



# DOING BUSINESS EL SALVADOR



# CONTENTS



---

**02**

*Foreword*

---

**06**

*Getting started*

---

**16**

*Real Estate*

---

**24**

*Intellectual Property*

---

**04**

*El Salvador*

---

**10**

*Tax System*

---

**19**

*Labor Matters*

*BLP was founded in 2003 in Costa Rica by a team of lawyers who share the vision that legal advisors must become true business allies of their clients by providing high-quality legal advice.*

*Hence our name: **Business Law Partners.***

*The firm has remained loyal to its business vision, providing our clients with a high-value, personalized, innovative legal service, with creative solutions by diverse and inclusive teams of lawyers specialized in different areas of law practice. We combine a global business vision with local culture to offer strategic solutions.*

*Over the years, the firm has expanded its practice within the Central American isthmus. BLP is registered to practice law in Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua. It also has international representation in Mexico and Spain to manage business opportunities between the regions, and provide legal advice on different aspects of the Central American jurisdictions.*

*BLP has an extensive network of contacts with the main law firms around the world. And it continues to develop these international connections through our active participation in exclusive networks in legal matters such as World Services Group, Meritas, Interlaw, GALA, ELA, Insuralex, and Interlex, which allows us to offer the best practices in addition to the best service in the legal market.*

*BLP is recognized as one of the most prominent law firms in Central America and Latin America, demonstrated by the loyalty of our clients and the numerous distinctions granted by the most prestigious international legal directories.*

*This document is part of a series of guides for doing business in Central America.*



# EL SALVADOR

Official name: **Republic of El Salvador**

Capital: **San Salvador**

**Main cities:** San Salvador, San Miguel and Santa Ana

**Form of Government:** Presidential Republic

**Surface:** 21,041 Km<sup>2</sup>

**Population:** 6,704,121 inhabitants (2019)

**Official language:** Spanish

**GDP (PPP):** Per Capita: USD \$8,775 (2019)

**Official currency:** US dollar (USD \$)

**Exchange parity with the annual average USD \$:** the US dollar is the medium of exchange and circulates freely in the country.

## Main competitive advantages of investing in El Salvador

- Competitive production costs
- Bank soundness
- Production of renewable energy through hydroelectric and geothermal development
- Strategic position and connectivity

**Exports:** \$7.98 billion (2019)

**Main export markets:** United States and Central America (Guatemala, Honduras, Nicaragua, Costa Rica)

## Main export products:

- Wardrobe items
- Electric capacitors (chips)
- Sugar
- Coffee
- Plastic products

## TRADE AGREEMENTS in FORCE

### Multilateral agreements

- World Trade Organization

### Customs Unions

- Central American Common Market (MCCA)

### Free Trade Agreements:

- Central America - United Kingdom
- Central America - Korea
- Central America - European Union (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama)
- Central America - Mexico (Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua)
- Northern Triangle - Colombia (El Salvador, Guatemala and Honduras)
- Taiwan (ROC) - Honduras, El Salvador
- CAFTA-DR (Central America - United States - Dominican Republic)
- Central America - Panama (Costa Rica, Guatemala, El Salvador, Honduras and Nicaragua)
- Central America - Chile (Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua)
- Central America - Dominican Republic (Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua)

### Preferential trade agreements:

- Venezuela (AAP.A25TM N ° 27)

### Bilateral investment agreements with:

- |                        |                 |                  |
|------------------------|-----------------|------------------|
| • Germany              | • United States | • Paraguay       |
| • Argentina            | • Finland       | • Peru           |
| • Belgium / Luxembourg | • France        | • United Kingdom |
| • Belize               | • Israel        | • Czech Republic |
| • Chile                | • Morocco       | • Switzerland    |
| • Korea                | • Nicaragua     | • Taiwan         |
| • Spain                | • Netherland    | • Uruguay        |

*El Salvador is a Central American country bordered by Guatemala to the North, Honduras to the East and West and the Pacific Ocean to the West.*

*El Salvador's form of government is a representative democracy. The Constitution sets forth the division of power among the executive, legislative, and judicial branches. Elections are held every five years for the President (who cannot be reelected in consecutive periods) and the Vice President and every three years for members of the Legislative Assembly and local governments.*

*Over the last 25 years, El Salvador has implemented reforms to modernize and open its economy to global trade and investment. In 2001, the US Dollar was allowed to circulate freely, bringing more stability to its economy. According to the Index of Economic Freedom created by the Heritage Foundation and the Wall Street Journal, El Salvador's economy is among the freest in the region.*

