



Doing business in El Salvador

A comparative guide

July 2024

A guide to doing business in El Salvador

Deloitte Legal compiled this guide for Legal 500, providing an overview of the laws and regulations on doing business in a variety of jurisdictions. The following country chapter contains the relevant information on the systems of law, the legal forms through which people carry out business, capital requirements, how entities are operated and managed, expansion possibilities, corporate governance, employment law and more.



No. Question

A. Legal system and landscape

- 1 Is the system of law in your jurisdiction based on civil law, common law or something else?

Based on the civil law and commercial law.

B. Entity establishment

- 2 What are the different types of vehicle / legal forms through which people carry on business in your jurisdiction?

Corporation (Sociedad Anonima or S.A): It is the type of company most often selected in El Salvador, which may be formed by other entities or individuals or a combination of both.

Limited Liability Company (Sociedad de Responsabilidad Limitada or S.R.L): This type of company is similar to a corporation, in that it may be formed by other entities or individuals or a combination of both. However, in this type of company, the capital is not represented by shares, but rather by membership interests.

Branches of foreign companies: These are foreign companies that can perform commercial activities in the Salvadorian territory, establishing their residence in the country through a branch. For such purpose, they must register their capital before the National Investment Office of the Ministry of Economy, followed by their registration before the Commercial Registry.

Simplified Company (Sociedad por acciones simplificadas or S.A.S) corporation that allow the incorporation of only one partner.

- 3 Can non-domestic entities carry on business directly in your jurisdiction, i.e., without having to incorporate or register an entity?

No, in order to carry any business, the company should be registered or incorporated.

- 4 Are there are any capital requirements to consider when establishing different entity types?

Minimum capital US\$2,000.00 for corporations and Limited Liability Company.

For Brach: US\$12,000.00

- 5 How are the different types of vehicle established in your jurisdiction? And which is the most common entity / branch for investors to utilise?

Corporation (Sociedad Anonima or S.A).

- 6 How is the entity operated and managed, i.e., directors, officers or others? And how do they make decisions?

Management may be entrusted to a Sole Administrator or a Board of Directors.

- 7 Are there general requirements or restrictions relating to the appointment of (a) authorised representatives / directors or (b) shareholders, such as a requirement for a certain number, or local residency or nationality?

No there isn't a restriction relating to the appointment of the representatives/directors or shareholders for corporations and Limited Liability Company, and Simplified Companies.

However, for branches the legal representative has to be a Salvadoran or a foreigner with residence in El Salvador.

- 8 Apart from the creation of an entity or establishment, what other possibilities are there for expanding business operations in your jurisdiction? Can one work with trade /commercial agents, resellers and are there any specific rules to be observed?

Yes, there are other possibilities for business operation like agents, distributor or resellers.

C. Entity operation - please answer the following questions only for the most comment entity / ies within your jurisdiction

C1. Governance

- 9 Are there any corporate governance codes or equivalent for privately owned companies or groups of companies? If so, please provide a summary of the main provisions and how they apply.

N/A

C2. Capital

- 10 What are the options available when looking to provide the entity with working capital? i.e., capital injection, loans etc.

Loans

C3. Return of proceeds

- 11 What are the processes for returning proceeds from entities? i.e., dividends, returns of capital, loans etc.

It depends on the case, but it can be through dividends, payments abroad, new shares.

C4. Shareholder rights

12 Are specific voting requirements / percentages required for specific decisions?

The Commercial Code establishes specific percentages for General Shareholders' Meetings.

In the case of ordinary general meetings of shareholders, you must have half of the shares plus one for the first call and for the second call with any number of shares present.

In the case of extraordinary general meetings of shareholders, three-quarters of the shares are required.

13 Are shareholders authorised to issue binding instructions to the management? Are these rules the same for all entities? What are the consequences and limitations?

The General Meeting of Shareholders is the highest authority of the company, therefore they can give instructions to the administration.

The limitations are established either by the company's articles of incorporation or by the General Shareholders' Meeting itself.

C5. Employment

14 What are the core employment law protection rules in your country (e.g., discrimination, minimum wage, dismissal etc.)?

Minimum wage, dismissal and maintain the minimum working conditions established by the Ministry of Labor.

15 On what basis can an employee be dismissed in your country, what process must be followed and what are the associated costs? Does this differ for collective dismissals and if so, how?

The labor code establishes the causes for dismissal with justified cause and releases the employer from liability. However, dismissals without just cause have financial responsibility for the employer.

The obligations that must be paid are compensation, which according to the Labor Code is a maximum of up to four current minimum wages.

16 Does your jurisdiction have a system of employee representation / participation (e.g., works councils, co-determined supervisory boards, trade unions etc.)? Are there entities which are exempt from the corresponding regulations?

Yes, there are unions, however, they are not exempt from complying with labor obligations.

C6. Anti-corruption / bribery / money laundering[/ supply chain]

17 Is there a system governing anti-bribery or anti-corruption or similar? Does this system extend to nondomestic constellations, i.e., have extraterritorial reach?

Yes, there is a law for preventing anti money laundering. The law applies to all entities domiciled in the country.

18 What, if any, are the laws relating to economic crime? If such laws exist, is there an obligation to report economic crimes to the relevant authorities?

Yes, the Law for the Prevention of Money and Asset Laundering contains crimes related to money laundering and other economic crimes.

Yes, there is an obligation to report crimes to the relevant authorities.

19 How is money laundering and terrorist financing regulated in your jurisdiction?

Law for the Prevention of Money and Asset Laundering.

