

**Guide to Doing Business  
in  
Nicaragua  
2010**

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## **I. NICARAGUA AT A GLANCE**

Nicaragua is the largest country in Central America, bordering both the Caribbean Sea and the North Pacific Ocean, between Costa Rica and Honduras. The country covers a total area of 129,494 square kilometers (120,254 square kilometers of which are land area) and contains a diversity of climates and terrains. The country's physical geography divides it into three major zones: Pacific lowlands, the wetter, cooler central highlands, and the Caribbean lowlands.

Official language in Nicaragua is Spanish, being also the most spoken language throughout the country; however, there are some other dialects spoken by the natives of the Nicaraguan Caribbean Coast (ethnic minorities), which also have official use in certain circumstances according to law<sup>1</sup>.

Nicaraguan currency is the “Córdoba”, and the official exchange rate for US dollars currently (January, 2010) fluctuates from 20.8433 to 20.9270<sup>2</sup>. For Euros, according to some Nicaraguan private banks, the exchange rate currently (January, 2010) fluctuates from 29.10 to 29.30<sup>3</sup>.

In Nicaragua there are neither cultural nor religious influences for running businesses, though most of the Nicaraguan people are religious and traditionalist. Running a business in Nicaragua basically demands a full compliance of all applicable laws and regulations and requires the business not to be in contradiction with public order.

The country's infrastructure is mainly composed by highways, some ports and airports. Most important ports, among others, are Corinto (Department of Chinandega), San Juan del Sur (Department of Rivas) and, Sandino (Department of León); which have lots of commercial and tourism activities (vessels, merchandise freight and cruise ships). The main airport is the International Airport “Augusto C. Sandino”, located in Managua, the capital of Nicaragua; there are other airports located in the main cities of the Caribbean Coast (Puerto Cabezas, Bluefields and Corn Island), for internal transportation only. In Nicaragua there are no railroad systems.

Public services, such as water and electricity, in the country are publicly owned. The water services are also managed and rendered by a public company; however, the distribution of electricity is currently carried out privately by means of a concession for its distribution, and there are also some other private companies involved in the generation of power, working under contracts celebrated with the governmental authorities. The general principle is that public services are publicly owned, but by means of concessions and contracts with the corresponding authority (for those fields allowed by

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<sup>1</sup> Art. 11 Political Constitution.

<sup>2</sup> According to official publication of the Central Bank of Nicaragua for January, 2010.

<sup>3</sup> At the time this memorandum was elaborated, no official exchange rate was published for Euro.

law) they could be rendered or distributed by third parties (private companies). Phone services were publicly owned during a long period, but were privatized several years ago; being now privately owned. However, given that the telecommunications sector is a regulated one, interested parties must comply with the corresponding regulations.

## **II. GENERAL CONSIDERATIONS**

### **A. Investment Policies**

Nicaragua is a country where investments, both national and foreign, are warmly welcome; and there are some agencies (such as “ProNicaragua”, a public agency) devoted to promote investment opportunities in Nicaragua.

There are fiscal incentives for investments under the Free Trade Zone Special Regime; which requires for the investment to be engaged in the exportation of goods or services. Incentives are exemptions of Income Tax (for a period of 10 years), Value Added Tax, Tax on the Incorporation, Amendments and Mergers of companies, Stamps Tax, Custom Taxes and Duties, Specific Consumption Tax, Municipal Taxes and, Export Taxes on products elaborated in the Free Trade Zone<sup>4</sup>.

Notwithstanding, there are some restrictions for foreign investment on specific sectors, such as:

Air Transportation: Cabotage activities are to be carried out exclusively by Nicaraguan individuals or Nicaraguan legal entities; and the President of the Board of Directors or at least 51% of the Board of Directors of such entities must be from Nicaraguan origin<sup>5</sup>.

Ground Transportation: Foreign shipping companies established in Nicaragua, may only use trucks from their Nicaraguan partners, or trucks from any other Nicaraguan company or individual rendering ground transportation services, in order to transport their specialized load in Nicaragua. Furthermore, internal load transportation services may only be rendered by Nicaraguan persons<sup>6</sup>.

Media and Television Broadcasting: Program and broadcasting a TV channel requires a previous license to be issued by the Communication Authority; and such license can only be issued to Nicaraguan individuals or legal entities with 51% of their capital stock constituted by Nicaraguan nationals<sup>7</sup>.

Additionally, some regulated sectors such as mining, forests exploitation, power generation, transmission and distribution, banking, healthcare (hospitals, clinics), telecommunications, air and aquatic transportation, among others, requires the issuance of the corresponding license, authorization or concession from public authorities before starting business operations.

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<sup>4</sup> Art. 20 of the Free Trade Zones Law.

<sup>5</sup> Art. 133 of the Civil Aeronautics General Law.

<sup>6</sup> Arts. 23 and 24 of the Ground Transportation General Law.

<sup>7</sup> Art. 29 of the Telecommunications and Post Office Services Law, as amended by Law 326.

All the aforementioned sectors plus other ones, such as agriculture and farming, retail markets, garment, services, real estate, etc., constitute the types of business conducted in Nicaragua.

The following ciphers, corresponding to the period January – June, 2009, show the size of foreign investment in different markets in Nicaragua, according to official data<sup>8</sup> (amounts in US\$ Mil):

Energy	105.71
Free Trade Zones	40.23
Tourism	40.29
Telecommunications	35.30
Forest	5.55
Mining	2.56
Commerce and Services	1.82
Agriculture:	0.17
Industry:	0.08

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<sup>8</sup> Edition No. CI-1/2009 of the Informative Bulletin issued by the Ministry of Promotion, Industry and Commerce.

Fishing:	0.04
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On another matter, we comment that there are no any bureaucratic discretionary restrictions to investment; however, regarding paperwork, requisites and conditions investors must fulfilled prior to running their business in Nicaragua, in some cases some public institutions demand the fulfillment of a few additional requisites (issuance and filing of previous documents, authorization letters, etc.) that although not expressly established by law or regulations, form part of their internal dispositions.

Finally, we mention that there is a Foreign Investment Promotion Law that recognizes Foreign Investors as persons subject to the same rights and obligations applicable to national investors.

## **B. Diplomatic Relations**

Nicaragua has diplomatic relations with most countries around the world, with embassies and consulates in several countries<sup>9</sup>. Its relations are sustained on the base of respect, cooperation and mutual aid in order to achieve important goals not only for the country but for the region and the whole international community as well. Satisfactory commercial relations with countries with diverse cultures and different political-economic systems, is the result of good and ample diplomatic relations; which makes Nicaragua an appealing country to foreign investment.

Nevertheless, businesses related with national security and public healthcare matters, are excepted from the rights conceded to foreign investment in Nicaragua; being these the only restrictions expressly contained in the corresponding law<sup>10</sup>.

There are no any restrictions or difficulties for travelling to Nicaragua. Citizens of several countries enjoy the right to enter to Nicaragua without any visa requirement (United States of America included), while others must fulfill such requisite depending on the countries categories the Nicaraguan Immigration Authorities have established for control purposes only.

## **C. Government**

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<sup>9</sup> Some of the Nicaraguan embassies addresses: United States of America: 1627 New Hampshire Ave. NW Washington DC 20009; Costa Rica: Ave. Central # 2540 Bo. La California, Frente a Pizza Hut, San José, Costa Rica; Venezuela: Av. El Paseo, Quinta Doña Dilia. Urbanización Prados del Este, Caracas; Germany: Joachim-Karnatz - Allee 45, (Ecke Paulstrasse) 10557 Berlin; Japan: Kowa 38 Bldg 9th floor Rm 903 12-24 Nishi Azabu, 4-Chome Minato-ku, Tokio 106 0031.

<sup>10</sup> Art. 3 of the Foreign Investment Promotion Law.

During the last ten years, Nicaraguan government has experienced changes that may be summed up as change in the political party in charge of the Executive Power. Two consecutive government periods (five years each) were led by a right-wing party, characterized for carrying out privatization processes of public services and implementing a capitalist economic system.

However, in the year 2007, a left-wing party held the Executive Power and, from there on, the government has been focused in the development of social projects (such as healthcare, education, food, etc.); while also working to appeal and support foreign investment to develop areas such as tourism, energy, free trade zones, etc.

Nicaragua's election system is one that allows each individual to actively participate in elections processes and postulate him/herself as a candidate by means of his/her affiliation to a political party. National elections, in which both president and congressmen are elected, take place each five years.

Next elections are scheduled for 2011, so the right-wing parties have already commenced their internal negotiations working to form alliances that might consolidate them as one strong option for voters in opposition to the current government. However, it is still too early to predict or ponder whether a change of the current government may take place or not.

Regarding the Nicaraguan legislative system, it is a single-chamber parliament composed of ninety-two representatives elected in the same election process to elect the President of the Republic. The parliament is called "National Assembly", and its primary function is to create, approve, amend and derogate laws and parliamentary decrees. Representatives must run with a political party in order to be elected.

With respect to the country's judicial system, we comment that it is a well organized one with specific divisions to solve disputes according to the subject matter of the case (civil, labor, criminal, etc.); being this a unitary legal system for all the country. It is also a system that allows alternative methods to resolve disputes (arbitration, mediation)<sup>11</sup>, which helps the system to reduce the number of filed cases. Of course, some matters can not be solved by means of alternative methods (criminal matters, labor, etc.) and must mandatorily be resolved at court.

Depending on the case's subject matter, lawsuits may take a considerable time (civil cases, mainly), while others may find a faster resolution. It is a judicial system generally perceived as impartial, though there is a trend for some people to criticize the system as "impartial" when served with resolutions against their interests, which is a common situation in all judicial systems.

Additionally, the country's judicial system allows enforcement of foreign judicial decisions, as long as the enforcement request fulfills the Nicaraguan legislation requirements and proceedings previous to enforcement are carried out according to

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<sup>11</sup> Art. 1 of the Arbitration and Mediation Law.

Nicaraguan law<sup>12</sup>. The enforcement of foreign judicial decisions also depends on the reciprocity of the country where the decision is issued; that is, that such country allows the enforcement of Nicaraguan judicial decisions as well.

#### **D. Environmental Considerations**

Government in Nicaragua, since several years ago, has been addressing efforts towards the consolidation of a more efficient environmental control programs; including environmental protection laws and regulations, as well as stressing the role of institutions such as the Natural Resources and Environment Ministry (MARENA), in order to achieve a sustainable exploitation of the natural resources while protecting the Environment as well.

The main specific legal framework on environmental matters is found in Law No. 217 “Natural Resources and Environment General Law”, its Amendments (Law No. 647) and its Regulations (Decree 9-96); which contains norms for the conservation, protection, improvement and restoration of the environment and natural resources, ensuring its rational and sustainable use<sup>13</sup>.

Such legal framework adopts the constitutional principle that establishes the natural resources as national patrimony<sup>14</sup>; creating, therefore, the legal provisions aimed to protect this patrimony through institutions such as MARENA, which is the one empowered to issue environmental permits for projects that may involve the use of national resources<sup>15</sup>, which is a requirement that must be fulfilled prior to starting activities related with the project.

In order to obtain the environmental permit, investors must prepare and conduct an environmental impact assessment and file it to MARENA for approval. It is also important to mention that natural resources may only be given to investors, foreign or nationals, by means of permits, licenses or concessions for a determined period, depending on the project and the natural resources involved<sup>16</sup>.

Every activity in connection with natural resources and environment is executed under the control and regulations of MARENA and the specific authority for the specific natural resource affected, which are entitled to supervise the activities and to impose sanctions against those in breach of environmental laws and regulations.

Furthermore, the Nicaraguan Criminal Code has gathered in a specific chapter the Environmental and Natural Resources Crimes; punishing with prison and pecuniary sanctions the behavior of those committing criminal acts against the environment (such as, among others, pollution of soil, subsoil, waters and atmosphere; breach to provisions

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<sup>12</sup> Arts. 542 – 552 of the Nicaraguan Civil Procedure Code, establish some procedures to be carried out before the Nicaraguan Supreme Court of Justice when trying to enforce foreign judgments.

<sup>13</sup> Art.1 of Law 217.