*As part of its effort in modernizing politics, El Salvador has liberalized its foreign trade policy by reducing its tariff barriers and signing several trade agreements, such as the Central America Free Trade Agreement (CAFTA-DR) with the United States, the Korea-Central America Free Trade Agreement, and trade agreements with Chile, Colombia, the European Union, and other countries.*

*Investors in El Salvador enjoy tax incentives and exemptions in key sectors. Renewal energy generators, international service providers, call centers and export-oriented manufacturing*

*companies may be exempt from income tax, municipal taxes, taxes on transfers of real-estate property, as well custom duties. Additionally, investors may execute an agreement with the government to enjoy various tax, custom, and immigration benefits.*

*El Salvador has a modern infrastructure, including one of the best highway networks in the region, which is complemented by its airport and seaports.*

*As of 2017, El Salvador had approximately 6.4 million inhabitants, making it the most densely populated country in Latin America with 56% of the labor force under 40 years of age.*

The main steps to starting operations:

- 1** Choose the type of company or form of incorporation to structure the business. For more information please refer to Section 1, **Getting Started**.
- 2** Register the company at the Commercial Registry and the Tax Administration and obtain legal and accounting books, a commercial license, and a tax number. Please see the **Tax System** section.
- 3** Choose the facilities to operate. The facilities can be leased, purchased or built, depending on the alternative desired. Certain permits and requirements must be fulfilled, especially when building. For more information please refer to Section 3, **Real Estate**.
- 4** Obtain the special permits and licenses applicable to the type of industry to be developed in El Salvador. For more information please refer to Section 3 C, **Construction of the facilities to operate the business**.
- 5** Register the company as an employer at the Social Security Entity, Labor Ministry and Pension Fund Administrators.
- 6** Register any intellectual property required for the operation. Please refer to Section 5, **Intellectual Property**.
- 7** Begin operations in **El Salvador!**

The two most common companies to do business under Salvadoran law are the Sociedad Anónima (SA) and the Sociedad de Responsabilidad Limitada (SRL) whose main characteristics are:

### **A. “Sociedad Anónima” (S.A):**

The SA is similar to a US corporation with the following relevant traits:

a. Limited Liability: The SA affords limited liability to its shareholders. Shareholders are only liable up to the amount of their capital contribution.

b. Capital Stock: The Capital Stock must be a fixed amount expressed in US Dollars with a nominal value of US\$1 or a multiple thereof. The Capital Stock is divided into shares that can be either bearer or nominative. If nominative, they shall be recorded in the shareholder registry book. Also, shares can be common or preferred shares and are deemed as securities which can be pledged or used in other financial operations. The minimum capital requirement to create a corporation is US\$ 2,000.

c. Number of Shareholders: Every corporation must have a minimum of two shareholders during its existence. There is no limit to the number of shareholders an entity can have.

d. Free Transferability of Shares: Shares can be freely transferred from any shareholder to a third party. No approval is required

either from the company or from the other shareholders. Shares are assigned simply by endorsing the corresponding share certificate. The assignment must be registered in the shareholder registry book.

e. Management and Representation: The management of an SA lies in the hands of a board of directors or a sole manager as determined by the articles of incorporation. Any member of the board of directors can bear a company’s legal representation. Alternatively, legal representation may be delegated to a manager. The bylaws determine the governance of a company, including its management and representation.

Directors are elected for a maximum period of 7 years and can be reelected.

f. Auditor: Shareholders must appoint an auditor who oversees all the accounting and financial affairs of the company. The auditor cannot hold any other office on the board of directors.

g. Term: In El Salvador, companies can be incorporated for a definite or indefinite term, as determined by their articles of incorporation.

### **B. “Sociedad de Responsabilidad Limitada” (S.R.L. or Ltda.):**

The SRL is similar to a US Limited Liability Company with the following relevant traits:

a. Limited Liability: Ownership participants are only liable up to

*the amount of their capital contribution.*

*b. Capital Stock: Ownership interest is represented by the “quota” (participación), similar to a share of stock. Prior to transferring or selling a quota, the authorization of the remaining quota holders is required. Bylaws can establish equal or different categories of quotas.*

*c. Transfer of capital stock: Quotas cannot be transferred by endorsement. Transfer of quotas must be previously and unanimously approved by the quota holders unless bylaws provide for a lesser majority. Quota holders have the right of first refusal to acquire such quotas. The quota holders must purchase the offered quotas within a fifteen-day term. After such term has lapsed without an offer to purchase the quotas, and provided that such transference was authorized by the quota holders, the selling shareholder is free to transfer any shares. Transfers must be recorded in a quota holders registry’ book and registered in the commercial registry.*

