



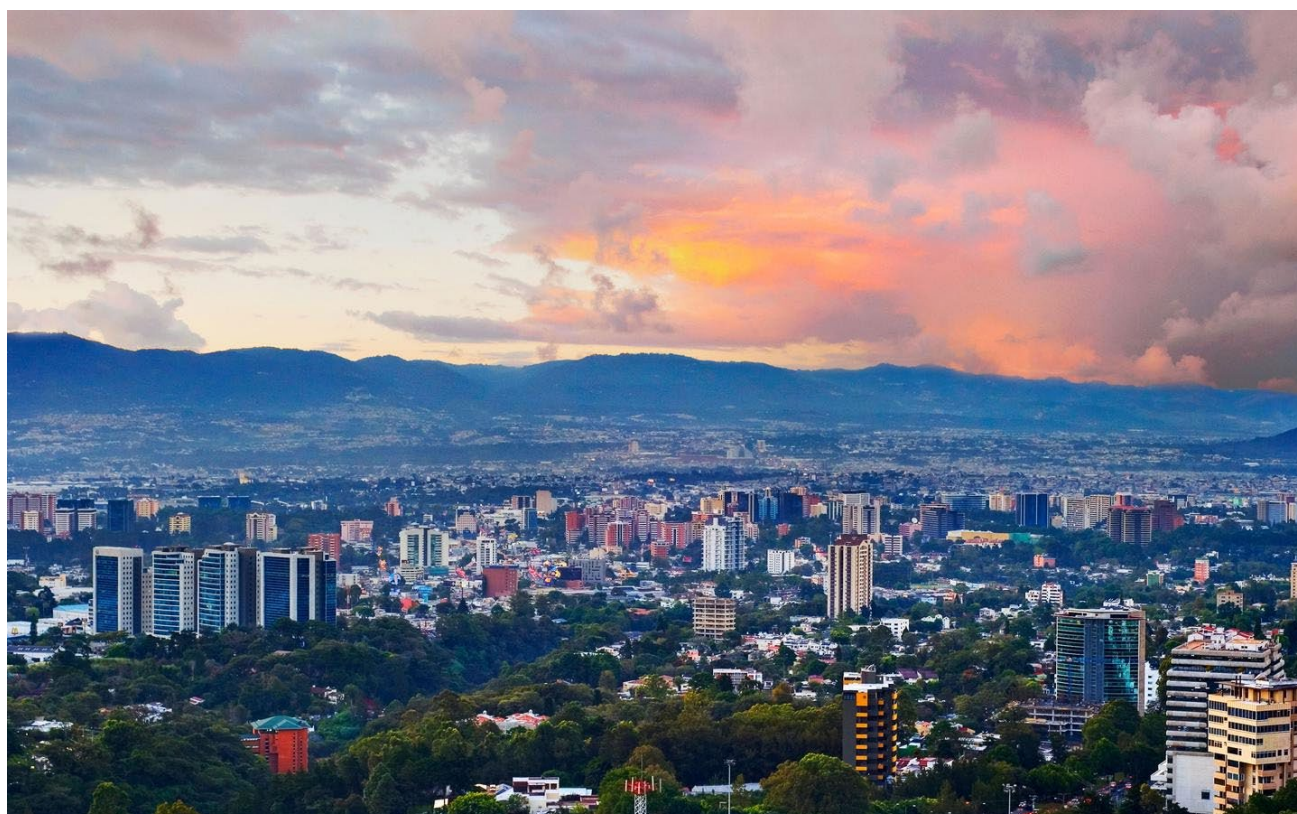
# Doing business in Guatemala

**A comparative guide**

July 2023

# A guide to doing business in Guatemala

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

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

The principle of legality, the sovereignty that emanates from the people, the recognition of human rights and the separation of the three branches of government imply that Guatemala exists under and is inextricably linked to the Rule of Law (Civil Law).

## B. Entity establishment

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

There are 6 types of business structure:

1. General Partnership;
2. Limited Partnership;
3. Limited Liability Company;
4. Corporation;
5. Partnership limited by shares; and
6. Entrepreneurship.