<sup>14</sup> Art. 102 of the Nicaraguan Constitution; and Art. 54 of Law 217.

<sup>15</sup> Art. 25 of Law 217.

<sup>16</sup> Art. 54 of Law 217.

contained in environmental impact assessments; illegal use of natural resources; etc.)<sup>17</sup>. A special unit of the District Attorney Office (Environmental Division) is currently in charge to investigate and prosecute this kind of crimes.

## **E. Intellectual Property**

### **Protection of intellectual property:**

In Nicaragua, intellectual property is regulated and protected through different laws, specifically for each legal regime.

As of November 19, 2001 the Industrial Property Office began applying the new trademark law: Trademark Law and other Distinctive Signs, Law 380, approved on February 14, 2001, and published in the Official Gazette No. 70 dated April 16, 2001, and its Regulation, Decree No. 83-2001 approved on September 4, 2001 and published in the Official Gazette No. 183 dated September 27, 2001, and which determine the procedure to be followed for the registration and protection of marks, commercial slogans, geographical origin and commercial names.

This trademark law, represents an effort to adapt Nicaraguan legislation to international standards, and has as its main objective to protect marks and other distinctive signs, as well as to implement updated regulations and controls providing greater legal protection to the owner of industrial property rights.

Ownership and the right to its exclusive use a mark shall be acquired only over the products, goods or services for which it was requested and which belong to the same class.

For registration of a mark, commercial name or commercial slogan, an application shall be filed with the Industrial Trademark Office. In the case of application for marks, is possible to file multi classes application, mentioning in one application the different classes that are being applied for. Payment of the official fee must be done within 60 days after being filed, otherwise the application will lapse and filed away.

In the event of multi classes application, for the main mark the official filing fee will be charges, and for the additional mark 50% of the official cost.

Once the application has been filed, the Registrar shall proceed to verify whether the application complies with the requirements provided for in article 10 and 11 of Law 380, and the regulation. In the event of an omission or deficiency the applicant should be notified to correct the application within a two months period of time.

If the exam by the Registrar determines that the application complies with all the requirements, then the Registrar shall direct that a notice of publication be published in the Official Gazette one time within a period at the expense of the interested party.

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<sup>17</sup> Arts. 365 – 390 of the Criminal Code.

During the two month following the date of the publication, any person claiming a legitimate interest may file an opposition against its registration indicating the legal and factual arguments as well as other proofs. If supporting documents are not available at the time, these shall be submitted within thirty working days. The period for replying to the opposition shall be two months starting from the notification 's date, and the Registrar shall issue the applicable decision regardless of whether or not an answer was filed.

The parties can submit themselves to the arbitration proceedings provided for in the Nicaraguan Civil Procedure Code articles 958 through 990.

Once the mark, trade name or commercial slogan has been registered, the Registrar shall proceed to issue a Certificate of Registration showing the ownership, the place and date of issuance and the expiration date, and will order its publication for one time only in the Official Gazette.

The rights granted by the registration of a mark shall last for a period of ten years, which may be renewed for a similar period of time filing the renewal application a year prior to the expiration date, or within the six months grace period after the expiration date (paying an additional 50% over the official renewal fee).

The owner of a registered mark shall have the following rights:

- To prohibit use of the mark or similar mark, by a third person during the course of his commercial operations;
- Exercise before the jurisdictional entities the applicable legal actions and measures against the third party infringing his rights.
- Additionally , it can forbid any of the following actions (among others) by a third party:

-Apply or place the mark or distinctive sing or similar one on products for which the mark has been registered.

-Delete or modify the mark with commercial objectives.

-Produce or manufacture labels, containers, wrappings or other materials that reproduce the mark.

-Use in the commerce a sign identical or similar to the mark.

The exclusive right to use the mark granted to the owner of the mark does not grant the right to prohibit a third party the use of the mark on the products legally marked with the registered mark introduced in the commerce in any country, either by the title holder or by any other person with his consent or economically related to him, as long as the products and the containers or packages have been altered or suffered any deterioration.

Law 380 defines use of the mark (among others) as the following: (i) introduce in the commerce, sale, offer for sale or distribute products using the sing; (ii) import, export, storage or transport products using the sign; (iii) Use the sign in publicity, publications, commercial documents or written or oral communications, regardless of the media used

and (iv) adopt or use the sign as domain name, e- mail address, name or other used in the electronic communication media.

Prior hearing of the owner of the registration of the mark, and upon request of any interested party , the competent judicial authority may declare the annulment of a registration of a mark if this registration took place infringing articles 7, (inadmissible marks based on intrinsic reasons) and 8 (inadmissible marks based on third party 's rights) . In the event of annulment based on article 7 it can be requested by the competent authority. If the annulment is based on article 8, it must be filed within five years after the registration date of the mark whose annulment is being requested. However, if the registration took place in bad faith, such prescription period will not apply. Is important to notice that law also provides that the annulment request will proceed when the interested party did not use his right to file an opposition.

The judicial authority upon any interested party 's request , will cancel the registration of a mark or will limit its extension, when its owner has caused or accepted that the mark became a generic sign to identify one or various of the products or services covered by the registration. Three elements must concur to determine that a mark has lost its distinctive character as indicative of the origin of the products or services: (i) The need for competitors to use that sign in lieu of the lack of another sign or name to identify those products or services; (ii) the generic use of the mark by the public and in the commerce and (iii) lack of information on the public that the mark indicates an specific commercial origin.

Additionally, the competent judicial may upon request of any interested party and prior hearing of the owner of the mark, cancel the registration of the mark when the mark have not been used during three uninterrupted years prior to the date of the cancellation action. This type of cancellation will not proceed before three years have lapse as of the initial registration 's date.

Cancellation for lack of use can be alleged also when answering an opposition, annulment or cancellation action, when such action is based on a trademark registration. However the cancellation will be decided by competent judiciary authority. Is important to mention that when the use of the mark begins three years after its registration, such use can not deter the cancellation of the mark unless it has began at least three months before the cancellation action is filed.

Marks should be used as the have been registered, or if used differently as long as these differences do not alter the mark 's identity (does not change its main elements). A mark will be deemed to be used when the same is available in the commerce in quantities and as they usually should in the market (taking into consideration the proportion of the market, the nature of the products or services and the modalities of its commercialization).

Use has to be proven by the owner of the mark through legal admitted proofs.

A notorious mark will be protected against its non authorized use as provided for in Law 380 and any other applicable regulation, including those pertaining to unfair competition.

All relevant factors will be taken into account to determine if a mark is notorious or not, specially the following factors (among other): Degree of acknowledgement of the mark among the members of an specific sector in the country; Duration, extension of its use within or outside the country, including publicity, presentation in fairs, expositions and other events and the existence and prior existence of any application or registration of the distinctive sign in the country or abroad.

In the case of infraction of marks, it is possible to request from the judiciary measures that imply: a) Cease and desist of the infringement acts; b) the compensation for damages; c) the embargo of the products object of the infringement; d) the prohibition to import or export of the products, material; e) the destruction of the Project object of the infringement; f) to take the necessary steps to avoid the continuity or repetition of the infringement; and g) the publication of the judicial ruling and its notification to the interested parties, and its notification, all cost bear by the condemned party.

On the other hand, the protection of Copyrights it is regulated by Law No. 312 Copyrights law and Related Rights (Ley de Derecho de Autor y Derechos Conexos) and its Regulation, both regulates the author's right over literary work, crafts., artistic or scientific works, and related rights of the artists, interpreters or performers of producers of phonograms and broadcasting organizations

The enjoyment and exercise of copyright and related rights recognized in the national legislation are not subject to registration and are independent and mutually compatible among them.

Law No. 312 protects all original and derived creations, literary, artistic or scientific work, regardless of gender, merit or a current or future form.

Copyright covers the moral and economic rights. Moral rights grant the author the right to work, right to the integrity of the work, right to disclosure and the right of withdrawal or repentance. Instead the economic rights authorize or prohibit the exploitation of the work in any form.

Moral rights belong indispensable and inalienable to the author. Based on the law, upon the death of the author these rights are transferred with no time limit, to the author's heirs, Nevertheless, the author can by will decide otherwise, entrusting the exercise of moral rights to any natural or legal person.

The economic rights shall last for the life of the author, and seventy years after his death or declaration of death or the respective declaration of absence.

In the pseudonymous or anonymous and collective work, patrimonial or economic rights will last seventy years as of its disclosure.

Economic or Patrimonial rights can be assigned or transferred, but any transfers must be formalized in writing.

In cases of copyrights' infringements, the owner can demand the cessation of the unlawful activity, as well as to be compensated for moral and economic damage caused by such unauthorized use. Additionally, the owner can request the adoption of protective measures.

Those persons infringing copyrights are subject to penalties ranging from one to three years in prison.

The industrial property regime is governed by Law No. 354 Law on Patents, Utility Model and Industrial Designs and its regulation, regulating the protection of inventions, designs and utility models, industrial designs, trade secrets and prevention of acts constituting unfair competition.

Based on the legislation, to be patentable inventions must be novel, have inventive level and be susceptible to be industrially applicable.

The right to a obtain a patent belongs in the first place to the inventor, except in those cases where the invention is a product of the execution of a contract, in which case the right belongs to those who contracted the performance of a work or service, or the employer, as applicable, unless otherwise reflected in the signed contract.

Patents are in force for a non-renewable term of twenty years as of the application filing date. To maintain the patents in force, an annual fee shall be paid. Otherwise, the patent will expire. The annual fee shall be canceled before the beginning of the corresponding next annual period, which is calculated by taking into account the application 's filing date, Nevertheless, the annual fee may be canceled within in a grace period of six months after the beginning of the corresponding annual period.

Patents or patent applications may be transferred to a natural person or legal entity by any means recognized by law.

National legislation allows the granting of licensing agreements for the exploitation of invention patents, additionally, it grants Compulsory Licensing of Patents for reasons of public interest, national emergency or to remedy an anticompetitive practice, to that effect, the applicant of the compulsory license shall show that they have previously asked the patentee a license contract, and have not been able to obtain it on commercial terms and reasonable time. It is not necessary to comply with this requirement in the case of national emergency, extreme urgency or noncommercial use of the invention by a state entity.

The holder of an invention patent may file before the competent judicial authority, a legal action against anyone who engages in any act that infringes his rights. In cases of joint ownership, either of the joint owners may file a legal action without requiring the consent of the other, unless otherwise agreed.

Unless otherwise agreed, an exclusive licensee whose license is registered may proceed against third parties who commit an infringement of the rights of the License. If the licensee does not have the owner's right to act, then he must show the request from the owner to bring action and that an over a month has lapsed without the owner taking any action doing so.

Trade secrets are protected indefinitely and must be secret in the sense that they are not part or in the configuration, and assembly of its components, generally known or readily accessible to persons within the circles that normally such information is used, have commercial value because it is secret and have been subject to reasonable steps to maintain its secrecy by the person lawfully in control.

The law stipulates that if as a condition for approval of a new pharmaceutical or agricultural chemical product, it is required to submit undisclosed data regarding safety and efficacy of the product, the national authority requesting the information must ensure that non authorized third parties using the information does not use it for commercial purposes for a period of 5 years for pharmaceuticals and ten years for agricultural chemicals.

### **International treaties:**

Nicaragua is signatory and member of different treaties and Conventions, regarding Intellectual and Industrial Property in International, among others:

- 1) General Inter-American Convention on Protection of Marks and Trade Names;
- 2) Universal Copyright Convention;
- 3) Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite;
- 4) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement);
- 5) Paris Convention for the Protection of Industrial Property;
- 6) Berne Convention for the Protection of Literary and Artistic Works;
- 7) Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations ;
- 8) Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of Their Phonograms;
- 9) International Convention for the Protection of New Varieties of Plants (UPOV Convention);
- 10) Patent Cooperation Treaty (PCT);
- 11) WIPO Copyright Treaty (WCT);

- 12) WIPO Performances and Phonograms Treaty (WPPT);
- 13) Lisbon Agreement for the Protection of Appellations of Origin and their International Registration;
- 14) Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure;
- 15) Trademark Law Treaty.

