresponding inventory of assets and liabilities. The Family Code expressly addresses death within the liquidation mechanics (including preferential adjudication of the family residence to the surviving spouse and interim support during liquidation), which confirms that the liquidation of the marital regime and the succession process are coordinated: the marital regime determines the surviving spouse's proprietary and statutory share, and succession rules then govern the distribution of the deceased spouse's share among heirs and beneficiaries.

2. MARRIAGE CONDITIONS

Spouses may determine, modify or replace their matrimonial property regime through marital agreements (*capitulaciones matrimoniales*). The Family Code recognises that such agreements are used to determine or modify the matrimonial property framework. The regime's effectiveness against third parties depends on the relevant registration mechanics contemplated by the Family Code.

From an estate planning standpoint, these agreements can materially affect the composition of the hereditary mass and reduce complexity in administration, such as excluding any or some of the property from the deferred community regime.

3. SAME-SEX COUPLES

The Family Code defines marriage as the legal union of a man and a woman. Therefore, same-sex marriage is not recognised under the Family Code, and same-sex partners do not benefit from the succession and marital property protections related to spouses.

4. EL SALVADOR INTERNATIONAL MATRIMONY LAW CONSIDERATIONS

The Family Code subjects Salvadoran nationals to its family status provisions notwithstanding residence or domicile abroad. It also contemplates that spouses married abroad who establish domicile in El Salvador or have assets in the country may opt for one of the Family Code's matrimonial regimes (or another regime) provided it does not contravene Salvadoran laws.

Regarding successions, the Civil Code provides that intestate succession opens at the deceased's last domicile, and where a foreigner's intestate succession opens in El Salvador, Salvadoran rules apply on the same terms as for Salvadoran nationals. In practice, assets located in El Salvador (particularly registrable assets) will commonly require Salvadoran instruments and registry formalities, even where broader succession planning is carried out abroad.

D. Tenancies, survivorship accounts and payable on death accounts

Estate administration timelines are materially influenced by how assets are titled and whether assets pass through succession proceedings or through beneficiary mechanisms.

For immovable property, Salvadoran property law recognises co-ownership (*proindivisión*) and other real rights (eg, usufruct), but it does not replicate (as a general default mechanism)

the common law 'joint tenancy with automatic survivorship'. As a result, fractional ownership typically passes to heirs upon death, which can lead to fragmented ownership, or co-ownership.

For bank and investment accounts, the common mechanism is to establish a beneficiary, who will be the person to whom the proceeds will be paid upon the death of the account holder. Only if no beneficiary is established could the heirs receive any amount from bank and investment accounts.

Payable on death mechanisms are commonly achieved through beneficiary designations in life insurance and certain contractual or employment-based benefits. Where properly structured, proceeds may be delivered directly to the beneficiary outside of the succession and heirship rules.

III. Trusts, foundations and other planning structures

A. Common techniques

El Salvadoran law does not recognise a common law trust as a domestic institution, and El Salvador is not a party to the Hague Trusts Convention. Instead, Salvadoran law recognises the *fideicomiso* as the closest similar structure that is not commonly used for estate planning. *Fideicomisos* are not widely used in El Salvador, given that only regulated financial institutions can act as trustees, and usually involve high costs that can make certain planning structures more costly.

El Salvador recognises foundations as private legal entities governed by the Law on Non-Profit Associations and Foundations (Ley de Asociaciones y Fundaciones sin Fines de Lucro). These entities are designed for public utility purposes rather than private estate planning and, although Salvadoran foundations are generally not suitable for this purpose, it can be a useful vehicle for: (1) philanthropic planning; (2) governance and stewardship of family charitable assets; and (3) creating durable funding structures for social, cultural or educational projects.

Nonetheless, Salvadoran civil law expressly recognises revocable donations (*donaciones revocables*), also referred to as donations 'by cause of death' (*donaciones por causa de muerte*). These instruments can operate as a will substitute in limited circumstances and may be combined with usufruct arrangements to preserve control and beneficial enjoyment during the donor's lifetime. A common civil law technique is to donate bare ownership (eg, of shares or real estate) while reserving usufruct to the donor, thereby allowing lifetime control and income enjoyment while anticipating succession.

