



# DOING BUSINESS Honduras







# Honduras

**H**onduras is the second largest country in the Central American region. The country is bordered to the west by Guatemala, to the southwest by El Salvador, to the southeast by Nicaragua, to the south by the Pacific Ocean at the Gulf of Fonseca, and to the north with the Gulf of Honduras, a large inlet of the Caribbean Sea. The official language is Spanish, and English is used mainly in commercial matters. The country has a population of 9.2 million and a total area of 112,492 km<sup>2</sup>. It has a total GDP estimated in USD 25,095 billion.

## Business Presence

- All laws in Honduras are constitutionally based and the Code of Commerce is the primary corporate and commercial regulation. The Law stipulates that in order to participate in the business sector, an individual must either be incorporated as a sole trader or form a corporation. There are five types of corporations recognized in Honduras:
- ✓ General Partnership.
- ✓ Limited Partnership: Is similar to collective society, except for the fact that there are two types of shareholders. Comanditario partners are jointly and severable liable. The comanditario partners are only considered as investors.
- ✓ Limited Share Partnership.
- ✓ Limited Liability Company: Is the smallest capital entity under Honduran law. It requires a minimum of two persons or entities and a maximum of 25 shareholders.
- ✓ Public Limited Company (Corporation): It requires a minimum of two shareholders or entities with a founding capital approximately of USD 1,100.00. Due to the minimum of shareholders and the founding capital it is the most used form of corporation in Honduras.

- Of the above, the Limited Liability Company and the Public Limited Company are the most commonly business vehicles. Additionally, the foreign investor has the possibility to authorize a branch of a foreign company to do business in the country. The branch has the same rights and obligations as a Honduran company.

*Note: A new law entered in effect on June 2014 and includes the figure of “Unipersonal Society” or S.L.U (Single member Limited Liability Company), by virtue of which any of the above described business vehicles can be incorporated with one partner. This possibility is excluded in the constitution of companies in regular sectors, such as energy and banking.*

## Economy

- According to the Central Bank of Honduras, the Honduran economy registered a growth in real terms of 2.7% in 2019, driven by the dynamism of consumption and investment of the private sector, demand for domestic products, mainly of assets for transformation (maquila), as well as the constant effort to diversify its exports. By 2020, the country's Gross Domestic Product was projected to grow between 3.3% and 3.7%, compared to what was reported in 2019. However, derived from the crisis of the Pandemic, COVID-19, this indicator was surely affected, being estimated to contract by 7.1%, due to a pronounced drop in trading, investment and consumption in the midst of the global slowdown and, the prolonged containment measures decreed in the country, specifically the restriction of certain constitutional guarantees.
- Initially, Honduras economy was primarily agricultural based, depending on traditional exports such as bananas and coffee. However, in the past years Honduras economy has diversified into other areas such as tourism, apparel manufacture and shrimp farming. In addition to this, it has experienced a noticeable growth in its industrial base.
- Trade relations with the United States have been of extreme importance to the Honduran economy. Today, half of the exports sent to the United States and more than a third of the Honduras' imports come from this country. However, trade with European and Latin countries is growing by the day.

### Steps that must be followed in the incorporation of a Honduran corporation:

- 01 Choose the Commercial Name of the Company and perform search at the Registry of Commerce to confirm availability.
- 02 Prepare the articles of incorporation that include, among others, name (name or company name), objective, name of shareholders, etc.
- 03 Register the company in the Commercial Registry as a reminder, as well as in the Chamber of Commerce of its domicile.
- 04 Get tax ID.
- 05 Obtain operation permit.
- 06 The corporation may begin operating after the tax identification is granted and it has been registered in the tax system of the country.

*Note: Additional registrations may be required depending on the activities the investor is going to engage in.*