20 Are there rules regulating compliance in the supply chain (for example comparable to the UK Modern Slavery Act, the Dutch wet kinderearbeid, the French loi de vigilance)?

No

C7. Compliance

21 Please describe the requirements to prepare, audit, approve and disclose annual accounts / annual financial statements in your jurisdiction.

For all companies, the Commercial Code establishes that oversight must be entrusted to an external auditor. Such auditor shall be appointed at a General Shareholders' or Partners' Meeting.

22 Please detail any corporate / company secretarial annual compliance requirements?

1. Renewal business license
2. Appoint external auditor
3. Appoint fiscal/tax auditor (if applicable according with the asset of the company)
4. Approved and file the Financial Statements

23 Is there a requirement for annual meetings of shareholders, or other stakeholders, to be held? If so, what matters need to be considered and approved at the annual shareholder meeting?

Yes, for shareholders, during the first five months of the year.

- 24 Are there any reporting / notification / disclosure requirements on beneficial ownership / ultimate beneficial owners (UBO) of entities? If yes, please briefly describe these requirements.

Only for requirements.

C8. Tax

- 25 What main taxes are businesses subject to in your jurisdiction, and on what are they levied (usually profits), and at what rate?

- a) The Income Tax and related taxes
- b) The Tax on the Transfer of Movable Goods and the Rendering of Services (VAT) (13%)
- c) Specific and ad-valorem taxes
- d) Other taxes, such as special contributions.
- e) Municipal Taxes

- 26 Are there any particular incentive regimes that make your jurisdiction attractive to businesses from a tax perspective (e.g. tax holidays, incentive regimes, employee schemes, or other?)

To promote foreign investment, certain laws have been created that grant benefits to different sectors and facilitate the registration and execution of these investments. These laws are as follows:

1. **Investment Law:** One of the main advantages of this law is that it facilitates the registration, and especially the repatriation, of foreign investments by investors. It guarantees foreign investors the right to transfer abroad funds related to their investments, provided that they comply with the tax, labor and social security obligations, in addition to the obligations generated by law.
2. **Law of Industrial and Commercial Free Trade Zones:** It regulates the operation of free trade zones and inward processing warehouses, as well as the benefits and responsibilities of the owners of companies that develop, manage or use them.
3. **International Services Law:** This law has the objective of regulating the establishment and operation of industrial parks and service centers engaged in, among other activities, international distribution, logistics, call centers, repair and maintenance of aircraft, business processes and BPOs.

- 27 Are there any impediments / tax charges that typically apply to the inflow or outflow of capital to and from your jurisdiction (e.g., withholding taxes, exchange controls, capital controls, etc.)?

Capital gains

The gains resulting from the sale of fixed assets, personal property and real property, so long as they constitute non-habitual transactions, are considered to be income subject to the determination of capital gains or losses, at a rate of 10%. When the asset is realized within the 12 months following the acquisition date, the net capital gain should be calculated as ordinary income.

Distribution of dividends or payments of profits

The payment or crediting of profits to shareholders, be they residents or non-residents

of El Salvador, is subject to a definitive income tax withholding at a rate of 5%, which can increase to 25% if the company receiving the dividends is domiciled in a territory of low or zero taxation or a tax haven.

- 28 Are there any significant transfer taxes, stamp duties, etc. to be taken into consideration?

Payments made to foreign parties

As a general rule, individuals or legal entities that pay or credit to non-resident parties sums of money resulting from any type of income obtained in the country, be they payments for services provided from abroad and used in the national territory, or amounts paid and credited due to the transfer of intangible assets under any title whatsoever, even if they refer to advance payments, are obligated to make an income tax withholding of 20% on these amounts as definitive payment of the tax. Notwithstanding the above, different rates will apply to payments or credits to non-resident parties residing in countries classified as tax havens by the Tax Administration. In these cases, a withholding rate of 25% applies.

C9. M&A

- 29 Are there any public takeover rules?

Not applicable.

- 30 Is there a merger control regime and is it mandatory / how does it broadly work?

No, there isn't a regime for merger control. The rules of mergers for non-regulated commercial companies are given by the Commercial Code, therefore companies are free to merge with other companies as long as this is not against the Competition Law, regarding antitrust practices.

- 31 Is there an obligation to negotiate in good faith?

N/A

- 32 What protections do employees benefit from when their employer is being acquired, for example, are there employee and / or employee representatives' information and consultation or co-determination obligations, and what process must be followed? Do these obligations differ depending on whether an asset or share deal is undertaken?

There are no special protections for employees. If there is an employer replacement, the rights acquired by the workers must not be diminished by the new employer.

C10. Foreign direct investment

- 33 Please detail any foreign direct investment restrictions, controls or requirements? For example, please detail any limitations, notifications and / or approvals required for corporate acquisitions.

Competition law, establish some restrictions for merger and acquisitions of companies.

- 34 Does your jurisdiction have any exchange control requirements?

No

D. Entity closure

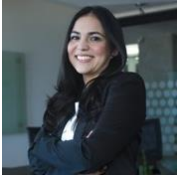
35 **What are the most common ways to wind up / liquidate / dissolve an entity in your jurisdiction? Please provide a brief explanation of the process.**

Currently, the dissolution and liquidation process for commercial companies takes approximately 18 to 24 months.

Since the process begins with the agreement of the partners or shareholders to liquidate the company, this agreement must subsequently be published and registered in the Commercial Registry. Once registered, the liquidation balance sheet is issued and subsequently the deed of liquidation of the entity.

It is important to mention that the liquidation process of the company is delayed by the fact that the tax administration begins a process of inspection of the company, this inspection process takes approximately 10 to 15 months.

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