

# **DOING BUSINESS IN NICARAGUA**

## **1. CONSTITUTIONAL LAW**

### **1.1) EQUAL RIGHTS FOR FOREIGNERS AND NICARAGUANS**

The Constitution prescribes that all individuals have equal rights including: the right not to be discriminated by motive of birth, nationality, political creed, race, sex, language, religion, opinion, origin, economic position or social condition (Article 27 Cn).

Foreigners have the same duties and rights that Nicaraguans, with the exception of political rights. Political rights should be understood as the right to vote and to be elected for public office.

There are some laws that restrict the foreign participation in given businesses. One of these laws is the Law of Financial Entities.

## **II. CORPORATE LAW**

### **2.1) INCORPORATION UNDER NICARAGUAN LAW**

Nicaragua's corporate laws are very ample. There is a National Public Mercantile Registry in charge of registering all incorporation and corporate documents. The system is public and very transparent.

The process of successfully registering the articles of incorporation for a newly formed corporation is simple. Registration takes around six weeks. A corporation will not obtain its legal status until it is registered. The cost of registration varies depending on the initial paid in equity.

Two incorporators must grant the articles of incorporation. Initial equity is usually nominal and must be expressed in local currency. Transfers of stock must be registered with the corporation.

All types of stock can be authorized and issued by the Stockholders Meeting. Common stock must always have one vote per share. The corporation must keep a record book of the shareholders.

Shareholders, when convened in a Stockholders Meeting, are the maximum corporate authority. Theirs are all powers which, for executive decision making and management they delegate in the corporate officers. Shareholders must meet at least once a year.

Nicaraguan corporations have a one tier management structure. The Board of Directors takes the place of both the Board and the Executive Committee that may exist in the American counterparts. The Board of Directors must have a minimum of three members: President, Secretary and Treasurer. Nicaraguan legislation requires that members of the Board of Directors be Shareholders.

Nicaraguan corporations, additionally, may have other employees, directly reporting to the Board of Directors, in various administrative capacities. These employees may have powers and faculties of representation and may be employed, designated or otherwise promoted or selected by decision of either the Board of Directors or the shareholders.

Corporate law mandates that each corporation have a comptroller, who is not a member of the Board of Directors, whose loosely defined obligations are to oversee management of the corporation. The comptroller can not be a board member. This person is usually an auditor.

Members of the Board of Directors, the comptroller and all stockholders may all be non Nicaraguan nationals.

Members of the Board of Directors can be elected for a period of a maximum of 10 years and they may be reelected. They may also be removed from office at any time. These decisions rest with the Shareholders Meeting. The Shareholders Meeting may revoke all powers granted, by itself or the incorporators, to any officers, employees or groups thereof, at any time. The Board of Directors must meet at least once every year.

At a Shareholders Meeting, each shareholder can hold a maximum of 10% of the total capital stock or a maximum of 20% of the capital stock present at the meeting. Directors may not delegate their positions. Shareholders meetings may be convened by proxies. As a result, Nicaraguan subsidiaries of international corporations may take its decisions by holding shareholders meetings where the proxies are carefully instructed on the decisions to take. Shareholders meetings and Board of Directors may be convened outside Nicaragua if and only if it was established on the articles of incorporation.

The corporation's economic year ends on 30 June as a matter of law.

Dividends can only be distributed if previously agreed to by a Stockholders Meeting and if they originate from realized profits as determined by a duly approved corporate profits and losses statement.

For a corporation to be able to initiate operation, it must register with the municipality. The registration fee is 1% of the initial paid in equity.

## **2.2) MINORITY SHAREHOLDER'S RIGHTS UNDER NICARAGUAN LEGISLATION**

The Nicaraguan Commercial Code regulates corporations.

This Code provides for a series of arrangements in order to protect the right of minority shareholders. The thesis frequently accepted in Nicaragua, continuing César Vivante's ideas, on whose work and doctrine are based the legal precepts collected in the Nicaraguan Commercial Code, is that those arrangements regulate the relationships among shareholder if the articles of incorporations do not state otherwise.

### 1. Qualified quorum and absolute majority in shareholders meeting for the amendment of the articles of incorporation (Articles 211 and 262 of the Commercial Code).