*d. Number of Quota holders: At least two quota holders must incorporate the SRL. A single member company (i.e. one quota holder only) is not possible. There is no limit to the number of quota holders these entities can have.*

*e. Managers: this type of entity provides a simpler management structure, since, instead of a board of directors, it is managed by at least one manager, who bears the company’s legal representation. Managers are appointed by the quota holders. Additional managers can be appointed. If managers are*

*not designated, the quota holders are by default in charge of the company’s management.*

*f. Auditor: These companies must appoint an auditor who supervises the accounting and financial affairs of the company.*

*g. Term: In El Salvador, companies can be incorporated for an indefinite or definite term, which is determined by their articles of incorporation.*

*h. Tax Status: Salvadoran tax laws do not distinguish between the SA and the SRL.*

## Comparative Chart

ASPECT	S.A	S.L.R
<b>Equivalent in the United States of America</b>	Similar to an American corporation	Similar to an American L.L.C.
<b>Tax treatment in El Salvador</b>	<p>A company pays income tax directly. Non-domiciled shareholders are subject to 5% withholding tax on dividends sent abroad (tax havens are subjected to a 25% withholding tax).</p> <p>Domiciled shareholders must report dividends as part of their income on annual income tax return. Furthermore, companies have to withhold 10% of the dividends paid to domiciled shareholders as part of the withheld income tax.</p>	<p>A company pays income tax directly. Non-domiciled shareholders are subject to 5% withholding tax on dividends sent abroad (tax havens are subjected to a 25% withholding tax).</p> <p>Domiciled shareholders must report dividends as part of their income on annual income tax return. Furthermore, companies have to withhold 10% of the dividends paid to domiciled shareholders as part of the withheld income tax.</p>
<b>Tax Treatment by the United States</b>	There is no special treatment.	Eligible to be treated as “flow-through” or disregarded tax entity.
<b>Capital - Currency</b>	Capital must be in US dollars.	Capital must be in US dollars.
<b>Capital - ownership interest</b>	Ownership interest is represented by shares, which are deemed securities and generally freely transferable; shares transferable by endorsing share certificates and registering such endorsement in the shareholders’ book; shares may be of different classes and certain classes may have preferences or limitations with respect to others.	Ownership interest is represented by quotas (participaciones), similar to membership interests; quotas are not securities; by statute, they are not freely transferable; statutory right of first refusal in acquiring quotas exists for benefit of remaining quota holders; transfer of quotas requires approval of 100% of quota-holders (unless articles of association provide for a lesser majority); transfer recorded in the quota holder book and registered in the commercial registry. Preferences or limitations may be established in the
<b>Capital increases</b>	No statutory preference for acquiring new shares in capital increases.	Statutory preference for existing quota- holders to subscribe new capital in proportion to their respective membership interest in the event of a capital increase; if a quota holder is not present at a meeting authorizing capital increase, he must be notified and given the opportunity to exercise this right.
<b>Management</b>	<p>Resides in the hands of a Board of Directors or a sole manager; the articles of incorporation must determine which is selected.</p> <p>Any member of the board of directors can bear the legal representation of a company. Alternatively, the representation can be assigned to a manager.</p> <p>Shareholders have the liberty to choose the structure of the board of directors.</p>	No Board of Directors. The company is managed by one or more managers with the authority granted to them by the quota holders; If no manager is appointed, the quota holders are deemed as the managers of the company.
<b>Oversight</b>	An auditor who is in charge of supervising all the financial and accounting affairs of the company must be appointed.	An auditor who is in charge of supervising all the financial and accounting affairs of the company must be appointed.
<b>Term</b>	The life of the entity can be either definite or indefinite.	The life of the entity can be either definite or indefinite.
<b>Stockholder Liability</b>	Limited liability: Shareholders are only liable up to the amount of their capital contribution.	Limited liability: Shareholders are only liable up to the amount of their capital contribution.