# Taxation

- Income tax. The Income Tax applies to any income from capital, work or the combination of both, within the principle of territorial income. Income is considered to be any kind of yield, utility, income, interest, product, profit, participation, salary, daily wage, fee and in general any proceeds in cash, in values, in kind or in credit that modifies the taxpayer's patrimony.
- The applicable Income Tax rate for a legal entity is 25% and is calculated on the taxable base; the taxable base constitutes the gross income minus the deductions allowed by law. The tax is paid in advance in 3 equal quarterly installments, with due date on June 30, September 30 and December 31. The last payment is made with the filing of the return on April 30 (thirty) of each year.
- Minimum tax. In accordance with the provisions of Decree 278-2013, which contains the Law on the Regulation of Public Finances, Control of Exemptions and Against Evasion Measures (Ley de Ordenamiento de las Finanzas Públicas, Control de las Exoneraciones y Medidas Antievasión), through which Article 22-A was modified, establishes that persons or legal entities domiciled in Honduras will pay 1.5% on gross income equal to or greater than ten million Lempiras (L. 10,000,000.00 approximately USD 410,000.00) in the tax period, when the application of the tariffs contained in Art. 22 a) and b) are less than 1.5% of the gross income declared.
- Taxpayers whose gross annual income is less than ten million lempiras (L. 10,000,000.00) must comply with the declaration, payment and rates established in literals a) and b) of Art. 22 of the Income Tax Law.
- Starting from the fiscal period of 2020 and subsequent years, according with the Legislative Decree No. 31-2018 containing reforms to the Income Tax Law, specifically its Art. 22-A, the calculation of Income Tax and payments on account must be carried out according to the following rules:
  - ✓ Natural or legal persons who have obtained gross income equal to or less than billion lempiras (L. 1,000,000,000.00 approx. USD 40,000,000.00) in the previous fiscal period, will not be subject to the application of Art, 22-A of the Income Tax Law, so the calculation of the ISR and their respective payments on account must be made according with the provisions of Art. 22 of the Law of the Income Tax.
  - ✓ Natural or legal persons that have obtained gross income greater than billion lempiras (L. 1,000,000,000.00 approx. USD 40,000,000.00) in the previous fiscal period, must pay 1% of this income when the application of the rates indicated in literal a) or b) of Art. 22 of the Income Tax Law, result in less than 1% of the gross income declared. The rate will be reduced to 0.5% for the following sectors:
    - (a) production and distribution of cement;
    - (b) public services provided by state companies;
    - (c) pharmaceutical products and drugs for human use, at the producer or importer level;
    - (d) the bakery sector or industry;
    - (e) production, distribution or commercialization of products derived from steel for construction (this does not include the sale of scrap metal or the activity of the mining industry); and
    - (f) production, commercialization or export of coffee.





- **Anti-evasion.** Persons or legal entities who have had two consecutive or alternate operating losses and who in the last period have had gross income equal to or greater than one hundred million lempiras (L. 100,000,000.00 approx. USD 4,219,410.00) per year, shall be subject to the payment of an advance of 1% in concept of Income Tax, which will be calculated on the gross income. This 1% constitutes a credit in the Annual Declaration to be applied either in the income tax, net asset or solidarity contribution.
- **The annual Net Asset Tax.** Is a cedular annual tax applicable to the total net assets of legal entities domiciled in Honduras, created by Decree No. 51-2003 (published in the Official Gazette on April 10th, 2003). The taxable base is: the difference resulting from the value of the assets that appear in the taxpayer's Balance Sheet, minus the accounts receivable reserves, the accumulated depreciations allowed by the Income Tax Law, the revaluations of assets while they are not available and the values corresponding to expansions of investments registered as projects in process or fixed assets that are not in operation. The balance of obligations with financial institutions directly related to the financing of fixed assets that are in operation will also be deducted. The rate is 1% on the total net value exceeding three million Lempiras (L. 3,000,000.00 approx. USD 126,582.00).
- **Solidarity contribution.** In accordance with Decree 278-2013 Chapter V, legal entities, except those included in the Special Regimes for Export and Tourism shall pay a solidarity contribution of 5% to be applied to the excess of the taxable net income over one million Lempiras (L. 1,000,000.00 approx. USD 42,195.00), from fiscal period 2014 onwards. The dispositions set on Art. 22 of the Income Tax Law must be taken in consideration for the calculation. The Solidarity contribution constitutes an over-rate of the Income Tax, for which reason it shall not be deductible from said tax, and the dispositions regarding the quarterly advanced payments, annual declaration and other applicable provisions of the Income Tax Law also apply to the calculation and payment of this contribution.
- **Capital gain.** Capital gains or losses are defined as the positive or negative result of transactions with respect to property or assets that do not represent the taxpayer's ordinary and usual business, such as real estate, shares, fixed assets and other similar assets. Profits and losses derived from the same tax year are calculated together, and the result, if positive, is subject to tax at a rate of 10%. However, if the result is a capital loss, it cannot be deducted from the gross income obtained from the taxpayer's ordinary income. Capital losses arising from the sale of securities of qualified individuals or by legal entities, usually related to such activities, may be deducted from the taxpayer's gross income. Capital gains derived from the transfer of real or personal property are equivalent to the value of the transfer, less the adjusted cost of ownership. The adjusted cost includes the acquisition value plus the improvement value, less the depreciation of benefits. Real property will not be registered by the Property Institute if 10% of the capital gains tax has not been remitted to the tax authorities.
- **Branch income.** A branch of a foreign company income is subject to income tax at the respective corporate income tax rate. Before May 12th, 2010 there was no withholding tax on dividends distributed in the country or abroad. Currently, 10% withholding is calculated on dividends.
- **Sales tax.** The general rate is 15%. A rate of 18% is calculated on first class and business class airplane tickets. The import and sale of alcoholic beverages, cigarettes and other tobacco products are subject to 18% sales tax.



- Municipal tax. 1) Industry, commerce and service tax, based on the volume of sales per year. 2) Municipal tax per person/legal entity (individual tax). 3) Tax for extraction and exploitation of resources. 4) Real estate tax, which is charged taking in consideration the property value as well as on the increase in the property value. 5) Selective tax on telecommunications services.
- Non-resident companies are subject to income tax only on income derived from Honduran sources.
- Additionally, there are some companies that operate under a special tax regime and are exempt of sales tax, income tax, custom duties and several municipal taxes. The special regimens are:
  - ✓ Free Trade Zones.
  - ✓ Industrial Parks.
  - ✓ Export Processing Zones.
  - ✓ Companies that are under the Tourism Incentive Law.
  - ✓ Tourism Free Zones.
  - ✓ Law promoting the generation of electric energy with renewable sources.
  - ✓ Law for Promotion and Protection of Investments.