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

Some activities might be carried out in Guatemala without having to incorporate or register an entity, for example: To obtain or give loans, acquire assets, opening bank accounts, sell or purchase merchandise, among others.

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

The minimum capital to establish an entity in Guatemala has been placed at approximately USD25.00 (local currency Q.200.00).

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

Commercial companies are divided into three types: personalist, capitalist, and mixed, with each of these companies having their own and general characteristics. The most common is the Corporation which is a capitalist entity.

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

The entity is operated and managed as follows:

General Shareholders' Meeting

- a) Management: Sole Administrator or Board of Directors (3 or more members)
- b) Oversight: Performed by the shareholders, accountants, auditors, or commissioners, as established in the articles of incorporation.

Decisions are taken by the majority.

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

No restrictions apply. Some industries might have restrictions i.e.: Energy, Banks, among others.

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**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?**

From a corporate law perspective, there are no restrictions in expanding business operations in Guatemala. An entity or establishment is free to work with trade/commercial agents and resellers.

## C. Entity operation

Please answer the following questions only for the most common entity / ies within your jurisdiction:

### C1. Governance

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**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.**

There are no corporate governance codes for privately owned companies, only the mandatory rules in our commercial code and the provisions of the bylaws of each entity.

### C2. Capital

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

The shareholders of the company may provide working capital by subscribing for further shares in the company.

A company may also consider a loan to finance working capital loans. This could be from the shareholders, another entity within the same company group or from a third party.

### C3. Return of proceeds

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

Private companies can return value to their shareholders in several ways, as set out below. As a general rule, companies are bound by strict maintenance of capital rules and only subject to certain exceptions, can return value to their shareholders.

**Dividends**

The most popular method of a company returning value to its shareholders is a dividend.

Dividends are paid in cash. Before recommending or declaring a dividend, the company should review their provisions.

**Capital reductions**

A reduction of capital occurs where a company reduces the amount of its share capital. This may be an option when the company has capital that is surplus to its requirements and that it wishes to return to shareholders.

### C4. Shareholder rights

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

Every share represents one vote. No specific voting requirements may apply, and decisions are taken by the majority in most cases, but for specific cases a minimum or percentage may apply.

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

The shareholders or partners meeting is the highest authority, therefore their decisions are binding to the management. The only reason that the instruction is not binding, is if that decision is illegal or the management does not agree with the decision of the shareholders meeting giving the reasons of such decision.

### C5. Employment

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

Right / Protection	Details
<b>National Minimum Wage</b>	There are 2 economic districts: a) Department of Guatemala; b) Any other department excluding Guatemala.

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	<p>The minimum wage for the department of Guatemala is as follows:</p> <p>Monthly Minimum wage agricultural sector: USD\$394.00 (local currency Q3,073.60) plus USD\$32.00 (local currency Q.250.00) of incentive bonus.</p> <p>Monthly Minimum wage non-agricultural sector: USD\$406.00 (local currency Q.3,166.38) plus USD\$32.00 (local currency Q.250.00) of incentive bonus.</p> <p>Monthly Export and makeup sector: USD\$371.00 (local currency Q.2,893.54) plus USD\$32.00 (Q.250.00) of incentive bonus.</p> <p>The minimum wage for any other department excluding Guatemala is as follows:</p> <p>Monthly Minimum wage agricultural sector: USD\$383.00 (local currency Q2,987.53) plus USD\$32.00 (local currency Q.250.00) of incentive bonus.</p> <p>Monthly Minimum wage non-agricultural sector: USD\$395.00 (local currency Q.3,077.56) plus USD\$32.00 (local currency Q.250.00) of incentive bonus.</p> <p>Monthly Export and makeup sector: USD\$361.00 (local currency Q.2,812.63) plus USD\$32.00 (Q.250.00) of incentive bonus.</p>
<p><b>Holiday</b></p>	<ul style="list-style-type: none"> <li>• January, 1st.</li> <li>• Holy Thursday</li> <li>• Holy Friday</li> <li>• Holy Saturday</li> <li>• May, 1st.</li> <li>• June, 30th.</li> <li>• September 15th.</li> <li>• October, 20th.</li> <li>• November, 1st.</li> <li>• December, 24th (noon).</li> <li>• December, 25th.</li> <li>• December, 31st (noon).</li> </ul>
<p><b>Working Hours</b></p>	<p>The general rule is 8 hours of work per day during the day shift, 6 hours of work per day during the night shift, and 7 hours of work per day during the mixed shift.</p>
<p><b>Rest Periods</b></p>	<p>Every employee has the right to enjoy a day of paid rest after each week of work. The week is calculated from five to six days depending of the custom of each company.</p>
<p><b>Pension rights</b></p>	<p>The employee will receive a pension by the social security, once they have 60 years old and prove the payment of a minimum wages.</p>
<p><b>Discrimination</b></p>	<p>Discrimination is prohibited in all work centers and sanctioned by the criminal law.</p>