### **C. Trusts**

*Trust agreements can be used by Salvadoran commercial entities and individuals to manage their commercial and personal interests and can serve as collateral. The trust structure is regulated in the Salvadoran Commerce Code and has a minimum of three parties: the donor, the beneficiary, and the trustee. In accordance with the specific terms and conditions of the trust, the donor transfers to the trustee property of certain assets or rights, for the benefit of designated beneficiaries.*

### **D. Subsidiaries / Branches / Representation Offices**

*Foreign companies may conduct business in El Salvador through branches of their parent company provided that the following requirements are duly met:*

- Articles of incorporation that attest to the existence of the parent company in accordance with the laws of its country of domicile.*
- Document proving the decision taken by the parent company to establish a branch in El Salvador.*
- Power of attorney whereby the legal representative is appointed with faculties set forth. The legal representative must have a permanent residency in El Salvador.*
- Enough capital stock (at least \$12,000.00) to undertake its activities, pursuant to a certificate granted by the Ministry of Economy, which attests that the branch has received enough funds.*
- Initial accounting balance of the branch done by a public*

*accountant.*

*- A formal statement by which it is fully acknowledged that the branch shall be subject to Salvadoran laws.*

*Additionally, the branch must be registered in the foreign investment registry held by the Ministry of Economy.*

*Due to the aforementioned registration, it is considered more convenient to create a new company as a legal vehicle to do business in El Salvador than to open a branch.*

## A. Income tax

### 1. Territorial source-based income system

The Salvadoran tax system is based upon the territorial principles whereby only income derived within Salvadoran territory and from Salvadoran sources is subject to income tax. Pursuant to the Income Tax Law (“ITL”) the following earnings are deemed as income derived from El Salvador:

- Income derived from assets (e.g. purchase or sale) or investments located within the territory;
- Services rendered from or in El Salvador, regardless of the cases in which such services are paid abroad.
- Income derived from intellectual property rights (e.g. copyrights, trademarks, patents) or similar registered or used in El Salvador.
- Income derived from securities when:
  - o The issuer is Salvadoran
  - o The capital is invested in El Salvador
  - o The risk assumed is located in El Salvador

As a consequence of said principle, any income obtained from foreign sources shall not be considered as part of the gross income.

Thus, for income purposes, income obtained from foreign sources should not be included in gross income. In this sense, the “territoriality” is the main element in order to determine whether or not income is taxable by the Salvadoran tax regime. Following

this principle, the tax is applicable to all income earned in El Salvador or from Salvadoran sources, regardless of citizenship, domicile or residence of the taxpayer.

### 2. Tax rates

Corporations pay a 25 or a 30 percent flat fee rate, depending on their income

Income	Tax
Up to \$150.000	25% flat rate
Over \$150.000	30% flat rate

As to individuals, Salvadoran legislation establishes different payment schemes depending upon the income tax rate applicable.

Income	Tax
\$0.1 - \$4.064,00	Exempted
\$4.064,00 - \$9.142,86	10%
\$9.142,86 - \$22.857,14	20%
Over \$22.857,14	30%

Profit obtained from the sale of real estate and movable assets by companies and individuals that do not usually engage in such activities is deemed as a capital gain and as such is taxed at a 10% rate.

### 3. Income Tax Return Filing

The statutory tax year runs from January 1 through December 31.  
The statutory tax year cannot be changed.

Taxpayers must file and pay the applicable taxes within four months after the end of the tax year (until April 30 of each year).

### 4. Taxable Profit – Deductible Expenses

Companies may deduct from gross income all cost and expenses necessary to produce taxable income. The Income Tax Law deems the following costs and expenses as deductible:

- Expenses to generate profit such as electricity, mail, etc.
- Salaries, labor compensation and bonuses.
- Travel expenses strictly related to business affairs
- Rent
- Insurance premiums
- Social security fees
- Fuel
- Interests on loans
- Production costs

### 5. Withholding taxes

The Tax Code provides that certain activities are subject to withholding taxes. Some examples of withholding taxes with the applicable rates are shown in the following chart:

Income	Rate
<i>Salaries and wages (on monthly basis)</i>	
a. \$0.01 - \$472.00	Exempt
b. \$118.00 - \$895.24	10%
c. \$895.25 - \$2,038.10	20%
d. Over \$2,038.10	30%
Services provided by individuals	10%
<i>Copyrights, trademarks, patents or similar</i>	
a. Individuals	10%
b. Companies	5%
Securities performance	10%
Dividends	5%

Regarding foreign remittances, several withholdings apply. The general rule is that services rendered in El Salvador by entities abroad or goods and services purchased from foreign providers are subject to tax withholding of 20%.