**Approvals by national investment boards:**

To proceed with the registration of trademarks, Patents, Copyrights and others is not necessary to obtain the approval of any chamber of commerce or investments, the person (national or foreigner) interested in protecting their right, will proceed before the national authorities in charge of the Registry and submit their applications as requested by the National Legislation.

**Notarization requirements:**

The power of attorney needed to proceed with registration procedure for Marks, Patents, Copyrights and other intellectual and/or industrial right, must be executed before a notary, and subsequently legalized by the Consulate of Nicaragua in the country where the document is being issued.

Furthermore, the transfer document, co-existence agreements, documents evidencing corporate merger or any other of this kind, should be filed before the national authorities for the registration or amendment of an industrial property right or intellectual right, and also requires notarization, legalization by the Nicaraguan consulate and further authentication by the Nicaraguan Foreign Ministry once it arrives in the country. If this document is in other language other than Spanish, it will require an official translation.

**Regulatory guidelines for licenses:**

Law No. 380, Law on Trademarks and Other Distinctive Signs provides that the owner of a trademark registration or pending application, may grant a third party, in writing, a license to use the mark, such licenses may be registered in the registry for purposes of disclosure.

Unless otherwise stipulated in a license contract, the following rules shall apply:

- a) The licensee shall be entitled to use the mark for the duration of the registration, including renewals thereof, throughout the country and with respect to all goods or services for which it was registered
- b) Licensee cannot assign the license or grant sub licensee.

c) When the license has been granted as exclusive, the licensor may not grant other licenses for the same territory, the same mark and the same products or services, nor can the Licensor use the same in that territory in respect of those goods or services.

It is possible to judicially cancel the registration of a license agreement and prohibit the use of the trademark by the licensee where, by default of adequate control by the owner, confusion occurs or might occur, deception or harm to the public, or a detrimental practice is set up affecting the market free competition. The cancellation request, can be filed by an interested party or a competent authority, and proceed after prior meeting with the owner of the mark registration.

### **Exceptions or requirements in relation to particular products:**

For the registration of marks in Class 5, the Intellectual Property Office will not accept the description of products in general as indicated in the Nice classification. Instead, it requires that the products to be protected be clearly specified, situation that is not provided for in the National legislation, however it is applied as result of agreements with the authorities in charge of granting the corresponding sanitary permits for pharmaceutical products.

For the other classes, generally there is no problem if the applicant indicates the products in general based on the description provided in the Nomenclature.

On another matter, there are no provisions establishing thresholds for royalties; though royalties for Non Residents are subject to a rate of 21% of Withholding Tax.

Competition Promotion Law establishes in Art. 4 Subsection “a”, that the exercise of Intellectual Property rights is not under competition provisions; unless the right holders incur in anticompetitive practices<sup>18</sup>.

### **Agreements between foreign corporations and their subsidiaries:**

In regard to Intellectual related rights, typically, foreign corporations, owner of the trademark or intellectual rights such as patents, trademarks, copy rights, enter into License Agreements supporting the use of such rights by the local subsidiaries.

## **III. INVESTMENT INCENTIVES**

Nicaragua offers a wide variety of incentives for important sectors (i.e., exports, manufacture, free trade zones, energy, tourism, agriculture, etc.). Upon a strong legal framework adequate to the current economic needs, Nicaragua has developed a platform

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<sup>18</sup> Please refer to *Chapter VIII. REQUIREMENTS FOR THE ESTABLISHMENT OF A BUSINESS, Subsection “B” Antitrust Law, for an illustration on anticompetitive practices.*

of incentives that makes investors choose Nicaragua to carry out their business and expand the opportunities to create more and new productive businesses. The following are some of the economic sectors with their respective investment incentives.

➤ **Exploration and Exploitation of Mines**

1. Companies may apply to the Temporary Admission System and other schemes to promote exports as established by the legislation for purposes of exemption or suspension of customs taxes.
2. Exemption of import tariffs on machinery, materials, instruments, tools and other effects related to the mining activity.
3. Exemption from taxes imposed on company property, within the perimeter of the mining concession.
4. Exemption from taxes or tax burden directly or indirectly applied on the minerals before extraction, on the right to extract them, on the extracted mineral, cartage, benefits, transportation or storage of the minerals, as well as its sale or export.

➤ **Free Trade Zones**

1. A temporary exemption from the Income Tax, including withholding tax for remittances on interest and fees for certain services paid to foreign providers. The full exemption is for ten years, and a 60% exemption applies to all subsequent years;
2. A permanent exemption from all import duties and taxes imposed on raw materials and other of materials required in the production process, machinery and equipment, spare parts and supplies;
3. A permanent exemption from all export and re-export duties on goods produced in the FTZs;
4. A permanent exemption from all property transfer taxes in the event of shut-down;
5. A permanent exemption from value added and consumption taxes;
6. A permanent exemption from all municipal taxes;
7. A permanent exemption from all transportation taxes; and
8. A permanent exemption from all formation, merger, and transformation taxes, and the Stamp Tax.

FTZ parks are restricted non-residential areas with infrastructure designed to meet industrial needs. With the exception of the exemptions listed above, all FTZ companies must comply with the laws of Nicaragua, including environmental and labor laws. They must maintain a “reasonable” number of employees at substantially the salaries offered to the government authorities in negotiations for the initial approval.

The Free Trade Zone Commission receives and issues recommendations on all applications for FTZ status. If the FTZ Commission recommends the application, the Executive branch decides whether or not to approve the application. This entire review process normally takes between four and six weeks.

➤ **Tourism**

Qualified tourism projects can receive the following tax benefits:

1. 80% to 90% income tax exemption.
2. Real Property tax exemption for 10 years.
3. Import tax and value-added tax exemption on the purchase of accessories, furniture, or equipment.

Tax exemptions related to project implementation:

1. Value-added tax on design/engineering and construction services.
2. Exoneration of import duties and taxes and value-added tax for the local purchase of construction materials and fixed building accessories.
3. Tax incentives can be extended if project undergoes extensive expansions.

➤ **Forestry**

10 years tax exemption on:

1. 50% of municipal taxes on sale of land.
2. 50% of profits.
3. Real Property taxes in the case of forest plantations and areas under forest management.

On the other hand, there are also the following incentives:

1. Companies investing in forest plantations may reduce 50% of the amount invested as costs.
2. Exemption from import duties for companies of secondary transformation and third transformation that import machinery, equipment and accessories excluding saw mills.
3. 100% percent deduction of income tax when land is destined to reforestation projects or forest plantations.

➤ **Energy**

1. Exemption of customs duties on the importation of machinery, equipment, material and raw material necessary for all construction of stations, including sub transmission lines necessary for energy transportation from the generation facility to the National Interconnected System.

2. Exemption of the Value Added Tax levied on machinery, equipment, material and raw material utilized during pre-investment stage, construction of structures, including the construction of the sub transmission lines necessary to transport energy to the National Interconnected System. For “isolated systems” with their own generation facilities, this exoneration covers pre investment, construction and all the investment made in distribution grids associated with the project (i.e. panels and solar batteries for solar energy).

3. Exemption of income tax for a maximum period of seven years. During this same period, the income derived from the sale of carbon dioxide bonds will also be exempted.

4. Exemption of all the Municipal Taxes on real estate, sales and registrations during the construction of a project, for a period of ten years to be applied in the following manner: exoneration of 75% during the first three years; 50% the five following years and, 25% for the last two years. Fixed investment in machinery, equipment, and hydroelectric dams will be exempted from all taxes and duties for a period of ten years.

5. Exemption of taxes on the exploitation of natural resources for a maximum period of five years after the beginning of operations.

6. Exemption of Stamps Tax incurred by the construction or operation of the project or expansion of a project for a period of ten years.

➤ **Temporary Admissions System**

This system allows both the entry of merchandise into the national customs territory, and the local purchase of goods or raw material without paying any kind of taxes or duties. This merchandise must be re-exported after being subjected to a process of transformation, repair or alteration. The company must request a suspension of duties and tariffs to competent authorities.

Regarding procedures and requirements, the following, among others, are the common documents that may be required:

1. Articles of Incorporation and Bylaws of the company / branch, registered at the Public Registry of Commerce.

2. POAs registered.
3. Taxpayer Identification Card.
4. Taxpayer Registration Certificate.
5. Environmental Impact Assessment (depending on the sector).
6. Environmental Permit (depending on the sector).
7. Concessions, licenses, permits, certificates (mining, forestry, energy, tourism, tc.).
8. Technical Information on the project.
9. Economic/financial information on the project.
10. Project's Drafts/plans.
11. Construction permits, licenses.

The abovementioned documents are requested and obtained at the corresponding authority involved (Tax Authority, Public Registry, Natural Resources and Environmental Regime, Tourism Ministry, Transport and Infrastructure Ministry, Energy and Mining Ministry, Forest and Agricultural Ministry, etc.); and procedures may take from 2 to 6 weeks, approximately.

#### **IV. FINANCIAL FACILITIES**

##### **A. Banking/Financial Facilities**

Banks, non-banking financial institutions, foreign bank branches, financial groups and, representation offices for banks and foreign financial institutions, are the main kind of financial institutions in Nicaragua. Given that the financial system is a regulated one in the country, the aforementioned institutions must be previously approved and authorized by the Superintendent Office for Banks and Financial Institutions, in order for them to render stock market intermediation and financial services with resources coming from the public<sup>19</sup>.

There is no an explicit requirement for investors to maintain a bank account in the country; however, there are some requirements for opening a bank account in Nicaragua which may change according to each private bank policies. The following are some of the general or common requirements for opening a bank account:

**Individuals:** Personal interview, request for opening a bank account, client's profile format, reference letters. Foreigners: Passport and Nicaraguan Residence Card.

**Legal entities:** Request letter for opening a bank account, Tax Identification Number, Request Format for opening a bank account, reference letters, articles of incorporation and bylaws, Board of Directors resolution deciding the opening of the bank account, client's profile format, POA or Board of Directors resolution designating the legal representative (individual, Nicaraguan or foreign with his/her legal residency in Nicaragua) for the bank account, registration as a commercial entity before the Public Registry of Commerce, signers ID and data. Foreign entities: Some banks do not allow

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<sup>19</sup> Art. 1 of the General Law for Banks, Non-Banking Financial Institutions and Financial Groups (the "Banking General Law").

foreign entities (with no legal presence in Nicaragua, i.e., branches, subsidiaries) to open bank accounts; there are other banks, however, requiring all corporate documents duly legalized up to the Nicaraguan consulate, which are basically the same documents detailed for Nicaraguan legal entities, accepting the opening of the account. If documents are in other language than Spanish, they must be translated to Spanish before a Nicaraguan Public Notary in order to be legally valid in Nicaragua. The Legal Representative for the bank account must be a Nicaraguan or a foreign person with his/her legal residency in Nicaragua.

Restrictions for using the bank account are mainly based on nationality and amount matters. An investor must designate a Nicaraguan person as the legal representative for the bank account or, designate a foreign individual with his/her Nicaraguan Residency Card in force and effect, which means that he/she is residing in Nicaragua. Additionally, all signers must be expressly authorized by the investor (the account holder) and notified to the bank authorities. Every movement or transfer involving US\$10,000.00 or more, must be notified by the bank to the Superintendent Office, which may imply information requests addressed to know the nature, causes or explanation for such transfer or movement. Furthermore, investors may receive bank loans as long as they meet the conditions and fulfill the requirements each private bank may have (i.e., loan guarantees, legal representative, etc.).

The banking system in Nicaragua is a regulated sector which exists and functions according to the Banking General Law and under the supervision and control of the Superintendent Office for Banks and Financial Institutions. A bank established and organized in Nicaragua must be constituted as a corporation, which articles of incorporation and bylaws are previously approved by the Superintendent Office and then registered at the Public Registry of Commerce. Branches of foreign banks are allowed as well in Nicaragua, being necessary for them, among other matters and procedures, to file their articles of incorporation and bylaws (which must expressly authorize the bank for opening branches abroad), certificate of good standing, balance sheet and profits and losses statement for the last five years, all before the Superintendent Office for approval.