Article 262 of the Commercial Code states that, unless otherwise established in the articles of incorporations or bylaws, a minimum quorum of three fourths of the paid in equity is required to modify the articles of incorporation.

### 2. Majority quorum and term of 15 days to summon Shareholders meeting (Article 253 of the Commercial Code).

The Commercial Code establishes that a quorum of more than 50% of the paid in equity and a fifteen day term are required to summon shareholders meetings.

3. Possibility of dissolution when the corporation has less than three stockholders (Article 270 of the Commercial Code).

If the number of shareholders of the corporation is less than three during a period of more than six months, any of the shareholders may request that the corporation be dissolved.

4. Appointment of the directors "among the same stockholders" (Article 244 of the Commercial Code).

The Commercial Code provides that to be a member of the Board of Directors one must be a shareholder.

If a corporation is a shareholder, then one of its representatives may take a seat at the Board of Directors.

5. Limitation to the quantity of votes that Shareholders can exercise (Article 260 of the Commercial Code).

The Commercial Code establishes that no shareholder will be able to represent more than 10% of the issued stock, neither more than 20% of the present stock in the Board. The Commercial Code does not establish specifically that this limitation may be eliminated in the articles of incorporation.

### III. TAX REGULATIONS

The most important taxes in Nicaragua are the following:

#### 3.1) AN INCOME TAX "IMPUESTO SOBRE LA RENTA" ( IR )

• Taxable Revenue:

Taxable revenue is the net revenue that results from applying the deductions permitted by the law called "Ley del Impuesto Sobre la Renta" (Article 25 Ley de IR).

For an individual, the tax is calculated in accordance to the progressive table described below:

TAXABLE REVENUE					
		TAX	PERCENTAGE	ON	
FROM C\$	UNTIL C\$	BASE	APPLICABLE	EXCESS	
1.00	50.000	C\$ 0	0%	C\$	0
50.001.00	100.000.00	0	10%	50.000.00	
100.001.00	200.000.00	5000.00	15%	100.000.00	
200.001.00	300.000.00	20.000.00	20%	200.000.00	
300.001.00	400.000.00	40.000.00	25%	300.000.00	

Corporations pay a fixed percentage of 25% of their taxable revenue. It is important to emphasize that in Nicaragua dividends are exempt from paying the IR in Nicaragua.

- Fiscal Year:

For the effects of the IR is considered ordinary taxable year between 1 of July of a year and 30 of June of the following year ( Article 26 Ley IR ).

- Not taxable Income:

Article 13 of the law “Ley del Impuesto Sobre la Renta “ lists the types of income or patrimony increases that are not encumbered with said IR. We consider that the following are the most important:

1. Interest, capital earnings and other revenues that are perceived by an individual, originating from financial assets issued by financial institutions legally established in Nicaragua, as well as capital earnings acquired in the Stock Market ( *Bolsa de Valores* ) duly authorized in Nicaragua.
2. Interest accrued from loans by international credit institutions ( IIC, IDB) and agencies or development institutions of foreign governments.
3. Interest accrued from loans of short, medium and long term, granted by banks or foreign institutions to national financial institutions, and to individuals or corporations.

### **3.2) A VALUE ADDED TAX “IMPUESTO GENERAL AL VALOR” ( IGV )**

- Transactions that are affected by the IGV:

Transfer of goods  
Rendering of services  
Granting of rights of use ( derecho de uso)  
Import of goods (Article 1 Ley IGV)

- Applicable Rate to each transaction:

This tax is levied on the sale of goods and on the rendering of services. The rate of this tax is 15 percent over the price of the goods or the services rendered.

### **3.3) MUNICIPAL TAXES**

All corporations and individuals that customarily or sporadically are devoted to the sale of goods or to industrial or professional activities, or to the rendering of services shall pay a municipal tax. The tax rate is 1% on the total amount of the perceived gross income. Gross income is understood as the sales and/or credit or any other perceived revenue deriving from its commercial activity.

Article 17 of the Ley de Justicia Tributaria Común y Comercial exempts the services granted by financial institutions registered under the entity in charge of regulating Banks and this type of institutions, “La Superintendencia de Bancos y Otras Instituciones Financieras”.