## National Security Regulation

- A National Security Regulation was issued by the National Congress, through the Population Security Law, to establish the contributions used for security manners. Contributions were established as followed:
  - ✓ Special contribution levied on the financial system for bank accounts transactions and renewal of credit cards membership.
  - ✓ Special contribution of cell phone companies taxed with a 1% rate on monthly gross income (air time).
  - ✓ Special contribution of the mining sector taxed with a 2% rate on the FOB value for exports.
  - ✓ Special contribution of food and beverage companies taxed with 0.5% on their monthly gross income.
  - ✓ Special contribution of casinos and slot machine companies taxed with a 1% on their monthly gross income.
  - ✓ Special contribution of the cooperative sector taxed with a 3.6% rate on their net annual surplus.

## Foreign Investments Restrictions and Conditions

- Some of the restrictions that are included on foreign investments are:
  - ✓ Disposal of toxic, dangerous garbage not produced in the country.
  - ✓ Activities that affect public health and the country's environment.

# Industrial Property

- In Honduras the Industrial Property is regulated by the Industrial Property Law, which regulates everything related to inventions, patents, industrial designs, trademarks, industrial secrets, and its objective is to:
- ✓ Set up the basis, so that there is a permanent system for these processes and products within the industrial and commercial activities of the country.
- ✓ Promote the inventiveness of industrial application, best techniques, and broadcasting technological knowledge within the productive sectors.
- ✓ Impel the improvement of the quality of goods and services in industry in relation to the interest of the consumers.
- ✓ Favor creativity for the design and presentation of new and useful products.
- ✓ Protection of the Industrial Property through the regulation of patents, utility models, industrial designs, trademarks and commercial signs, name of origin and industrial secrets.
- ✓ Prevent actions that attempt against Industrial Property rights or generate unfair competition; and establish the penalties related to them.





# Labor Law

- The Honduran Labor Code is applied to all corporations regardless of if they are located in a Free Zone or an Industrial Park. Labor contracts may be verbal or written. The Labor Code authorizes the verbal contract in cases of:
  - ✓ Domestic service.
  - ✓ Incidental or temporary work not exceeding 60 days.
  - ✓ A given work which value does not exceed 200.00 Lempiras (almost USD 10.00), and, if it has been stated time for delivery, provided it is not more than 60 days.
  - ✓ Farming, except industrial or commercial enterprises from agriculture or livestock.
- It is important to mention that the written agreement is a guarantee for the employee, and its omission is imputable to the employer. The labor contract and all subsequent legal obligations are assumed at the beginning of the work relationship, even though the contract was verbal. Labor contracts may include a trial term for the first 60 days, term within which any of the parties may terminate the relationship without cause. Once these 60 days period is over, the labor contract is considered to be celebrated for an undetermined period, unless the parties have agreed a specific term in the cases permitted by Law.
- The Labor Code provides the following types of labor agreements:
  - ✓ For an indefinite period.
  - ✓ For a limited time.
  - ✓ For specific tasks.
  - ✓ Likewise, hiring per hours is possible, according with the legal provisions contained in the Hourly Employment Law, establishing three (3) hours a day as a minimum hiring day.

## Vacations

- Vacations according to Honduran Labor Code are:
  - ✓ 10 consecutive business days for the 1st year of work.
  - ✓ 12 consecutive business days for the 2nd year at work.
  - ✓ 15 consecutive business days for the 3rd year at work.
  - ✓ 20 consecutive business days for the 4th and following years at work.

## Work Shifts

- The following shifts are established in the Honduran Labor Code:
  - ✓ Day Shift: from 5:00 a.m. to 7:00 p.m.
  - ✓ Night Shift: from 7:00 p.m. to 5:00 a.m.
  - ✓ Mixed Shift: This would be part day shift and part night shift. If a mixed shift includes more than 3 hours at night, the whole shift is considered a night shift.



# Zones of Employment and Economic Development (ZEDE)

- According with the constitutional provision, the State of Honduras may establish areas of the country subject to special regimes, with their own legal personality, their own fiscal, political and regulatory system. These are called “Zones of Employment and Economic Development (ZEDE, for its acronym in spanish)”, and their creation is exclusive of the National Congress by qualified majority.
- The Employment and Economic Development Zones (ZEDE), can be created with the aim of developing National or International Financial Centers, Autonomous Cities, International Logistics Centers, International Commercial Courts, Special Investment Districts, Renewable Energy Districts, Special Economic Zones, Areas subject to a Special Legal System, Agroindustrial Zones, Special Tourist Zones, Social Mining Zones, Social Forest Zones, or any other regime that includes a combination of the above and that seeks the development of investments.



We, at García & Bodán, are ready to support you in all legal matters of interest to your company or business, we have highly qualified lawyers in investment matters.

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