<b>Maternity Leave / Pay</b>	Maternity Leave is recognized by the law, having a paid period up to 84 days. After this time, the mother has a lactation period of one hour for 10 months.
<b>Paternity Leave</b>	The legislation recognizes 2 paid days of paternity leave.
<b>Shared Parental Leave</b>	No shared parental leave disposals apply.
<b>Statutory sick pay</b>	The social security makes the payment to the employee in case of sickness.
<b>Statutory Notice Periods</b>	No dismissal notice period applies, only the employee has the obligation to give a notice period in case of resign.
<b>Unfair dismissal</b>	In case of termination without just cause, the employer must pay a severance, the exception of this payment is in case of termination in the trial period (2 months). The severance corresponds to one month´s salary for each year of work.
<b>Statutory Redundancy Payment</b>	One month´s salary for each year of work.
<b>Statement of particulars</b>	N/A

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**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 employer has the right to dismiss any employee at any time, the only exemption is in case of immunity for the employee i.e.: Maternity, trade unions, among others.

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**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?**

The trade unions are regulated in the labor code, looking for improvements in working conditions.

## C6. Anti-corruption / bribery / money laundering / supply chain

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**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?**

No specific system applies, but the bribery and corruption are sanctioned by our Law. The reach is territorial.



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**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?**

The economic crimes are regulated in our Criminal Code, and it establishes that the officials who have knowledge of a crime have the obligation to report it.

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

There are specific rules that regulate these activities, which are sanctioned by the state of Guatemala.

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

No state regulations regarding the compliance in the supply chain apply.

## C7. Compliance

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

The book or record of financial statements shall include:

- 1<sup>st</sup> The opening balance sheet and the ordinary and extraordinary balance sheets that are prepared for any circumstance.
- 2<sup>nd</sup> The profit and loss statements or those that serve as such, corresponding to the respective balance sheet.
- 3<sup>rd</sup> Any other statement that in the merchant's judgment is necessary to present its financial situation.

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

The only annual requirement is to have an annual shareholders meeting.

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**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?**

The ordinary shareholders' meeting shall take place at least once a year, within the four months following the closing of the accounting period and also at any time that it is convened. In addition to the matters included in the agenda, it must also deal with the following matters:

- 1<sup>st</sup>. Discuss, approve or disapprove the profit and loss statement, the balance sheet and the management's report, and if applicable, the report from the oversight body, if any, and take the appropriate measures.
- 2<sup>nd</sup>. Appoint and remove the administrators, the oversight body, if any, and determine their respective remuneration.
- 3<sup>rd</sup>. Hear and decide on the plan for the distribution of profits that the administrators must submit for its consideration.
- 4<sup>th</sup>. Hear and decide on the matters that the articles of incorporation specifically indicate.



The meeting´s can be held virtually if the bylaw of the entity allows it.

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

N/A

## C8. Tax

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

The Guatemalan tax system is based on the territoriality principle. With few exceptions, mainly related to withholdings tax on source, almost all of the taxes apply to the activities carried out within the Guatemalan territory.