B. Treatment of foreign trusts and foundations

El Salvador is not a party to the Hague Trusts Convention and does not recognise the common law trust as a domestic institution. Nevertheless, there is generally no local law obstacle preventing a foreign trust from investing in or acquiring assets located in El Salvador. The ownership and transfer of Salvadoran assets (especially real estate and registered assets) must comply with Salvadoran formalities and registration requirements,

regardless of whether the ultimate beneficial arrangement is governed by foreign law. If a foreign foundation or entity is intended to operate on an ongoing basis in El Salvador, local registration and tax compliance may be required, and an analysis should be conducted on a case-by-case basis.

IV. Taxation

A. Domicile and residency

Salvadoran tax outcomes often depend on whether an individual or entity is treated as 'domiciled' (tax resident) in El Salvador and whether any income or value is treated as Salvadoran sourced. The Tax Code (Codigo Tributario) sets out the operative definition of tax domicile and 'domiciled subjects' for tax purposes, including for individuals, legal entities, *fideicomisos* and successions.

Individuals are treated as domiciled if they reside in El Salvador temporarily or permanently for more than 200 consecutive days during a calendar year. Once domiciled for more than one calendar year, they may be absent for up to 165 days without losing domiciled status. Individuals may also be treated as domiciled if El Salvador is the principal place of their business (ie, the location that generates the highest amount of their income).

Entities incorporated in El Salvador are treated as domiciled, as are successions opened in El Salvador. Certain foreign trusts and foreign successions may also be treated as domiciled when most of the beneficiaries or heirs are domiciled in El Salvador or when activities involving assets located in El Salvador give rise to taxable events for domiciled beneficiaries or heirs.

Separately, the Income Tax Law (Ley de Impuesto sobre la Renta) contains exclusions that are highly relevant to cross-border private client planning. It expressly provides that amounts or assets received from inheritance or successions (including capital, profits and returns) do not constitute taxable income for Salvadoran income tax purposes, provided certain statutory conditions are met.

B. Gift and inheritance taxes

1. INHERITANCE TAX

There is no standalone inheritance tax under Salvadoran law. As a general income tax rule, assets or amounts received by inheritance or succession are excluded from the definition of taxable income. Nevertheless, heirs should assess the deceased's outstanding tax position given that the Tax Code provides for joint liability in certain circumstances for the heirs of a taxpayer.

2. GIFT TAX

There is no standalone gift tax under Salvadoran legislation. For income tax purposes, however, a donation may be treated as taxable income for the recipient unless it falls within a statutory exclusion. In general terms, donations between spouses, between ascendants and descendants, and certain other close-family gifts (including by affinity up to the second

degree and certain adoptive relationships) are excluded from taxable income. Donations outside these categories (eg, gifts to more remote relatives or unrelated people) can be treated as taxable income for the recipient, subject to general income rules.

3. REAL ESTATE TRANSFER TAX (*IMPUESTO A LA TRANSFERENCIA DE BIENES RAÍCES*)

Inter vivos transfers of real estate are subject to a national transfer tax unless an exemption applies. The tax is generally computed as three per cent of the portion of the declared value that exceeds 250,000 colones (approximately US\$28,571.43 at the fixed conversion rate). The law also contains specific exemptions that are frequently relevant in estate planning (eg, constitution or transfer of usufruct, use or habitation rights) and succession or inheritance that involve the transfer of real estate property are not levied by such taxes.

4. TAXATION OF THE ASSETS OF A TRUST OR FOUNDATION

Local trusts are expressly contemplated by the Tax Code's domicile rules and are also treated as taxpayers under the Income Tax Law. As a result, a domestic trust is generally expected to register, keep accounting/tax records as applicable and file annual income tax returns, paying tax on its net taxable income under the rules applicable to trusts and successions.

Regarding real estate held in trust, the transfer of real estate into a trust may fall within a statutory exemption in certain *inter vivos* trusts established in favour of the settlor where the assets revert to the settlor at the end of the trust term. Where the exemption does not apply, the real estate transfer tax analysis should be analysed based on the specific transfer instrument and the applicable legal cause.