Nicaragua has a regulated stock market system. Law No. 587 “Stock Market Law”, was enacted in the year 2006 to regulate stock markets, individual and legal entities directly or indirectly involved in them, as well as the acts or contracts in connection with such markets and securities negotiated therein<sup>20</sup>. In general terms, there are two kinds of stock markets, the primary market and the secondary market. Public offers in the primary market is reserved for the serial securities issuance according to the Superintendent Office norms<sup>21</sup>; while the secondary markets are organized in the stock exchange, prior approval of the Superintendent Office, where the issuance of securities registered at the Superintendent Office are publicly offered and negotiated<sup>22</sup>. The stock exchange may also negotiate with non-registered securities as long as they clearly

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<sup>20</sup> Art. 1 of the Stock Markets Law.

<sup>21</sup> Art. 9 Ibid.

<sup>22</sup> Art. 30 Ibid.

separate and identify registered securities from the non-registered ones. Stock exchange offices must be previously approved and authorized by the Superintendent Office.

## **V. EXCHANGE CONTROLS**

### **A. Business transactions with nationals, residents or non-residents**

In general, nationals are legally defined as (i) those born in Nicaragua, (ii) those whose mother or father are Nicaraguan, or (iii) foreign individuals that have previously renounced to their nationality and have fulfilled the legal requisites to request and obtain the Nicaraguan nationality. Central American persons may request the Nicaraguan nationality without renouncing to their original nationality<sup>23</sup>.

On the other hand, residents are foreign individuals that have their legal residency, temporary or permanent, in Nicaragua; while the non-residents are those who have entered to the country for a limited period, visiting the country for specific purposes without establishing their legal residency in Nicaragua<sup>24</sup>.

There are some limitations or restrictions when conducting a business with non-residents in Nicaragua; being important to mention that a non-resident is not legally allowed to perform economically compensated activities in Nicaragua<sup>25</sup> and, there are some institutions (public authorities, banks, etc.) that do not recognize non-residents as legal representatives for companies alleging that foreign individuals must only identify themselves with their Nicaraguan Residence Card when acquiring legal obligations<sup>26</sup>.

Additionally, given that companies in Nicaragua are registered as employers before the Social Security System, reporting employees is a requirement and, therefore, residents employees are also reported to such system. Moreover, within the documents to be filed before the Immigration Authority when requesting the legal residency for work purposes, the contract must be filed as well; such contract must to contain a special provision indicating that it will enter into force and effect only when the Residence Card issued by the Immigration Authority.

Investors may receive loans from nationals or residents; non-residents, on the other hand, are not allowed to perform compensated activities in Nicaragua.

### **B. Investment Controls**

From a general perspective, there are no restrictions on direct or indirect investments in the country. However, there are a few restrictions on the control bodies of the company as well as on the stock's percentage for foreign investors, depending on the business sector (please see Section II. General Considerations, Chapter "A" Investment Policies, in this memorandum).

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<sup>23</sup> Arts. 16, 17 and 19 of the Nicaraguan Political Constitution.

<sup>24</sup> Arts. 7 and 41 of the Immigration Law.

<sup>25</sup> Art. 47 of the Foreign Status Law.

<sup>26</sup> Art. 71 Ibid.

There are no general requirements for investors to make declarations on the nature of their investments. However, for specific businesses there is the need to request prior authorizations before the corresponding authorities and, once authorized, filing periodically reports is required (regulated sectors, such as free trade zones, banking and financial institutions, telecommunications, maritime and air transportation, energy and mining, etc.).

### **C. Money transfer**

According to the Monetary Law, the external value of the Nicaraguan currency “Cordobas” is established by the Directive Board of the Central Bank of Nicaragua, according to either of the following instruments: (i) US dollar, or any other currency or groups of currencies regionally or internationally accepted as payment means; (ii) any asset created through an international treaty signed by Nicaragua; or (iii) any regional asset created by a Central American treaty<sup>27</sup>. In practice, however, parties use the official exchange rate in connection with the US dollar, as published by the Central Bank of Nicaragua.

Money transfer into or out of the country is subject to reporting restrictions when such transfer is equal or superior to US\$10,000.00. Such reporting requirement is aimed to determine the source and destiny of the money, as part of the legal mechanisms implemented to prevent money laundering activities; reports are to be made before Customs Authority (if cash) or before the bank involved (if a wire transaction), in this case the bank will report it to the Superintendent Office. Hard currency may be taken out of the country following the same reporting restrictions depending on the amounts involved.

Remittance of profits abroad is taxed depending on the profits source in Nicaragua and as long as such profits are not under any special tax exemptions. For instance, profits derived from payments for rendered services is taxed with 10.5% and, according to a recent amendment to the Tax Law, in force and effect from January 2010, dividends paid to shareholders of companies are subject to a withholding tax of 10%<sup>28</sup>. Such withholding taxes must be duly reported and paid to the Nicaraguan Tax Authority.

## **VI. IMPORT/EXPORT REGULATIONS**

### **A. Customs regulations**

Nicaragua is member of different agreements related with customs, tariffs and trade; among others, the most important are the General Agreement on Tariffs and Trade (GATT), Dominican Republic and Central American Free Trade Agreement (DR-CAFTA), Central American Uniform Customs Code (known as CAUCA, in Spanish) and its Regulations and, Central American Tariffs System (known as SAC, in Spanish). Nicaragua is not a member of EEC; however during the last two years it has been actively

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<sup>27</sup> Art. 13 of the Monetary Law.

<sup>28</sup> Art. 3 of the Amendments to the Tax Law, amending Art. 15 of the Tax Law.

participating with the other Central American countries in meetings and negotiations with the European Community, aimed to approve a regional agreement on trade.

Additionally, Central American integration rules require for its members to apply the same import duties. However, there have been exceptions for many years, and one of the integration treaties, the Agreement on the Central American Tariff and Customs Regime (*Convenio sobre el Régimen Arancelario y Aduanero Centroamericano*), ratified in 1985, allows countries to modify import duties unilaterally in certain cases. That provision has been broadly interpreted and used by the Central American governments, including Nicaragua, which has used this unilateral modification authority in relation to the computation of import charges on various types of goods.

The Nicaraguan Customs Authority is the one in charge of valuing goods, through a well organized inspection and valuation system. The interested parties, however, are also authorized to file their own goods valuation by means of their private customs agents using an official informatics system, subject to further control from the Customs Authority. Such valuations are carried out by applying the corresponding tariffs established in the applicable agreements or documents according to the nature of the goods and their origin.

## **B. Exports**

Depending on the goods to be exported, there would be specifically requirements or restrictions on exports; origin certificates, permits from the involved authorities (health ministry, forest and agriculture ministry, energy and mines ministry, etc.) along with all the legal documentation identifying the exporter (individual or legal entity) and goods, are some of the requirements the authorities may ask for the exporters to fulfill.

Exporters must be registered at the Exports Center (known as CETREX, in Spanish), filling out the corresponding paperwork according to the exporter's legal and fiscal regime (free trade zones, corporations, cooperative associations, etc.); in some cases, special licenses are also required to export goods that may be under a special control regime (milk products, controlled pharmaceutical products and some others that may be under control for a determined period), paying fees (according to the exports amounts involved) for CETREX's paperwork and procedures.

## **C. Foreign trade regulations**

There are some foreign trade regulations which would be applicable depending on the goods imported/exported and their origin. If the products are covered by the DR-CAFTA, for instance, then specific regulations contained therein may apply when importing or exporting such goods to or from Nicaragua, from or to the United States of America. Origin Certificates and Licenses, Permits or Authorizations from the country's respective authorities are required for the importer/exporter to file before the Customs Authority and CETREX in order to be subject to DR-CAFTA's benefits. The same would be applicable for goods under other trade agreements.

## **D. Imports**

Importers must be registered at the Customs Authority's registration system in order to carry out their imports activities<sup>29</sup>. Additionally, according to the Import Tariff Act of 1986 (*El Derecho Arancelario a la Importación (DAI)*), goods are subject to import tariffs and duties, which range between 0% and 15%. The SAC classification, along with any applicable trade agreements, determines the applicable ad valorem tariff rate in accordance with the type of goods. The value added tax, specific consumption tax, and other applicable taxes are also collected upon importation. Nicaragua has enacted several temporary importation regimes to encourage value-added manufacturing activities that use foreign-sourced inputs.

Barriers on importation also depend on the type of goods to be imported. In this sense, merchandise statements for imports must contain, besides other requirements, licenses, permits, certificates as well as other documents referred to the fulfillment of those non-duties restrictions and regulations the merchandise may be subject to before it is finally imported to the country<sup>30</sup>.

### **E. Manufacturing requirements**

Products manufactured in the country may contain components found or produced in Nicaragua or abroad; keeping in mind that in order to be subject to fiscal benefits applicable for special regimes, it is required for the goods to be produced in Nicaragua (such as exemption from export and re-export duties on goods produced in free trade zones).

Importation of component parts must be conducted through a specific customs regime<sup>31</sup>. If component parts are definitively imported to Nicaragua in order to be independently commercialized (i.e., not being incorporated to a final product), then the corresponding customs regime would be that of a *definitive importation*, being charged with the corresponding import duties for the specific type of goods imported (component parts). It is important to consider, however, that if the importer is a company established under a special fiscal regime to carry out its activities (free trade zone for manufacturing purposes), then it would be required for such importer to incorporate the component parts into the final product the company is authorized to produce in the country.

### **F. Product Labeling**

There are some labeling requirements to be observed depending on the products involved; that is, there is no a general rule to be applied indistinctively on all kind of products.

Most common labeling rules are the ones contained in the Nicaraguan Technical Norm No. 03 021 – 08, first revision, on pre-packed or pre-canned food for human consumption; which establishes as minimum labeling requirements, among others, the following: food name, ingredients list, net content and strained or drained weight, name

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<sup>29</sup> Arts. 19 and 20 of the Regulations to CAUCA.

<sup>30</sup> Art. 321 Ibid.

<sup>31</sup> Art. 91 CAUCA and Art. 357 of the Regulations to CAUCA.

and address of the importer, packer, distributor, exporter or seller, country of origin, sanitary registry, expiration date, etc.

Regarding the language, the aforementioned Norm stipulates that when the labels are not in Spanish, then an additional label in Spanish must be attached. On the expiration date, the Norm disposes that correlative numbers may be used, writing (in letters) the months for countries that may be induced to error by using numbers solely, like Nicaragua.

## **VII. STRUCTURES FOR DOING BUSINESS**

### **A. Governmental participation**

Private investments generally do not require government participation neither on the ownership nor in the operation of the entity. However, in some public bids involving natural resources granted by concessions, permits, licenses or authorizations to investors, part of the bid's terms and conditions have included a special provision requiring for the investor to provide the government with a specific percentage of the investment involved. There is no any pre-established or regulated percentage or fee for these purposes, being established, instead, by the government for the specific project.

Investor's liabilities for partners, investors or others, depend on factors such as whether there are or no any previous agreements defining the project, liabilities, specific responsibilities, etc. Under Nicaraguan law liabilities may arise out of labor matters (employer/employee relations, including social security rights), civil matters (contracts, compensations to partners or other investors for damages and losses, civil liability for harm caused to third parties, etc.), administrative matters (permits, concessions, licenses, supervision and control exercised by the government depending on the project's nature), criminal matters (crimes or felonies committed through the execution of the project or investment) and tax matters (filing of tax returns, withholding taxes for the Tax Authority, payments, audits, etc). Under the current Nicaraguan Criminal Code, representatives and directors of companies are personally responsible for any crime committed through the entity.

### **B. Joint Ventures**

Nicaraguan law does not provide a special legal regime for JVs; therefore, JVs are under the general category the Civil Code has established for contracts, being deemed for all legal purposes as contract celebrated within the parties involved.

Upon the aforementioned, JVs contracts are not legally subject to registration before any public registry; although, in practice, some of these public institutions have allowed JVs registration, without creating a right or legal status that is not previously provided by law.

Consequently, as in any other private contract, parties may execute a JV contract establishing the terms and conditions they deem appropriate (i.e., manager, directors, fees, responsibilities, liabilities, accountability before third parties and government –such

as tax authority-, duration, termination, etc.), being the parties involved legally obliged to observe and respect each of the obligations contained in the JV contract, taking into account that the parties involved in such contract could be individually responsible before third parties and government claims, since a JV does not create a joint legal personality for the parties involved in it.