Companies can opt to pay the Income Tax under one of the following regimes: (1) Over Profits from Lucrative Activities, in which the tax base is calculated based on the accounting profit and the tax rate of 25% is applied, with three quarterly pre payments and one definitive annual settlement of the tax being required each fiscal year (same as the calendar year) by March 31 of the following year; or (2) Simplified Optional Regime over Income from Lucrative Activities, in which the tax base is the gross revenues, without deducting any costs or expenses, and a rate of 5% or 7% is applied, with monthly tax payments and an annual informational return, also due on March 31, being required.

Guatemalan source income obtained by non-resident entities without a permanent establishment in the country is subject to withholdings tax on the total amount paid.

Each year, companies must file an informative tax return, which summarizes the annual income earned and the withholdings made. This tax return is due by March 31 of the following calendar year.

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**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?)**

There are established incentive regimes for the drawback industry and free trade zones.

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**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.)?**

No general impediments / taxes charges apply to inflow of capital and in the outflow of capital a 5% might apply in some cases.

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

The main laws regulating tax matters include the Tax Code, and Income Tax, Law which includes the Transfer Pricing Regulations, Value Added Tax Law (VAT), Solidarity Tax Law (ISO), Property Tax (Law IUSI), Stamp Tax Law (ITF), the Specific Tax on the First Registration of Land Motor Vehicles, tax

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incentive laws for the drawback industry and free trade zones, the National Customs Law, and the law regulating employer and employee Social Security contributions.

Guatemala has not signed any international double or multiple taxation agreements.

In the case of certain industries, there are specific consumption taxes, such as the Tax on the Distribution of Cement, the Tax on the Distribution of Tobacco, the Tax on the Distribution of Alcoholic Beverages, the Specific Tax on the Distribution of Soft Drinks, Other Beverages and Bottled Water, and well as the Tax on the Distribution of Fuels.

## C9. M&A

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### 29 **Are there any public takeover rules?**

No public takeover rules apply only on specific industries might apply some rules i.e.: Bank, energy, among others.

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

There is not a merger control regime, only rules and procedures for mergers apply, which are established in the commercial code. In general, this procedure seeks to make the public aware of the mergers.

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### 31 **Is there an obligation to negotiate in good faith?**

Obligations and commercial contracts will be interpreted, executed and fulfilled in accordance with the principles of known truth and good faith kept, in order to preserve and protect the upright and honorable intentions and wishes of the contracting parties.

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### 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 specific disposals for protection to employees in cases of M&A, only the general labor law will apply.

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## C10. Foreign direct investment

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### 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.**

There are no restrictions for foreign investments only to consider that the money should be transferred through a bank.

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### 34 **Does your jurisdiction have any exchange control requirements?**

No

## D. Entity closure

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

Companies are totally dissolved for any of the following reasons:

- 1<sup>st</sup>. Expiration of the term set in the articles of incorporation.
- 2<sup>nd</sup>. Impossibility to continue performing the principal objective of the company or because such objective has been consummated.
- 3<sup>rd</sup>. Resolution of the partners made at a board meeting or extraordinary general shareholders' meeting.
- 4<sup>th</sup>. Loss of more than sixty percent (60%) of the paid-in capital.
- 5<sup>th</sup>. The shares or contributions of a company are held by one sole person.
- 6<sup>th</sup>. Those foreseen in the articles of incorporation.
- 7<sup>th</sup>. In the specific cases determined by the Law.

As soon as the administrators are aware of the existence of any cause for dissolution, they shall place it on record in the minutes and have it signed by all, and they shall convene a board meeting or general shareholders' meeting that must be held within the shortest possible term and in all cases within the month following the date of the minutes.

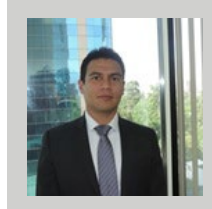
The liquidators cannot distribute among the partners, not even partially, the corporate assets, so long as the creditors of the company have not been paid or the sums necessary to pay them have not been segregated.

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