Salvadoran public utility foundations may qualify for income tax exclusion if they meet statutory requirements and are recognised by the tax administration. Foreign trusts or foundations receiving Salvadoran-sourced income should be analysed under the non-resident rules and withholding tax framework on a case-by-case basis.

5. INHERITANCE TAX AND GIFT TAX IN DOUBLE TAX TREATIES

El Salvador's treaty network is limited and is principally orientated towards income tax. In particular, the only tax treaty in force with Spain applies to income and capital gains; it does not create a specialised inheritance tax or gift tax regime because El Salvador does not levy inheritance tax and gift tax.

C. Taxes on income and capital

The principal tax relevant to ongoing wealth and investment structures is income tax (*impuesto sobre la renta* or ISR). In addition, El Salvador applies withholding taxes in a variety of scenarios and a specific tax on distributions of profits. Capital gains can be taxed either as ordinary income or under a ten per cent regime, depending on the taxpayer category and holding period.

1. CORPORATE INCOME TAX

Under Salvadoran legislation, Salvadoran legal entities are taxed on their net taxable income at 25 per cent where the taxable income does not exceed US\$150,000 and at 30 per cent

where it exceeds that threshold. Separately, a five per cent withholding tax applies to dividends and other profit distributions to shareholders, partners, beneficiaries and similar recipients, including distributions by trusts and other vehicles within the scope of the distribution tax rules (25 per cent withholding tax on dividends may apply if the shareholders, partners, beneficiaries and similar recipients are located in a tax haven or preferential tax regime territories, per the Salvadoran tax haven annual list).

Capital gains are generally taxed at ten per cent on the net gain where the assets have been held for more than 12 months and the taxpayer falls within the categories covered by the capital gains regime; a shorter period results in ordinary income treatment.

2. PERSONAL INCOME TAX

Individuals, successions and trusts are taxed under the progressive income tax schedule. Certain receipts are excluded from taxable income, including inheritances and legacies, and certain close-family donations, as previously stated.

Taxable income bracket (US\$)	Fixed tax (US\$)	Marginal rate (%)	Excess over (US\$)
0.01–6,600.00	0.00	0	0.00
6,600.01–9,142.86	212.12	10	6,600.00
9,142.87–22,857.14	720.00	20	9,142.86
22,857.15 and above	3,462.86	30	22,857.14

3. NON-RESIDENTS

Non-domiciled persons and entities are generally taxed on Salvadoran-sourced income through a withholding tax. The Tax Code provides a general 20 per cent withholding on payments to non-domiciled recipients for Salvadoran sourced services and other specified payments, with reduced rates for certain categories and enhanced rates for certain jurisdictions classified as preferential regimes.

Category	Illustrative rate (% gross)	Notes
General payments to non-domiciled persons or entities	20	Default withholding rate unless a reduced rate or treaty applies
International transport (excluding land transport), insurance/reinsurance and leases of movable goods	5	Specific reduced-rate categories

Financing	10	Applies to certain interest and/or financing payments to regulated financial entities duly registered before the Central Bank of Reserve of El Salvador
Films/tapes and similar media for image/sound reproduction	5	Specific reduced-rate category
Recipients in tax havens/preferential regimes (special rule)	25	Applies in addition to other requirements where the recipient is in a listed jurisdiction

4. TEMPORARY RESIDENTS

For individuals, 'temporary presence' is highly relevant given that the tax domicile can arise after more than 200 consecutive days of presence during a calendar year. Accordingly, individuals relocating to or from El Salvador should track their days of presence and the location of their principal business seat. Where an individual remains non-domiciled, Salvadoran sourced payments will typically be addressed through withholding.

5. DOUBLE TAXATION TREATIES

El Salvador currently has only one double taxation treaty: in force with Spain. This treaty can be most relevant to private client structures that receive cross-border income streams, such as dividends, interest, royalties or service fees. The treaty generally caps source-country taxation (withholding) on dividends, interest, royalties and certain services, subject to treaty conditions (eg, beneficial ownership and absence of a permanent establishment in the source state). In addition, the treaty establishes certain conditions to avoid double taxation, allowing certain withholdings to be omitted in the state of origin so that they can be taxed in the recipient state, provided that the eligibility conditions for that transaction are met.