If the JV is established outside Nicaragua and is conducting its business (i.e., rendering services) from outside Nicaragua, then no Nicaraguan party would be required to be a member of the JV, since fulfillment of governmental obligations (withholding tax on JV's invoices) would be up to entities or individuals receiving the services in Nicaragua. However, if the JV is intended to be established in Nicaragua in order to carry out business inside Nicaragua, then a Nicaraguan party would be needed to have legal presence in the country before the government offices (tax, customs, municipalities, authorities for the specific business' sector, etc.).

There are no restrictions on capitalization, as long as it does not go beyond the control and capital limits established for some specific sectors<sup>32</sup>, nor beyond the private conditions that might be set forth among the parties.

### **C. Liability companies and partnerships**

There is a kind of legal entity in Nicaragua called in Spanish "Sociedad Colectiva"<sup>33</sup> (Collective Company, in English, hereinafter the "Company"), which is the one selected by investors interested in running their businesses under either Liability Limited Partnerships or Companies, for being this Collective Company the one with more similar characteristics.

The Company has independent legal existence and provides limited liability to capital contributions of its owners. The organizers must execute the organization deed before a Nicaraguan public notary and register it before the Public Commercial Registry and publish notice of its organization in the Official Gazette.<sup>34</sup> Registration process may take from three to six weeks; and fees involved depend on the capital stock established when incorporating the company (ranges from US\$50.00 to US\$1,500.00, approximately, official registration fees).

The Company must be formed by a minimum of two partners, whether individuals or companies, with no nationality requirements, and may receive contributions from any number of additional partners. These companies have neither minimum capital stock nor minimum paid-in requirements. The name of the company must include either the names of all partners or the name of at least one partner along with the words "*y compañía*" ("and Company"). In order to limit the partners' liability, the company's name must end

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<sup>32</sup> Please see Chapter II. "GENERAL CONSIDERATIONS", subsection A. "Investment Policies" in this memorandum.

<sup>33</sup> Arts. 133 – 191 of the Nicaraguan Code of Commerce.

<sup>34</sup> Although required by law, in practice many LLCs do not publish this notice. In most cases they are not actively pursued by authorities on this matter.

with the word “*limitada*” (limited); otherwise, partners are severe and jointly responsible for all the obligations incurred by the company.

The administration of the Company corresponds to each and all of the partners, unless it has been expressly delegated to one or some specific partners. If it was not delegated, then it is legally understood that partners have reciprocally conferred each other the power to administrate the Company, being all of them severe and jointly responsible without the need of further approval. However, if the administration powers were delegated to one or more partners, then the other ones are not allowed to intervene in the Company’s administration.

Tax consequences for investors basically imply the registration of the company before the Tax and Municipal Authorities; filing the corresponding bi-monthly and monthly tax returns for payment of Income Tax, Definitive Minimum Payment and Value Added Tax, among others. There are no restrictions on capitalization other than those that might be set forth by the partners in the incorporation deed or afterwards through a legally adopted decision.

#### **D. Sole Proprietorships**

Sole Proprietorships are not allowed under the Nicaraguan legal system. Nicaraguan law requires at least two persons, either individual or legal entities, to form a company or a corporation. However, one person may exercise commercial activities on his/her own by registering him/herself at the Public Registry of Commerce, obtaining his/her corresponding Taxpayer Number and fulfilling with all tax, national and municipal, obligations; being allowed to use a commercial name, different from his/her natural name.

#### **E. Subsidiaries/Branches/Representative Offices**

Subsidiaries and branches are allowed in the country<sup>35</sup>. Procedures require that the foreign company’s articles of incorporation and bylaws, amendments included, as well as its Board of Directors or Shareholders resolution deciding to open a branch in Nicaragua, must be legalized up to the nearest Nicaraguan consulate, then authenticated at the Foreign Affairs Ministry and, afterwards, all documents must be inserted into a Nicaraguan Public Notary’s Protocol which will be registered before the Public Registry of Commerce.

Timing depends on how long the legalization process takes abroad, which also depends on where the foreign company is established (could take from one to four weeks); then, insertion into a Notary’s Protocol and registration at the Commercial Registry could take from three to six weeks. Official registration fees range from US\$50.00 to US\$1,500.00, approximately.

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<sup>35</sup> Arts. 337 – 340 of the Nicaraguan Code of Commerce.

A Nicaraguan individual or a foreign with his/her legal domicile in Nicaragua must be granted with a Full POA (*Poder Generalísimo*, in Spanish), who will be representing the branch office in Nicaragua.

Investors would be liable for all obligations contracted by the branch, whether civil, labor, tax, administrative or commercial, before third parties and before governmental authorities through the branch.

Tax consequences for investors imply the registration of the company before the Tax and Municipal Authorities; filing the corresponding bi-monthly and monthly tax returns for payment of Income Tax, Definitive Minimum Payment and Value Added Tax, among others, there are no substantial differences from local companies' tax obligations. There are no restrictions on capitalization other than those that might be set forth by the Shareholders or Board of Directors resolution deciding the opening of the branch, or afterwards through a legally adopted decision.

On another matter, there are no specific regulations on Representative Offices for foreign commercial companies; therefore if a Representative Office would like to operate in the country, it could do so by incorporating using any of the legal entities established in the Nicaraguan Code of Commerce (corporation, limited liability company, etc.), being subject to all legal obligations as any other Nicaraguan company.

There are, however, some special regulations for representative offices of foreign banks and financial institutions, being required the previous approval of the Banking Superintendent Office before establishing them in Nicaragua<sup>36</sup>. Additionally, such representative offices (for banks and financial institutions), must file at the Banking Superintendent Office information regarding its internal operative structure, as well as information related with credit and investment operations, and deposit accounts kept with banks or financial institutions in the country, among others<sup>37</sup>.

It is important to clarify that Representative Offices for foreign banks or financial institutions are allowed only to place funds in the country, whether credits or investments, acting as well as information centers for their clients. They are not permitted to receive funds from the public in the country.

## **F. Trust and other fiduciary entities**

The General Banking Law stipulates that banks are allowed to act as trustees for trusts established in virtue of *special laws*, as long as in such operations the banks neither assume the obligation to pay fixed or determined yields nor to integrally return the capital received in trust<sup>38</sup>.

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<sup>36</sup> Art. 14 of the Banking General Law.

<sup>37</sup> Art. 3 of the Norm on the Minimum Information Required for Representative Offices of Foreign Banks and Financial Institutions (Resolution No. CD-SIBOIF-448-1-OCT24-2006).

<sup>38</sup> Subsection 8 of Art. 54 of the General Banking Law.

Nevertheless, it is important to mention that currently there are no any special laws on the matter; being, trust agreements, therefore, not under any special applicable regulations in the country, with neither special legal treatment to goods or assets given in trust nor governing the relation among the parties.

## **VIII. REQUIREMENTS FOR THE ESTABLISHMENT OF A BUSINESS**

### **A. Alien Business Law**

Nicaragua counts with a foreign investment promotion law which basically recognizes the same rights for foreign investors as those granted for nationals. In general, there are no limitations on foreign investment, although some industries (please see Chapter II “General Considerations”, Subsection A “Investment Policies”) that have some percentage limitations and restrictions on foreign investment. There is no a specific alien business law; being the general principle that foreign investment has the same rights and obligations as the national ones do; with the exception of national security and public healthcare matters<sup>39</sup>.

Regarding registration and reporting requirements, we comment that Art. 9 of the Foreign Investment Promotion Law establishes that foreign investments interested in make use of the benefits contained in such law, must be registered at the Foreign Investments Statistics Registry attached to the Commerce, Industry and Promotion Ministry. However, in practice most of the foreign investments do not register themselves before such office, given that, basically, the rights in such law are the same granted for nationals.

### **B. Antitrust Law**

Pursuant to Art. 2 of Law 601 “Competition Promotion Law”, any act, conduct, transaction or agreement executed by economic agents in all sectors of the Nicaraguan economy, including those carried out outside Nicaragua and, as long as such acts produce or might produce antitrust effects in the Nicaraguan market, are subject to Law 601.

Law 601 includes some anti-competition practices, which, among others, are the following:

#### Anti-competition practices among competitors economic agents:

- a) Agreements, contracts, covenants, whether express or tacit, celebrated in order to fix, rise, agree on or manipulate prices or other conditions of sales / purchases;
- b) Divide, distribute, assign or impose portions or sectors of a current market by means of clients, sellers, suppliers, kind of products, etc.

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<sup>39</sup> Art. 3 of the Foreign Investment Promotion Law.

- c) Celebrate agreements to eliminate other companies from the market or limiting the access to it.
- d) Fix or limit productions amounts, establishing an obligation to not produce, process, distribute other than a specific amount of goods or a limited number or frequency of services.

Anti-competition practices among non-competitors economic agents:

- a) Unjustified contract or agreement for the exclusive distribution of good or services;
- b) Imposition of prices and/or other conditions a distributors must observe when providing goods or services;
- c) The sale of a good conditioned to the acquisition of other or the use of a service;
- d) Purchase or sale conditioned to not use or acquire, sell or provide goods or services produced, processed or distributed by third parties.

Regarding filing or reporting requirements, we comment that there two filing conditions for mergers and acquisitions or concentration processes, which are (i) the parties' combined market share on the relevant market in Nicaragua is that of 25% or more and; (ii) the parties' combined gross income exceeds 642,857 times the authorized average minimum wage. Therefore, acts or activities involving either of these two conditions, must notify and ask for authorization before the corresponding authority, which in Nicaragua is the one called PROCOMPETENCIA.

PROCOMPETENCIA is the authority for competition matters, and it is empowered to conduct *ex officio* investigations as well as to receive denonounces from parties affected as a result of anti-competition practices.

### **C. Environmental Regulations**

Depending on the investor's business, then it will or will not be subject to environmental regulations. In general, all projects or businesses relating to natural resources, or given to the business nature it may generate environmental impact, then environmental regulations will apply for the business. In this case, environmental impact assestments are required from investors according to the specifics the Natural Resources and Environment Ministry (MARENA) may issue for the specific project/business; afterwards, if approved by MARENA, and after filing all documents and paperwork required (such as articles of incorporation and by-laws, POAs, project's information/descriptions, filling out forms, etc.), MARENA may issue the corresponding environmental permit allowing the investor to start business activities.

There are some additional costs when requesting environmental permits, and most of them are in connection with fees for paperwork and administrative expenses from the authorities involved. In some cases, depending on the prjoect, other ministries may work

together with MARENA (Health Ministry, Energy and Mines Ministry, Forest and Agriculture Ministry, etc.) in order to assess all the aspects involved in the business and issuing the corresponding permits, opinions or recommendations.

#### **D. Government Approvals and Licenses/Permits**

Government approvals are required as long as the business is under the category of a “Regulated Sector” (such as, telecommunications, energy and mining, forest, human consumption food, etc.). Such approvals, depending on the business, are issued in the form of Licenses, Operation Certificate, Concessions, Permits, Resolutions, etc.; taking, usually, from two weeks to two months to fulfill all procedures and requirements aimed to receive the corresponding approval.

Investors apply for approval (license, permit, etc.) by filing all documents required by the involved authority(ies) and filling out all paperwork / forms. Documents required depend on the business sector, but common ones are articles of incorporation and bylaws (registered at the Commercial Registry), POAs (registered, if necessary), Taxpayer Identification Number, Municipal Certificate; depending on the sector, authorities may ask for permission or licenses in force issued in the country of origin, a technical description of the project, environmental impact assessment, economic and financial structure (amount of investment) in situ visits to the proposed investor’s headquarters facilities, laboratories, etc.

Fees change from ministry to ministry or authorities involved; which could be established by a percentage of the investment amount or by applying fixed amounts for specific cases according to their internal regulations for each business sector.

#### **E. Insurance**

There are no general requirements for investors or enterprises to carry insurances. However, when dealing with regulated sectors, depending on the amount of the investment and risks involved (environmental, civil, health, fires, etc.), the regulator entity may require insurance policies before granting its approval. Insurances commonly requested are those covering civil damages and extra-contractual responsibility (third parties harm); nevertheless, given the specific circumstances of the business/project, additional covering might be asked by authorities (fires, floods, robbery, etc.).