Moreover, Salvadoran legislation establishes several special cases of withheld taxes as shown below:

Income	Tax
International transportation	5%
Insurance	5%
Loans (by financial entities registered in the Salvadoran Central Bank)	10%
Copy rights, trademarks or patents	5%
Securities performance (traded in the stock market)	3%
Dividends	5%

*If a creditor is located in a tax haven, a 25% withholding rate applies.*

### **B. Value Added Tax (VAT)**

*The VAT levies upon the value added to a merchandise or a service.*

*It is generated with the (i) transfer of the domain of tangible movable property against payment, by any act or contract through which the ownership of these assets is totally or partially transferred; (ii) the onerous provision of services provided in the country; and (iii) import of goods to the country.*

*Taxpayers are those who have made transfers of tangible movable property or have provided services during the previous year for an amount greater than or equal to \$5,714.29 and when the total of their assets is greater than or equal to \$2,285.71.*

*The VAT rate is 13% over the base. In the case of large taxpayers, they must retain 1% of the price they receive from small and medium taxpayers as an advance of the VAT, as well as 1% when they acquire movable property or act as service providers to other taxpayers.*

*The payment of the tax is based on the difference between the fiscal debits acquired through sales at the time of the transfer of goods and services and those paid (tax credits) when purchases or expenditures of goods and services or import processes are made within the same tax period. If the aforementioned*

*difference in the tax credit exceeds the fiscal debit, the remainder may be deducted in the following tax periods. The tax declaration and its payment by taxpayers must be made within the first ten business days of the month following the corresponding tax period.*

### **C. Municipal taxes**

*El Salvador is divided into 262 municipalities, many of which have municipal taxes. According to the Constitution, the municipalities have the right to propose their own taxes to the Legislative Assembly. The Legislative Assembly has the exclusive power to elaborate and create municipal taxes. Therefore, each municipality requires an act of the Assembly to collect taxes.*

*Municipal taxes could apply if the economic activity as well as the real estate of companies, industries, financial institutions, and service providers occurs or is located within a municipality's territory, such activity, and real estate are subject to municipal jurisdiction. Each municipality will establish specifically the activities or subjects that are taxed and the conditions that apply.*

*The main cities in El Salvador, e.g. San Salvador, Santa Ana, and Antigua Cuscatlan, have their own municipal tax law.*

*The Supreme Court has declared in some decisions the unconstitutionality of those taxes that use the value of the payers' assets as a parameter to calculate tax obligations, arguing that these taxes violate the principle of economic capacity established by the Constitution.*

### **D. Special Contribution for Citizens Security and Coexistence (Telecommunication tax)**

*In 2015, a special contribution was levied on telecommunication services and related operations. This special contribution taxed the acquisition and usage of telecommunication services, independently of the technological means that is used for this purpose, as well as on the transference of any kind of technological devices that allow the employment of telecommunication services.*

*According to the Law for the Special Contribution for Citizens Security and Coexistence ("LECCS") the following activities are taxable:*

- *Payment for phone services*
- *Payment for television and Internet services*
- *Importation, sales, or any kind of operation in which the property or possession of technological devices, such as phones, tables, SIM cards, and other items, is transferred.*
- *Retirement or obsolescence of technological devices, terminals, or accessories that allow the usage of the aforementioned services, when these items are part of the provider's asset.*

*This special contribution tax is 5% of the amount of said operation, with the telecommunication, television and Internet providers and sellers of related items and devices serving as withholding agents of this contribution.*

### **E. Transfer pricing regulations**

*The Salvadoran Tax Code imposes a transfer pricing system whereby controlled (or related) entities within an enterprise must set their prices in accordance with said Code and the guidelines set by the Organization for Economic Co-operation and Development.*

*Taxpayers subject to transfer pricing rules must maintain documentation to support the pricing of related party transactions.*

*Taxpayers that undertake operations with related or controlled entities, or with entities located in tax havens, pursuant to the list published by the Tax Authority, must submit an annual report before the Tax Administration when such operations exceed \$571,429.00.*

### **F. Tax incentives**

#### 1. Free Zones Law

*El Salvador offers several tax incentives to export-oriented manufacturing companies located in free zones or warehouses for inward processing. Free Zones are industrial parks considered outside the national territory for fiscal purposes, allowing the tax-free importation of raw materials or merchandise by companies located therein.*

*Some of the benefits that investors can enjoy are:*

- *Full exemption from customs duties and other taxes on the*

*import of machinery and equipment used for production.*

- *Full exemption from customs duties and other taxes on the import of raw materials and other goods used for production.*
- *Full exemption from customs duties and other taxes on lubricants, fuel and other substances used for production.*
- *Full exemption from the income tax for 10 to 15 years depending on the activity. After this period, a partial exemption may be granted. A similar schedule applies for municipal taxes.*

*In order to enjoy these benefits, an authorization from the Ministry of Economy must be previously granted.*

