

Honduras

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 WILLS AND TESTAMENTS

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

Formal wills

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

- The nuncupative will (*testamento abierto*) is the most common form of last will and testament, which 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.
- The closed envelope will (*testamento cerrado*) is a private form of last will and testament that requires the testator to write their 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 their will, but its contents remain confidential and are 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. Upon the testator's passing, the will must be presented to a judge or notary for probate of will provisions.

Privileged wills

There are three types of 'privileged' or 'less' solemn wills (*testamentos menos solemnes o privilegiados*) in Honduras. These are used in urgent or exceptional circumstances and do not require a notary's assistance:

- *Wills without notary assistance*: applicable in situations like imminent death or epidemics, where a testator can make a will verbally or in writing before five witnesses (in imminent death scenarios) or three witnesses (during epidemics). These wills are valid even without witnesses who can write, but they 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*: specifically designed for Honduran armed forces personnel and associated individuals during wartime; and
- *Maritime wills*: 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 modifying provisions of 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 contents of a will are 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 trusts (eg, *fideicomisos*), private foundations and corporations, or by means of purchasing life insurance policies.

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

Upon the death or loss of capacity of the grantor, powers of attorney and all mandates are automatically revoked and cease to be effective. Thus, they are unsuitable for estate planning, as they do not continue to operate after the grantor's passing.

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. As such they may be adapted; however, since this framework is not tailored specifically to healthcare decisions or end-of-life care scenarios, individuals should consult with a local notary.

II. Estate administration

A. Overview of administration procedures

In Honduras, succession takes place upon 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* – the surviving spouse's portion of the estate.

B. Intestate succession and forced heirship.

Intestate succession is carried out upon 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 their 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. Also, the surviving spouse who lacks the means to sustain themselves adequately has forced heirship rights equal to one-quarter of the decedent's estate (the *porción conyugal*).

C. Marital property

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

1. JOINT PROPERTY (*COMUNIDAD DE BIENES*)

The assets and debts of both spouses – whether acquired before or during the marriage – form a common pool that belongs equally to both. Each spouse may administer the community, and both are jointly responsible for family obligations. Upon divorce or death, the community is divided in half. Certain assets, such as strictly personal items or those excluded by law, may remain separate.

2. MARITAL PARTNERSHIP (*SOCIEDAD GANANCIAL*)

Each spouse retains ownership of the assets they had before marriage, as well as those they acquire individually through inheritance or gifts. What becomes common are the gains and benefits produced during the marriage, such as salaries, rents or profits. At dissolution, these *gananciales* are shared equally, while each spouse keeps their original property.

3. SEPARATE PROPERTY (*SEPARACIÓN DE BIENES*)

Each spouse preserves full ownership and control over their own assets and debts, whether acquired before or during the marriage. There is no pooling of property. Nonetheless, both remain jointly responsible for household expenses, the upbringing of children and other family obligations.

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 upon between the co-owners. As a result of such a clause, upon the death of one of the owners, the other owner(s) 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 owner(s) 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 institution as known in common law systems is not native. Instead, the equivalent device is the *fideicomiso*. In a *fideicomiso*, the grantor transfers ownership of certain assets to a fiduciary – which always will be a Honduran authorised bank (*banco fiduciario*) – which is bound to administer them in accordance with the terms of the *fideicomiso* agreement. These arrangements may be created *inter vivos* (during the grantor's lifetime) or *mortis causa* (to take effect upon the grantor's death).

Foundations in Honduras are legal entities typically used for non-commercial purposes such as charitable, cultural, educational or social initiatives. Honduran law recognises both locally incorporated foundations and those governed by foreign law.

To establish a foundation under Honduran law, the incorporator must execute a notarial deed before a civil law notary. This deed must include the foundation's articles of association. The foundation, together with its board members, must then be registered with the Public Registry of Civil Associations, administered by the Ministry of Government, Justice and Decentralisation.

By statute, foundations are subject to strict limitations on distributions. Specifically: (1) no distributions may be made to the incorporator(s) or members of its governing bodies; and (2) distributions to third parties are permitted only if they serve an altruistic or socially beneficial purpose. These rules apply to profits, capital and reserves. They do not, however, prevent a foundation from entering into contracts with related persons and making payments under such contracts.

For estate planning, foundations are one option among several. Other commonly used structures include corporations – where assets are titled in the corporate name and share certificates are transferred to heirs upon the grantor's death – and lifetime transfers (*donaciones en vida*), often structured with special provisions such as a retained usufruct in favour of the donor.

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

Under a *fideicomiso*, the duties of the fiduciary bank arise solely from the terms of the arrangement and the applicable law; they may not be inferred or extended beyond what is expressly provided.

On the other hand, 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 are 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 oversight.

C. Treatment on foreign trusts and foundations

Honduran individuals may create or participate in foreign trusts holding assets located either in Honduras or abroad. Honduras, like most Latin American jurisdictions, has not ratified the Hague Trust Convention. As a result, the recognition and governance of such trusts are determined by private international law principles under the Civil Code, unless a bilateral treaty provides otherwise. In practice, the governing law will generally be that chosen by the parties in the trust deed; in the absence of such choice, Honduran courts would look to the law of the place of principal performance.

Foreign foundations and associations are recognised under the law of their jurisdiction of incorporation, but when operating in Honduras they must comply with domestic legal requirements, including registration and regulatory oversight, to the extent applicable.

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's or entity's tax domicile is primarily their residence or place of business. For those outside Honduras, it is where they conduct business or where 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 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 HNL10m 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 corporate income tax at 25 per cent on territorial income. A minimum tax of 1 per cent applies to entities earning a gross income greater than HNL1bn, with a reduced rate for specific sectors. Additionally, a 5 per cent 'solidarity contribution' is levied on taxable income exceeding HNL1m. Anti-evasion measures include a 1 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 a 10 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 4 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.