There is no a state monopoly on insurance in Nicaragua; there are Nicaraguan private insurance companies operating in the country under the regulation and supervision of the Superintendent Office, given that the insurance business is a regulated sector in the country.

### **IX. OPERATION OF THE BUSINESS**

#### **A. Advertising**

There are no restrictions on advertising, as long as the publicity does not affect the public moral and does not contain false information that may induce to error or mistake.

It is important to consider that Nicaragua counts with a “Consumers Defense Law”, which punishes companies using false publicity against consumers, being civilly responsible for the promotion of good and services based on false statements regarding competitors’ advantages or disadvantages<sup>40</sup>. False publicity is also considered as an anti-competition activity and as a crime, being also punished with prison (1 to 3 years)<sup>41</sup>.

## **B. Attorneys**

It is recommendable for the investor to have a local counsel in order to obtain professional and specialized advice on the legal aspects involving the business in Nicaragua. Attorneys may be found by Internet or telephone directory. Large law firms usually have their own websites; however, the telephone directory contains a much more ample of law practitioners, including both the large and the small law firms and sole practitioner attorneys.

Fees vary from firm to firm and attorneys involved. There are some firms charging by the hour (from US\$50.00 to US\$250, usually) while other attorneys charge a fixed fee for each case (depending on the nature and complexity of the case).

## **C. Bookkeeping Requirements**

Investors must keep local book of accounts, BOD and Shareholders resolutions book as well (Minutes Book). All books must be kept in Spanish, as this is the official and legal language in the country; being also necessary to register them at the Commercial Registry where the company is registered as a commercial entity. The accounting of the company must be carried out in the accounting books under the double-sided entry system<sup>42</sup>.

## **D. Business Ethics/Codes**

There are no business ethics/codes the investor must conduct the business in accordance with. However, Nicaragua counts with a strong and very ample legal system that punishes fraud or illegal acts committed through a corporate structure, both against the company or against third parties. Corporate crimes (white collar crimes) are included in the current Nicaraguan Criminal Code, punishing shareholders, partners, directors, representatives, comptrollers, managers, etc., involved in the authorization of illegal acts. Sanctions are both pecuniary and prison (1 to 3 years)<sup>43</sup>.

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<sup>40</sup> Art. 27 Subsection “d” of the “Consumers Defense Law”.

<sup>41</sup> Art. 272 of the Nicaraguan Criminal Code.

<sup>42</sup> Art. 29 of the Nicaraguan Code of Commerce.

<sup>43</sup> Arts. 278 and 279 of the Nicaraguan Criminal Code.

## **E. Consumer Protection Laws**

There is a Consumer Protection Law aimed to guarantee consumers the acquisition of good and services of the best quality; by means of a kind, just and equitable treatment<sup>44</sup>.

This is a Public Order and Social Interest Law, therefore rights granted therein can not be waved and prevail over any other law, use, customary, commercial practice or provisions in contradiction with this law<sup>45</sup>.

Main rights of consumer are, among others: health protection and safety in the goods and services consumption; education for consumption; truthful, opportune, clear and adequate information on goods and services available in the market; integral, timely and adequate reparation of damages and losses suffered, caused by suppliers; demand the fulfillment of promotions and offers when providers do not fulfill them and; access to the judicial and administrative organs in order to protect their legitimate interests<sup>46</sup>.

Companies breaching this law may be subject to administrative procedures and lawsuits filed by offended consumers. Therefore, investors must put into practice policies aimed to respect abovementioned rights when conducting their business in the country, avoiding the use of false publicity/advertising, promotions or offering services or goods without expressing the necessary information to know the real nature, ingredients, components, side-effects, etc., of the services or goods offered; without omitting, as well, the inclusion of all directions for the correct use and advantages of the services or products.

## **F. Construction**

Construction projects basically require two kinds of Municipal authorizations: Use of Soil Certificate and Construction Permit. The Use of Soil Certificate requires an environmental assessment carried out by the Environmental Assessment Department of the Municipality involved; if the project or works to be executed show a Potential Environmental Impact High Risk, then it would be required an Environmental Permit or an Environmental Impact Assessment, as the Natural Resources and Environment Ministry (MARENA) may decide.

Once the Use of Soil Certificate is obtained, then the Construction Permit is requested at the Urbanism Department of the Municipality. Some of the documents required are the following: request letter, project's plans with their definitive technical approval, payment of Construction Tax (1% of the project's total value), authorization of the involved government offices, municipal solvency of both the project's owner and constructor, updated and in force constructor's operation license issued by the Transport

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<sup>44</sup> Art. 1 of the Consumers Protection Law.

<sup>45</sup> Art. 2 Ibid.

<sup>46</sup> Art. 12 Ibid.

and Infrastructure Ministry, Constructor's Municipal Certificate and bank guarantee, payment of the supervision rate.

Supervision Rates are the following:

Urbanization Projects: US\$100.00, approximately, under a monthly basis.

Edifications from 1m<sup>2</sup> to 100m<sup>2</sup>: US\$0.05, approximately, per m<sup>2</sup>.

Edifications from 101m<sup>2</sup> to 200m<sup>2</sup>: US\$0.10, approximately, per m<sup>2</sup>.

Edifications from 201m<sup>2</sup> to 1,000m<sup>2</sup>: US\$0.15, approximately, per m<sup>2</sup>.

Edifications superior to 1,000m<sup>2</sup>: US\$0.20, approximately, per m<sup>2</sup>.

Timing depends in great measure of the environmental assessment and Use of Soil Permit; if there is no need to obtain Environmental Permit or to file Environmental Impact Assessment, both before MARENA, then the process may be faster and could take around 1 to 3 weeks. On the contrary, if MARENA permits or environmental impact assessment are required, it might take from 3 to 6 weeks.

## **G. Contracts**

Investors may freely enter into local agreements, deciding the terms and conditions which will govern their contractual relationship. However, in certain projects where the Transport and Infrastructure Ministry may be appointed as the Supervisor (highways and some other edification projects), then the inclusion of some specific clauses may be ordered by the authorities.

Choice of law and jurisdiction may be freely agreed among the parties (i.e., investors and construction companies); nonetheless, in construction-related contracts is more likely for local companies to choose Nicaraguan law and venue. Additionally, authorities that may be involved in this kind of projects (MARENA, Municipality, Transport and Infrastructure Ministry, mainly), will always be acting under the Nicaraguan law and exercising the rights contained therein, disregarding the contractual stipulations the investor may have entered into in with the construction companies. In some other cases, however, (bids), the terms and conditions establish that the governing law for the project will be no other than the Nicaraguan law.

## **H. Price controls**

Price controls are currently exercised for gas and electricity distribution. The Energy National Institute (INE) periodically issues a chart with the approved prices for the different sizes of liquefied gas-cylinders and the distribution of electricity per kilowatt/hour consumed.

## **I. Product Registration**

Some products require a previous registration in the country for their commercialization or distribution. Products associated with healthcare and human consumption in general (food, cosmetics, etc.), agricultural supplies (chemical, organic and inorganic), etc., require the previous granting of permits, sanitary registration, certificates, etc., which are issued by the government office involved with the specific product (Health Ministry, Agriculture and Forest Ministry, etc.).

The registration process basically requires the filing of product samples before the corresponding authorities in order to be assessed by the authority's respective division. Together with the samples, general and specific information of the product must be filed as well, along with all current and in force certificates, licenses, permits the importer has obtained in its country of origin. In some cases, such certificates are simply validated by the Nicaraguan authority, making the registration process easier and faster. Information on the importer (company information, registration data, domicile, representative, etc.) must also be filed.

Timing depends on the nature of the product and laboratory analysis requirements (when required, such as human consumption pre-packed or canned food). In this cases, the process may take from 1 to 2 months. However, for products where a simply validation of the foreign license or certificate of origin is practiced (i.e., some agricultural products or supplies), the process is faster, and may take from 1 to 2 weeks. Nevertheless, in either case documents issued abroad must be legalized up to the nearest Nicaraguan consulate and then before the Foreign Affairs Ministry in Nicaragua prior to start registration proceedings.

Fees depend on the product to be registered and the authority involved, and may be either a percentage over the whole stock of products or a fixed rate for the registration of a specific product.

## **J. Reductions or Return on Capital**

There are no general restrictions preventing the repatriation of capital while the corporation is still ongoing.

Nevertheless, the banking sector has an express restriction that forbids the repatriation of capital of foreign banks branches in the country unless it is previously authorized by the Banks Superintendent Office once finished the business' liquidation.

## **K. Sale of Goods**

Sale of regulated goods (i.e., human consumption food, healthcare products, chemical products –agricultural supplies-, weapons, etc.), must comply with regulations on the manner and place of sales as well as with pre-requisites for their distribution in the country.

Once obtained the corresponding permits, certificates or licenses, they must be presented in the manner and place indicated by authorities (labeling requirements, special

cans, refrigeration, safety measures, etc.). However, those goods that are not under any regulation may be sold without restrictions of manner, time and place.

## **L. Trade Associations**

There are some trade associations in Nicaragua, such as the Nicaraguan Commerce Chamber (CACONIC), Nicaraguan Construction Chamber (CNC), Nicaraguan Fishing Chamber (CAPENIC), among others.

It is not mandatory for the investor to join such chambers, however there are some benefits derived from the association (training, support for the resolution of disputes, communication channels with governmental offices, commercial alliances, etc.). There are no expressly mandatory commercial practices; notwithstanding, members of these chambers are subject to the rules of each chamber, and must contribute with them for their well functioning.

Among other conditions, there are some fees requirements in order to be affiliated as well as monthly quotas to keep the association in force. Each chamber has its own conditions and fees, ranging from US\$50.00 to US\$500.00, approximately, the association fees, while the monthly quotas vary from US\$25.00 to US\$200.00, approximately.

## **X. CESSATION OR TERMINATION OF BUSINESS**

### **A. Termination**

Termination of a business in Nicaragua requires both the liquidation as well as the dissolution of the company created for running the business.

The liquidation is oriented to pay all obligations the company have with creditors, whether in cash, bank transfers, goods (real estate or movable assets), as well as the obligations existing within the same company (salaries, labor benefits, social security obligations, etc.); and, only when all of the aforementioned obligations have been satisfied, then dividends (if any), assets and goods of the company may be distributed among the shareholders or sold as it may be decided by the Liquidator Board, which must be designated to handle all the liquidation process.

According to Nicaraguan law, labor obligations must be satisfied previously to any other obligations the company may have (including creditors); being worth mentioning that a termination of business notice must be filed before the Labor Ministry, intervening to make sure the employees receive all payments and labor benefits according to law.

The liquidation and dissolution of the company must be decided by the percentage of shares established in the Articles of Incorporation and By-laws of the company;

otherwise, that is if nothing was stipulated in this respect, then the Code of Commerce requires the favorable vote of at least 75% of the stock<sup>47</sup>.

Once liquidated, a public deed of Liquidation and Dissolution of the Company must be issued by a Nicaraguan Public Notary and registered by the Public Registry of Commerce. Afterwards, notification proceedings to government authorities the company was related with during its existence are carried out (Tax, Municipality, Customs, and the specific ones depending on the nature of the business, Health Ministry, MARENA, etc.).

All obligations with public authorities must be settled and closed, being necessary to pay all taxes, fees, duties, rates and so forth pending at the moment the company decided to terminate the business.

Regarding tax matters, VAT, Income Tax, Consumption Specific Tax (if applicable), must be entirely paid to the Tax Authority, giving them the Accounting Books duly updated until the termination of business for their following custody. Original tax certificates must be delivered as well to the Tax Authority for their custody (Taxpayer Registration Certificate, Indirect Tax Collector –VAT-, Taxpayer Identification Card). Municipal Income Tax must also be fully paid before the Municipal Tax Collector Office.

## **B. Insolvency/Bankruptcy**

If an investor falls in insolvency/bankruptcy, then the investor must fulfill the requirements and carry out procedures established in the Nicaraguan Code of Commerce.