• **Registration Tax:**

All corporations or individuals that are devoted to the sale of goods, industries or rendering services must registered annually with the Municipality.

The registration fee is 2% of the monthly average gross income obtained by the sales of goods or rendering services from last three months or from the months elapsed from the opening date, if they are less than the three months.

### **3.4) FREE TRADE ZONES**

Free Trade Zone corporations enjoy a special fiscal regime and have greater benefits than corporations not located in such zones.

Corporations established in Free Trade Zone enjoy the following fiscal benefits :

1. Exemption of 100% of payment of the IR generated by its activities in the Zone during the first ten years of operation. From the tenth year on, they are exempt from payment of 60% the IR. The activities included in these exemption are the payments of the loan interest done by foreign nonresidents, or by abroad legal services in or out of Nicaragua. The activities no included in these exemption are the taxes paid for personal income, wages, salaries or perquisites paid to the employee of the corporation established in the Free Trade Zone.
2. Exemption of all taxes and customs tariffs applicable to the importation of material, equipment, machinery, counterfoils, or parts, samples, molds and accessories for their operation in the Zone; as well as applicable taxes for the installation of dining rooms, health services, medical assistance, day care centers, scattering and any other type of goods that tend to satisfy the needs of the personnel of the company that work in the zone.
3. Exemption of transportation tax of; loading vehicles for the use of the company in the Zone or for the use of any personnel of the company in the Zone.
4. Total exemption of municipal taxes.
5. Total exemption of export taxes on products manufactures in the Zone.

### **3.5) INCENTIVES TO EXPORTS**

Exporters enjoy the following benefits:

1. There is no IGV tax on exports.

2. Producers or manufacturers have the right to refund equivalent to 1.5 % of the FOB value of the exports. The payment, of the mentioned refund, will be paid in a term not greater than 60 days.

#### IV. LABOR LAW

##### 4.1) GENERAL

The Labor Code “Código del Trabajo”, regulates the relationship between employee and employer, labor contracts and all matter related to employment in Nicaraguan. It establishes the most basic principals such as the non-**renounceability** of employee’s labor rights.

More than 90% of the employees of a business must be Nicaraguan nationals. The percentage may be lower if authorized by “Ministerio del Trabajo”, the government entity in charge of regulating labor relationships.

##### 4.2) INDIVIDUAL LABOR RIGHT

An individual labor contract or labor relationship is terminated by:

- 1.- The expiration of the agreed term upon by the conclusion of the task or service that originated the contract.
- 2.- The death or permanent incapacity of the employer; or the death or incapacity of the employee.
- 3.- The conviction of the employee or imprisonment of the employee.
- 4.- Definitive shut down of the employer.
- 5.- A judicial decision providing for the definitive liquidation of the company.
- 6.- The termination of the contract in accordance with the law.
- 7.- The retirement of the employee.
- 8.- A force major or Act of God when it causes the termination of the company.

Regardless the cause of termination of the labor contract, the employer is obligated according to the law, to pay the employee, or to whomever corresponds in case of death or permanent incapacity of the employee, the accrued portion of vacations and the mandatory thirteenth month bonus.

When the term of the contract is not defined, the employee may terminate the labor relationship by giving a written notice to the employer with fifteen days of anticipation.

The termination of the labor relationship by mutual consent or resignation does not affect the seniority acquired by the employee in terms of severance payment.

When the employer terminates the labor contract without a just case, the employee is entitle to an indemnification equivalent to:

- 1.- One month salary for each of the first three years of work.
- 2.- Twenty days salary for each year work counting after the fourth year.

In any case, the indemnification will not be lower than a month nor higher than five months. The fractions between years worked will be liquidated proportionally.

The employer may terminate the contract without additional responsibility than paying accrued proportion of vacation and mandatory thirteenth month bonus, when the worker incurs in any of the following offenses:

- 1.- Lack of moral integrity and ethics.
- 2.- Serious offenses against the life and physical integrity of the employer or of the work mater.
- 3.- Libelous or defamatory **expresivebus** against the employer that caused harm to the company.
- 4.- Any violation to the clauses that are established in his/her contract or internal labor by laws of the company that have caused harm to the employer.