*Some of the eligible activities are:*

- *The production, assembly or manufacturing, transformation or commercialization of industrial goods.*
- *Fishing of maritime species to undergo an industrial transformation.*
- *Cultivation, processing, and commercialization of flora species grown in protected structures in greenhouses and laboratories.*

### 2. International Services Law

*In addition to the incentives for Free Zone manufacturers, certain export-oriented services enjoy a number of tax benefits including:*

- *Total exemption from customs tariffs and other taxes that are imposed on the importation of machinery, equipment, tools, replacement parts, accessories, furniture and office equipment, and any additional goods necessary for the execution of the*

*activity subject to the incentive.*

- *Exemption from the Income Tax, exclusively for income coming from the activity with the incentive during the period in which operations within the country are carried out.*
- *Exemption from the payment of municipal taxes over the assets of the company, during the period in which operations within the country are carried out, beginning from the start of operations.*

*The law establishes and defines the following as the only activities which may receive the benefit of tax incentives:*

- *International distribution*
- *International logistics operations*
- *International call center*
- *Information technologies*
- *Research and development*
- *Repair and maintenance of marine vessels*
- *Repair and maintenance of aircraft*
- *Business processes*
- *Medical and hospital services*
- *International financial services;*

*As a general rule, all these activities must be export-oriented, with the understanding that the service will be destined for or provided to a customer domiciled abroad or outside the local custom territory. A prior authorization from the Ministry of Economy is needed.*

### 3. Renewable Energy

*Developments in hydraulic, geothermic, wind, solar, marine, biogas and biomass-based energy generation projects may benefit from the following tax incentives:*

- Total exemption from customs duties for machinery, equipment, materials, and supplies intended exclusively to construct or expand energy plants for 10 years.*
- Total exemption from income tax when profit comes directly from renewable energy generation. Projects that generate more than 10 megawatts will be exempt for a period of 5 years and projects that generate 10 megawatts or less will be exempt for 10 years.*
- Sale of Certified Emission Reductions is totally exempt from taxes.*
- Geothermic plants can deduct from the income tax, for a period of 10 years, costs and expenses of those activities strictly related to the reinjection of geothermic resources. Some restrictions may apply.*

### 4. Tourism

*Any investment of potential tourism interest or greater than twenty-five thousand dollars will be exempt from the following:*

- a. Real estate transfer tax that affects the acquisition of the property that will be destined for the project;*
- b. Customs duties on the importation of goods and equipment necessary to carry out the project, with certain restrictions:*

*c. Paying income tax for a period of ten years.*

### 5. Duty Free

*Inside the El Salvador International Airport, commercial establishments can operate under a customs regime of duty free shops.*

*Merchandise can be introduced with the exemption of the payment of import customs duties, a tax on the transfer of movable property and the provision of services and other applicable taxes generated by the importation, to be used exclusively for the sale of travelers leaving or entering the country by air.*

*To operate as a free store, an application must be submitted to the General Directorate of Customs.*

### **A. Lease of the facilities to operate**

*Lease agreements in El Salvador are regulated by two main legal sources: The Law of Tenancy (Ley de Inquilinato) and the Civil Code, which apply to different situations depending on the nature and purpose of the lease agreement. The former is applicable to leases for residences, commercial establishments whose assets do not exceed \$1,714,00 such as public and professional offices, consulting rooms and clinics, while the latter applies to most commercial leases and any other that is not regulated by the Law of Tenancy.*

*The Law of Tenancy establishes several requirements and obligations, which must be observed by the parties, and most of its rules are pro-tenant. For instance, every lease agreement under this law must be written and include the following information:*

- a. Name and general information of the lessor and lessee*
- b. Necessary information to identify the property*
- c. Rent*
- d. Payment method*

*Parties may agree on an expiration term; nevertheless, as long as the rent is paid accordingly after the termination date, the lessee cannot be evicted from the property.*

*On the other hand and contrary to the Law of Tenancy, under the Civil Code parties have more freedom to regulate their contractual relationships. The Civil Code only establishes certain*

*compulsory obligations, such as a required written agreement.*

*It is advisable to stipulate in the contract the name of the parties, identification data and a detailed description of the property, purpose of the lease, rent amount, term, and any other clause that the parties wish to include.*

### **B. Purchase of the facilities to operate**

*Before making any real estate investment, it is recommended to conduct a full due diligence on the property, including an investigation of the title, liens, easements, mortgages, annotations or limitations, the allowed use and restrictions that may apply, the condition of the improvements and appraisal of the premises. In addition, it is important to verify that the property has no relation to criminal activities in order to prevent any future confiscation of the property.*