The investor that has stopped payments of its regular obligations and, if its last balance sheet shows liabilities higher than assets, is obligated to declare its bankruptcy status within the following ten days after the suspension of payments<sup>48</sup>.

The state of bankruptcy declared by court, separates the investor from the administration of all the assets that may be subject to embargo in order to be managed by the creditors' representative as appointed by such creditors. The investor is not allowed to leave the place of trial unless authorized by creditors and appointing a sufficient POA to represent him.

Basically, bankruptcy gives place to the liquidation of all obligations of the company (attending tax and labor obligations first), and then satisfying obligations with creditors. Payment may be done by movable assets, real estate property, etc.

However, if it is the case of a fraudulent bankruptcy, the investor may also be criminally prosecuted, pursuant to Arts. 258 to 262 of the Nicaraguan Criminal Code, which punishes fraudulent bankruptcy with 2 to 6 years in prison.

On another matter, the investor under the state of bankruptcy (not fraudulent bankruptcy) may enter into any agreement with creditors in order to find a way out to the

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<sup>47</sup> Art. 262 Subsection 1 of the Nicaraguan Code of Commerce.

<sup>48</sup> Art. 1067 Ibid.

problem. Therefore, under the terms and conditions of such agreements or covenants, the investor may try the business restructure in order to satisfy its obligations with creditors; provided that the execution of this kind of agreements suspends the bankruptcy lawsuit before Court. The breach of the agreement, nevertheless, may result in the continuity of the lawsuit.

## **XI. LABOR LEGISLATION, RELATION, AND SUPPLY**

Employment and labor laws are an important part of Nicaragua's legal structure. Basic labor rights have enjoyed constitutional status since 1987, and include minimum conditions of liberty and dignity for all workers, equal pay for equal work, an 8-hour workday and 48-hour workweek as a maximum, a minimum wage, double pay for overtime, a Christmas Bonus given on 12 continuing working months (consisting on a full month salary, and severance payment and the right to reinstatement for "unjust" dismissal. The Labor Code (1996) follows the principle of minimum standards that can only be negotiated in the direction of improvements for the employee. The Labor Code also addresses collective bargaining rights, including the right to unionize and the right to strike pursuant to a mandatory conciliation process.

The Labor Code defines an employment relationship as one in which the employee receives money in exchange for services and is subject to direction and control by the employer. Employment agreements need not be in writing, but oral agreements are typically interpreted in favor of the employee. Even in the case of written agreements, the minimum standards of employment in the Labor Code cannot be reduced.

Employers must issue their Internal Work Regulations and submit it to the Ministry of Labor for approval. Nicaraguan employees are generally accustomed to working under Internal Work Regulations, and expect it to cover the following areas, which are provided by law, but may be improved upon (but not diminished or contradicted) by the employer:

**Work Schedule.** Standard daytime (6AM to 8PM) working hours: 8 or 9 hours per day, 48 hours per week; night shift (7 hrs/day, 42 hrs/wk). These provisions do not apply to employees who set their own work-schedule, such as salespersons and upper-level management. At least a 30-minute lunch break is part of the paid day's work and at least one day of rest per week.

**Overtime.** Payable as double-time on daily basis, with the workday not to exceed 12 hours and workweek not to exceed 57 hours.

**Holidays.** Eight mandatory paid holidays: January 1, Thursday and Friday of Holy Week, May 1, July 19, (August 1 and 10 – Managua only), September 14 and 15 and December 8 and 25. Work on these holidays is voluntary and must be paid at double-time rates. Holidays that fall on a Sunday are taken on the Monday following the date.

**Wages/Payment.** The minimum wage in Nicaragua depends on the industry or economic sector, and is reviewed every six months by the Labor Ministry in meetings held with both employers and employees representatives. Current minimum wages vary from US\$75.00 to US\$175.00, depending on the economic sector.

**Paid Vacations.** Employees have a right to fifteen days of uninterrupted paid vacation for each six months worked. The Employer may determine when vacations are taken. Only half of the vacation time earned each year may be compensated with money, except in the event of termination. Employees may not allow vacations to accumulate for use in subsequent years.

**Trial period.** The law permits a one-month trial period. If the employee is dismissed without cause during this time, no benefits accrue.

**Social Security and employee income tax withholding.** Nicaragua has a mandatory social security system that provides all citizens with medical care, disability payments, and retirement benefits. The employer acts as a collector of percentage deductions made to the employee's salary (6.25%). In addition, the employer, according to a recent Presidential Decree which some sectors have declared as illegal (although not yet challenged through any legal recourse), must contribute with 16% of payroll for Social Security (prior to the decree, it was a contribution of 15%); and 2% for the National Institute for Technology (a government training program). The employer is also responsible for withholding the employee's estimated income tax; however, according to a recent amendment to the Nicaraguan Tax Law, an employee earning no more than US\$3,750., approximately, per year, would have a 0% tax rate<sup>49</sup>.

**Health Leave.** Unless otherwise agreed, the Social Security system pays all health leave. Social Security pays 60% of salary from the fourth day of hospitalized or non-hospitalized sick leave (unless it's an on-the-job injury, in which case payment begins on the day after the injury). Maternity leave is paid by Social Security at 60% of salary for three months (one month before birth and two months after).

**Thirteenth Month Bonus.** The law requires payment of a Thirteenth Month Bonus (*decimotercer mes*) equal to the most recent monthly salary received, payable no later than December 10. In the event of termination before the Thirteenth Month Bonus is paid, the employer must pay within 10 days the amount accrued at the time of dismissal.

**Termination of employment.** Nicaraguan employment law does not recognize the concept of at-will employment common in the United States. To avoid severance payments, an employer must only dismiss an employee if the employer has "just cause" as defined by the Labor Code. Employees terminated for "just cause" are due only accrued vacation time and Thirteenth Month Bonus, and any current wages. The following constitute "just cause" for termination:

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<sup>49</sup> Art. 4 of the Amendments to the Nicaraguan Tax Law (amending Art. 21 of the Tax Law).

- i) Physical or moral acts or libel committed against the employer or against a fellow worker at any time;
- ii) Criminal acts or property damage related to the workplace;
- iii) Acts that endanger security and working conditions in the workplace;
- iv) Release of the employer's confidential information;
- v) Unjustified absence for 2 consecutive days or 3 or more days during any month; or
- vi) Disobeying rightful instructions or orders from the employer.

To terminate for any of these causes, the employer must request authorization from the Labor Ministry within thirty days from the employee behavior. Failure to obtain authorization will forfeit the "just cause" for termination and render any termination unjustified. The employee may also terminate employment at any time and with or without cause, with the employer being liable for severance payment in the event of just cause. In the event of dismissal without "just cause" or employee resignation, the employer must give severance payment proportional to the total time worked by the employee. Only in the event of termination without just cause is the employer obligated to give a 15-day notice.

**Severance Pay.** If the employer dismisses an employee without "just cause" or if the employee quits for a "just cause" attributable to the employer, the employee will be entitled to severance pay of one month's salary for each of the first three years worked and 20 days' salary for each year worked over three, calculated based on average salary over the last 6 months. Severance pay may be no less than one month's salary and no more than five months' salary.

**Accumulated Vacation Pay and Bonus.** Independent of cause, the employee is entitled to payment for unused vacation time and pro rata Thirteenth Month Bonus upon termination.

**Foreign employees.** Headcount for all companies operating in Nicaragua must be at least 90% Nicaraguan. No percentage of payroll requirements apply. The Ministry of Labor may allow variations based on technical requirements. In order for a foreign to work in Nicaragua, it is necessary to previously obtain the corresponding Nicaraguan Residency Card allowing the foreign person to legally work in the country. Such Residency Card is requested and obtained at the Nicaraguan Immigration Authority (*Dirección General de Migración y Extranjería*).

**Workplace Discrimination.** The Nicaraguan constitution guarantees employees the right to work in an environment free from discrimination based on ethnicity, sex or religious beliefs.

**Safety Standards.** There is the General Law for Work Hygiene and Safety (Law No. 618), which establishes the obligation for companies to issue their Internal Regulations on Work Hygiene and Safety.

Such law demands for employers, as minimum requirements, to adopt preventive measures aimed to guarantee the hygiene and safety of employees; designate a person trained on occupational health to attend activities of promotion, prevention and protection against labor risks; guarantee to employees periodic occupational health exams; avoid risks; assess unavoidable risks; attack the risks in their origins and; adapt the work to the person, among others.

There is also the obligation to create the Mixed Commissions for Work Hygiene and Safety. Such commissions are integrated by the employer's representatives and those representing the workers unions and, their Constitution Minute must be notified, as well as any amendment, to the General Direction for Work Hygiene and Safety. Breach of Law 618 is punished with pecuniary and administrative sanctions.

**Unions.** Unions are recognized under the Labor Code, and their Articles of Incorporation must be registered in the Unions Registration Book at the Labor Ministry. Workers unions must be constituted with a minimum number of 20 members, while employers unions require at least 5 members. Most recognized unions are those pertaining to the construction (there are even mandatory bargaining collective agreements for this sector), health and garment sectors, though there are some other sectors (i.e., agricultural and livestock, etc.) with a minor presence of unions. It is no necessary for unions to be affiliated to a political party; though in practice some of the most notorious unions are expressly identified with left-wing parties.

## **XII. TAXES**

In May of 2003 the Nicaraguan legislature overhauled the national tax system, replacing among other laws the old income tax law (1974) and the old value added tax law (1984) with a comprehensive Tax Equity Law, and added Regulations in June 2003. Additionally, a Tax Code was enacted by the Nicaraguan Congress on 2005 as part of the compromises derived from the signing of the Dominican Republic and Central American Free Trade Agreement (DR-CAFTA).

As the time went by, the aforementioned laws have suffered different amendments; being the latest and most important one, due to the important and sound changes contained therein, is Law No. 712 "Amendments and Additions to Law 453, Tax Equity Law, and to Law 528, Amendments and Additions to Tax Equity Law", published in the Official Gazette No. 241, dated December 21, 2009 (hereinafter, "Law 712"), and its Regulations, contained in Decree No. 93-2009, published in the Official Gazette No. 244, dated December 30, 2009 (hereinafter, the "Decree"), which also amends some provisions of the prior Regulations.

The most important aspects in Law 712 are the following:

### **On Corporation:**

- The calculation and payment of the Income Tax Definitive Minimum Payment (Pago Mínimo Definitivo del Impuesto sobre la Renta), were amended. The rate of this Minimum Payment is that of 1% calculated now on the gross income<sup>50</sup>. Such payment takes place through in-advance monthly payments of 1% of the gross income of the company. In the case of taxable income based on commissions, such percentage is calculated on the sales commission or commercialization margin as long as the provider complies with the corresponding prior in-advance monthly payment.
- Additionally, Law 712 indicates the cases not subject to such Minimum Payment, among those there are: taxpayers during their first 3 years of commercial operations as long as this activity is the result of new investments, excluding the investments in acquisition of assets and pre existing rights; tax payers whose sales prices are subject to control or regulated by the State; investments subject to a term for the realization of its projects, in this case the Finance Ministry together with the Agricultural and Forestry Ministry will coordinate with the Commerce, Industry and Promotion Ministry in order to determine the term for the projects' realization; those tax payers that are not performing economic or business activities, and formalize this situation before the tax authority and; taxpayers that due to proven force majeure interrupt their economic or business activities<sup>51</sup>.
- Dividends to be paid to companies' shareholders are subject to a final withholding tax of 10%.
- Incomes not considered as Rent and, therefore, not subject to tax are, among others: Dividends paid to shareholders after practiced the final withholding tax of 10%; prizes, raffles, less than 25,000 córdobas (US\$1,250.00, approximately); amounts received due to insurance, unless the insured matter is income or product in which case such income is considered as a Rent; severance pay received by employees or their beneficiaries and any income received in accordance with the social security law; employees' Christmas Bonus; interests accrued by international credit institutions and agencies or development institutions of foreign governments<sup>52</sup>.
- Corporation Tax is that of 30 % of the taxable income<sup>53</sup>.
- The Occasional Income, such as the income obtained from sales, auction, or any other legal means to dispose of movable or immovable properties, shares, participation in legal entities and intangible rights, as well as benefits originating from inheritances, donations, lottery, prizes and similar, is deemed as an increase on income; and are subject to withholdings towards annual income tax. In the case

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<sup>50</sup> Art. 5 of Law 712 (amending Art. 28).