#### **4.3) RIGHTS GRANTED TO EMPLOYEE´S UNDER NICARAGUAN LABOR LEGISLATION (vacation, salary and mandatory bonus “decimotercer mes”)**

· Minimum Wage:

It does not exist a minimum wage in Nicaragua, but the government is studying in conjunction with the representatives of the private company, the possibility of establishing a minimum wage in Nicaragua.

· Vacation:

The employee shall have the right to enjoy a fifteen continuous and remunerated rest days by each six months of non-interrupted service to the same employer. This vacation will be calculated based on the last salary accrued by the employee.

· Mandatory bonus:

The employee has the right of a mandatory bonus consisting of one month of salary after an interrupted year of work, or the proportional part thereof, greater than a month and less than a year.

· Obligation of the employer to register the employee under the Social security:

The employer is obligated to register immediately on the second day of work.

#### **V. OTHERS**

**In Nicaragua several laws has been reformed in order to protect and promote investments.**

Following we list the most important sectors recent law amendments:

### 5.1) TOURISM:

A new Law of tourism has been recently approved by the Congress. This law, grants the following exemptions to the tourism investors such as:

- Exemption of IGV, I.B.I “**Impuesto sobre bienes Inmuebles**” and **import taxes** to all individuals or corporations that offer services of hotel industry, that invest in the construction, remodeling, amplification, equipment, rehabilitation and hotel development, motels and of other similar facilities whose minimal investment is fifty thousand dollars (US\$ 50.000.00 ).
- Exemption of the 80% of IR for ten years when starting operation of the tourism company as well as companies that perform activities of filming inside Nicaragua.

### 5.2) BANKING:

“SUPERINTENDENCIA DE BANCOS” is the Governmental entity who authorizes the operation of banks in Nicaragua.

In October 1999, the law that regulates banks, “Ley General de Bancos, Instituciones Financieras No Bancarias y Grupos Financieros” was amended. One of the changes that this law suffered, is the fact that no one can own more than the 20% of the total shares of a bank unless being authorized by the “SUPERINTENDENCIA DE BANCOS”. The Government, corporations, individuals that dedicate to the finance business are the only ones that can be authorized to own more than the 20% of the shares of the bank.

The minimum equity a was increased to C\$120.000.000.00. This increase was done to protect account holders.

### 5.3) TELECOMMUNICATIONS:

The Government entity that regulates the telecommunications in Nicaragua is ENITEL, “EMPRESA NICARAGUENSE DE TELECOMUNICACIONES” . ENITEL is undergoing a capitalization process by which 40% of the shares of the company will be sold to a public bidding.

The law that regulates telecommunications in Nicaragua is the “Ley General de Telecomunicaciones y Servicios Postales” and has just been amended. This law distinguishes the different kinds of services for which licenses can be granted to. These services are as follows:

- 1.- **General interest services:** In this category are included the cellular telephony services, radio, opened television and television by subscription and transmission of data.
- 2.- **Special interest services:** Radio localization, mobile persons, liaison services *troncalizados*, radio determination and the stations **terrenas** or teleports for communications by satellite.
- 3.- **Particular interest services** require of record and permit by TELCOR.

These **particular interest** services are established by corporations or individuals to satisfy their own needs of communication using authorized nets or their own facilities. These services may not be accorded to third parties, unless they have complementary for the fulfillment of a social objective. They are lent by the private telecommunication nets, those which can not be interconnected to the telephonic public net, except if authorized by TELCOR.

4.- **Unregulated services:** Those that by the judgment of TELCOR have a technical or economic characteristic and do not require of frequencies assignment: Electronic mail, voice mail, information services, access to datum bases, and the storage and facsimile shipment.

Before the amendment of the “Ley General de Telecomunicaciones y Servicios Postales”, licenses could only be granted to national corporations and Nicaraguans. With this amendment, licenses can be granted to corporations, individuals and foreigners.

Licences for SOCIAL COMMUNICATION included in the category denominated before as **general interest** services, may ONLY be granted to national corporations and Nicaraguans.