*Once the decision is taken to purchase, it is advisable to create an asset holding legal structure which will secure proprietary rights while protecting the company from any operational risks and liabilities. Usual structures may include special purpose vehicles.*

*Prior to registering the deed, it is necessary to pay the real estate transfer tax.*

*The actual closing of the transaction is done through the conveyance of ownership rights and transfer of the property in an official document before a Salvadoran notary (the purchase deed). The deed will contain an identification of the dealing*

parties, and a legal description of the property and the purchase price. Usual warranties and representations will be stated in this document as well. The deed must then be filed for registration before the Salvadoran Public Registry (Instituto Libertad y Progreso) in order to be fully effective. Closing costs are customarily paid by the Buyer. The registry fees are calculated at \$ 0.63 per hundred of the sale price up to a maximum limit of \$5,400.

**C. Construction of the facilities to operate the business**

There are different governmental entities that are competent to grant construction permits in El Salvador. Depending on the

incumbent authority, the requirements and procedure may vary. If the municipality where the construction project is going to be developed has a Municipal Ordinance in this regard, usually the permits are granted by the local authorities. However, if there is no Municipal Ordinance, these permits are granted by the Vice-Ministry of Housing and Urban Development. The major cities in El Salvador that have issued their own Municipal Ordinances on this matter, include San Salvador and Santa Ana. For instance, in San Salvador and surrounding municipalities, permits are granted by the Planning Office of the Metropolitan Area of San Salvador (OPAMSS).

Generally speaking, the procedures to obtain a construction permit have the following common steps:

Steps	Description
<p><b>1. Preliminary steps</b></p>	<p>a. General:</p> <ul style="list-style-type: none"> <li>- Request and fill out the application form.</li> <li>- Indicate the name of the property owner.</li> <li>- Appoint a professional responsible for the project.</li> <li>- Submit a sworn statement of the owner and responsible professional.</li> <li>- Submit a copy of the deed and the technical description of the real property.</li> <li>- Submit two copies of the topographic blueprints.</li> <li>- Point out general information about the real state property, such as surrounding areas, registry information, characteristics, location, and more.</li> </ul> <p>b. Obtain site qualification resolution.</p> <p>c. Request construction delimitation resolution.</p> <p>d. Request zoning and road revision.</p> <p>e. Obtain rain water drainage feasibility.</p>

<b>Steps</b>	<b>Description</b>
	<p><i>f. Construction blueprints must be approved by the Ministry of Health and the project must obtain a license granted by said Ministry to initiate the construction.</i></p> <p><i>g. If required, obtain an authorization granted by the Ministry of Environment.</i></p>
<p><b>2. Approval of the construction plans and the respective licenses</b></p>	<ul style="list-style-type: none"> <li>- Request and fill out the application form.</li> <li>- Submit three (3) copies of the building blueprints, signed and stamped by the professional in charge of the project and by the construction manager.</li> <li>- Submit a copy of the property deed.</li> <li>- Present municipal solvency.</li> <li>- The project must demonstrate the feasibility of its water services, drainage, and energy provision.</li> <li>- Depending on the project, other requirements may apply.</li> </ul>
<p><b>3. Reception of the Construction</b></p>	<ul style="list-style-type: none"> <li>- Fill out the application form, which must be signed by the professional responsible for the construction and the owner.</li> <li>- Submit a certificate of water well construction, signed and stamped by the construction supervisor.</li> <li>- Submit the construction records and final report.</li> <li>- If the building will be organized as a condominium property submit a document of condominium creation and its administration rules.</li> <li>- Obtain the certificate of compliance of measures against fire, granted by the fire department.</li> </ul>
<p><b>4. Permit of habitability</b></p>	<ul style="list-style-type: none"> <li>- Once the abovementioned steps have been completed, the permit of habitability will be granted.</li> </ul>

*El Salvador is a member of the International Labor Organization (ILO). As such, it has adopted many of the rules contained in ILO resolutions. Employment and labor relations are heavily regulated and have special treatment at a constitutional level. The rules contained in the Labor Code develop the principles contained in the Constitution.*

*Work is considered under the Constitution as a 'social function,' which has been interpreted as the State's obligation to do what it can to promote full employment, as well as adequate levels of compensation and working conditions. The Constitution establishes the existence of a Labor Code that will regulate the relationships between workers and employers.*

### **A. Employment Contracts**

*There are three kinds of agreements applicable to individual labor contracts based on their duration:*

- *Permanent agreements*
- *Agreements based on a specified duration*
- *Agreements based on the task to be performed*