<sup>51</sup> Art. 6 Ibid. (Amending Art. 29).

<sup>52</sup> Art. 2 Ibid. (Amending Art. 11).

<sup>53</sup> Art. 4 (Amending Art. 21).

of sales of movable or immovable property subject to further registration in any public office, a withholding shall apply based on the taxable value of the good, being the rates from 1 to 3 %, and based on the higher value resulting from comparing the cadastral appraisal and the purchase price established in the purchase agreement<sup>54</sup>.

- Final Withholdings are defined as those that with their payment satisfy the income tax obligation, and are not subject to return, accreditations or compensations<sup>55</sup>. Individuals, legal entities or economic units, residents or not in Nicaragua, receiving an income from any of the following sources are subject to the following withholding obligations:
  1. 10% over interests from deposits in financial institutions; interests earned from Nicaraguan sources/origin by persons, residents or not in Nicaragua, with the exception of financial institutions legally established in the country; dividends or participation on profits paid by legal entities, subject or not to income tax, to their shareholders or partners; prizes such as raffles and similar, and profits from gambling.
  2. 20% for income of Nicaraguan origin obtained by individuals not domiciled or not residents in the country.
- Transactions in the Agricultural Stock Exchange are subject to 1.5% final income tax withholdings for primary agricultural products and 2% for other goods in the agricultural sector. Transactions in the Securities Stock Exchange –transaction of financial instruments with a term lesser than 4 years-, are subject to final withholding tax of 10%. In transactions up to C\$ 60,000.000.00 per year such withholdings are final; however, in transactions exceeding C\$ 60,000.000.00 per year, the withholdings are payable towards annual income tax, and in the event such withholdings are higher than the annual income tax, these will be considered as final withholdings.<sup>56</sup>

### **On Individuals:**

- Tax to be paid by individuals in general, is based on the following progressive chart<sup>57</sup> (Exchange rate varies as per Central Bank Official Exchange Rate published on a monthly basis, at this time Twenty-One Córdobas, approximately, is equivalent to One U.S. dollar; for example, 50,000 cordobas are equivalent to US \$ 2,380.00, approximately).

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<sup>54</sup> Art. 1 Ibid. (Amending Art. 6).

<sup>55</sup> Art. 3 Ibid. (Amending Art. 15).

<sup>56</sup> Art. 10 Ibid. (Amending Art. 110).

<sup>57</sup> Art. 4 Ibid. (Amending Art. 21).

<b>Taxable Income (Categories)</b>		<b>Base tax</b>	<b>Applicable percentage</b>	<b>In exces s of</b>
<b>From C\$</b>	<b>to C\$</b>			
1.00	50,000.00	0	0%	0
50,001.00	100,000.00	0	10%	50,000.00
100,001.00	200,000.00	5,000.00	15%	100,000.00
200,001.00	300,000.00	20,000.00	20%	200,000.00
300,001.00	500,000.00	40,000.00	25%	300,000.00
500,001.00	Higher	90,000.00	30%	500,000.00

- For employees earning salaries, the applicable progressive chart is the following:

<b>Taxable Income (Categories)</b>		<b>Base tax</b>	<b>Applicable percentage</b>	<b>In exces s of</b>
<b>From C\$</b>	<b>To C\$</b>			
1.00	75,000.00	0	0%	0
75,001.00	100,000.00	0	10%	75,000.00
100,001.00	200,000.00	2,500.00	15%	100,000.00
200,001.00	300,000.00	17,500.00	20%	200,000.00
300,001.00	500,000.00	37,500.00	25%	300,000.00
500,001.00	Higher	87,500.00	30%	500,000.00

- Incomes not considered as Rent and, therefore, not subject to tax are, among others: Dividends paid to shareholders after practiced the final withholding tax of 10%; prizes, raffles, less than 25,000 córdobas (US\$1,250.00, approximately); amounts received due to insurance, unless the insured matter is income or product in which case such income is considered as a Rent; severance pay received by employees or their beneficiaries and any income received in accordance with the social security law; employees' Christmas Bonus; interests accrued by international credit institutions and agencies or development institutions of foreign governments<sup>58</sup>.
- The Occasional Income, such as the income obtained from sales, auction, or any other legal means to dispose of movable or immovable properties, shares, participation in legal entities and intangible rights, as well as benefits originating from inheritances, donations, lottery, prizes and similar, is deemed as an increase on income; and are subject to withholdings towards annual income tax. In the case of sales of movable or immovable property subject to further registration in any

<sup>58</sup> Art. 2 Ibid. (Amending Art. 11).

public office, a withholding shall apply based on the taxable value of the good, being the rates from 1 to 3 %, and based on the higher value resulting from comparing the cadastral appraisal and the purchase price established in the purchase agreement<sup>59</sup>.

### **General Aspects:**

- A Nicaraguan subsidiary of a foreign company may deduct as expenses certain documented payments to its foreign parent company. Specifically, the subsidiary may deduct from gross income payments to its foreign parent for technical, financial (up to national market interest rate) or other assistance, or for patents, formulae, trademarks and similar items. The deduction is available only if the Nicaraguan company has duly withheld any corresponding withholding tax due.
- By law, the fiscal year of Nicaraguan taxpayers ends on June 30. However, companies, individuals and other taxable entities may request a special fiscal year if they reasonably justify their need for it. Nicaraguan tax law does not allow for consolidation of tax reporting. Nicaraguan corporate taxpaying entities may carry forward up to three years operating losses for most activities. Carrybacks are not allowed. Although Nicaraguan legislation generally requires accrual method accounting, companies may use cash-flow accounting upon prior approval of the tax authorities. Nicaragua does not have any tax treaties currently in effect.
- Nicaraguan tax law and regulations do not include any specific provisions governing corporate reorganizations, including mergers and spin-offs. However, Nicaraguan tax authorities, in practice, have taken the position that transfers of real estate that are related to mergers are exempt from real estate transfer taxes, unless the real property is depreciable. All fiscal attributes of the merged company are transferred to the surviving company.
- Withholdings to Non Residents Persons: individuals, 20%; legal entities, 10.5%; payment of dividends to shareholders, 10% (new); royalties, copyrights, patents, and related, 21%; maritime transportation, 3%; Air transportation and international communications 1.50%.
- The Nicaraguan Value Added Tax (*Impuesto al Valor Agregado*) of 15% applies to all imports and sales of goods and rendering of services, with significant exceptions, mostly for basic goods<sup>60</sup> and services.<sup>61</sup> Like standard VATs, each entity involved in the chain of supply from raw material to finished product or service nets its tax collected (from the next purchaser) against its tax paid (to its

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<sup>59</sup> Art. 1 Ibid. (Amending Art. 6).

<sup>60</sup> E.g., unprocessed foods, books, medicines, personal toilet, domestic manufacture clothing, real property, farm animals and inputs, petroleum, used goods, and raw materials used for production of basic goods.

<sup>61</sup> E.g., health services, domestic transportation, education, domestic utilities, interest on loans from financial institutions, affordable housing construction, housing rental and agricultural land leases.

supplier) to determine the amount it must pay to the tax authority. The tax falls completely on the end-user but is remitted to the government by merchants and businesses along the value chain. By the fifteenth day of each month, the Nicaraguan VAT taxpayer must remit to the tax authority the difference between VAT collected and the VAT paid for the previous month.

- A yearly Real Estate Tax of 1% of appraised value on the property must be paid by the property owner to the Municipality where the property is located. The owner must pay this yearly tax during the first six months of the following year (i.e., Real Estate Tax for the year 2010 is to be paid during January-June of year 2011 and so on); appraisals on the property are carried out by municipal authorities and, usually take place yearly when the has come for the owner to pay this tax. Moreover, each municipality collects a monthly Income Municipal Tax of 1% on gross income, plus a yearly registration tax of 2% of the average gross income during the final quarter of the foregoing year. When opening a new business, the registration tax is that of 1% of the invested capital. These taxes are collected and managed by each municipal government locally. Local governments have the right to levy additional taxes and fees, which vary by location.
- All taxes, must be declared and paid by taxpayers before the Nicaraguan Tax Authority (*Dirección General de Ingresos* – Income General Direction, in English), excepting Municipal taxes, which are both declared and paid before the Collection Department of the Municipal Authority of the corresponding location. VAT returns must be filed under a monthly basis, within the following fifteen days to the foregoing month. Withholding Tax returns are filed under a bi-monthly basis and, in-advance Income Tax returns are filed monthly. The yearly declaration takes place once the fiscal period has ended (June 30, unless the taxpayer has received authorization to use a special fiscal term). All tax returns must be filed using the specific formats issued by the Tax Authority.

## **XII. IMMIGRATION REQUIREMENTS AND EXPATRIATE EMPLOYEES**

Nicaragua counts with two main legal bodies on the fields of Immigration and Foreigners Status Regime. Law No. 153 “Immigration Law”, published in the Official Gazette No. 80 on April 30, 1993 and, Law No. 154 “Foreign Status Law”, published in the Official Gazette No. 81 on May 03, 1993, constitute the applicable legal framework for this matters.

The following are the most relevant aspects:

- Several countries have been benefited with the visa-free entrance system. Citizens from nations under the Category “A”, such as the United States of America and countries members of the European Union, among others, may enter to Nicaragua without the need of a previous visa; being allowed to stay in the country for a maximum period of 90 days under the tourist category, which could be extended for an identical additional term by reporting it to the Immigration Authority and,

as long as there are no any motives or grounds to reject the extension of the term, then it is granted.

- There are, however, some other countries that are not under a visa-free entrance regime; whose citizens must obtain a visa before entering the country. Citizens from countries under the Category “B” (such as Egypt and Saudi Arabia) must obtain a consular visa and, citizens from countries in Category “C” (such as Nepal and Mongolia) when requesting visa must wait for approval from the Nicaraguan Immigration Authority. Common documents required are, among others, filling out visa forms, two passport-size photos, copy of passport in force (no lesser than 6 months), copy of visas contained in passport, request letter, interview with the consular officials, fee of US\$25.00.
- It is important for foreigners to know that according to Nicaraguan law, only those with their legal residency may perform compensated activities in Nicaragua (work). Therefore, all foreign individuals must obtain their Nicaraguan Residence Card before executing work activities. The following, among others, are the common requisites: Request Letter; filling out residency forms; work contract subject to the issuance of the Residence Card (contract must specify position and wage); compromise of the employer, granted before Notary, accepting to be in charge of all expenses of stay as well as those of the citizen’s return to his/her country of origin; copy of Articles of Incorporation and Bylaws of the company, along with the Municipality Registration Certificate; Criminal Record, Health Certificate and Birth Certificate, all authenticated up to the nearest Nicaraguan Consulate and translated into Spanish before a Nicaraguan Notary. Fees: US\$40.00, approximately; plus a deposit equivalent to the cost of a return ticket to the country of origin or residency. All documents issued in other language than Spanish, must be translated into Spanish before a Nicaraguan Notary. Persons from 16 years old on, must file his/her Criminal Record.
- Residence in Nicaragua is also available through Retirement program. “Residencia” (Retirement) Program Certificate of Income from home country is needed. Required monthly \$500 for single or \$600 for married couple. Marriage Certificate, Health Certificate and Good Conduct Letter from the Local Police Chief’s Office is also required (authenticated before the nearest Nicaraguan Consulate and translated before Nicaraguan Notary).
- Foreign persons to be established in Nicaragua desiring to bring their belongings with them, may enter into the special imports customs regime known as “Menaje de Casa” (Household Items); which basically is a special regime allowing persons to elaborate their own detailed list of goods, specifying the estimated value of such goods as well as the transportation document. Used merchandise does not require commercial invoice to be presented. However, vehicles, machinery, equipment, tools or supplies for offices, laboratories, factories, repair shops or similar establishments, are not comprehended under this special customs regime. Household items under this regime are duty free.

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Respectfully submitted,

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