*The following are the only cases whereby a worker can be hired for a fixed term:*

- *When a worker is hired to perform transitory, event-specific, or temporary work*
- *When the company, during the hiring process, takes into account circumstances or events that would cause the full or partial termination of the work.*

*(In both cases it is necessary to establish the circumstance or event that motivates the hiring for a fixed term).*

### **B. Internal Labor Regulations**

*Every private employer that permanently employs ten or more workers and the autonomous and semi-autonomous official institutions have the obligation to draw up internal labor regulations, which must be submitted to the General Director of Labor for approval.*

*For their approval, the internal labor regulations must comply with the Labor Code's provisions, laws, agreements, and conventions that may affect these. Their purpose will be to establish the mandatory technical or administrative rules, necessary and useful for the development of the company, to which both employers and workers must comply in the performance or development of the work.*

### **C. Trial Period**

*The trial period in El Salvador is 30 days. During this period, the employer must respect all the rights as it would have to for the rest of the labor relationship (e.g., social security, protection from occupational hazards, the right to enjoy work breaks, days off, etc.). When the trial period comes to an end and if the employer does not believe that the employee has the necessary skills to perform the work, he can terminate the employment without liability, except for the agreed-upon salary accrued during the 30-day trial period.*

### **D. Termination**

*Labor contracts may terminate with or without any further liabilities to any of the parties depending on the circumstances that lead to the termination.*

*The employer may terminate the employment relationship by the mere exercise of his will and without liability in the cases established by the Labor Code, some of which are:*

- Within 30 days of initiating work, discovering false or misleading statements made by the worker about his/her qualifications prior to being hired;*
- Repeated negligent acts by the worker;*
- Lack of trust by the employer due to the position of trust that the worker has abused;*
- Revealing or making public commercial secrets or administrative matters that could negatively affect the business and/or owner;*
- Severe acts of misconduct by the employee;*
- Severe acts denoting lack of respect directed towards the employer;*
- Severe acts denoting lack of respect directed towards the employers' family members;*
- Acts that severely disrupt the daily operations of the business;*
- Damaging business property due to the negligence of the worker;*
- Acts that threaten the life or well-being of others in the workplace;*
- Drinking on the job or being under the influence of alcohol and/or drugs, or other substances.*

*It is important to establish clear guidelines to determine when such events occur and to keep proper evidence of their occurrence.*

*If an employment relationship is terminated under other grounds not listed in the Labor Code, the employer is liable for such termination and must pay compensation for the time of service.*

### **E. Voluntary Resignation**

*In the event that a permanent worker resigns, the employers will be obliged to pay him an economic benefit that is determined by the salary and years of service.*

*To obtain this benefit, the worker must give notice:*

- If the worker is a director, manager, administrator or specialized worker notice must be given thirty days prior to the date that the resignation will become effective.*
- All other workers must give notice fifteen days prior to the date that the resignation will become effective.*

*The resignation must be in written form, duly signed by the worker, along with the worker's identification and in pages provided by the General Directorate of Inspection of the Ministry of Labor and Social Welfare, or its departmental dependencies, or on sheets provided by the judges of first instance with jurisdiction in labor matters.*

*For workers to be entitled to this economic benefit, they must have at least two years of continuous and effective service to the same employer.*

### **F. Salary**

Labor law provides for a monthly minimum wage currently set at \$304.17 in the commercial and the industrial sector, except for the textile manufacturing industries where the monthly minimum wage is set at \$299.30.

The following constitute valid methods of payment:

- Payment for a unit of time without special consideration of the result (which is the most used method)
- Payment for a unit of work, when only quantity and quality are taken into account, paying for all pieces produced or measurements or sets determined regardless of time invested.
- Payment based on a mixed system, when payment is based on the units produced or the work done during the work day.
- Per task, when the worker obliges himself to make a specific quantity during the work day or any other period agreed upon.
- For commission, when the worker receives a percentage or agreed upon amount for each one of the operations performed.
- By project, per adjustment or price, when the salary is agreed upon in a global way, taking into consideration the work to be done, without taking into account the time taken to execute it.

Regardless of the method chosen, in most cases, payments cannot be less than the minimum wage established.

After being employed for a year, every employer is obligated to pay their employees a bonus for every year of service, to be granted as follows:

- Workers with one or less than three years of service, receive a bonus equal to fifteen days of their salary;
- Workers with three years or more and less than ten years, will receive a bonus equal to nineteen days of their salary;
- Workers with ten or more years, will receive a bonus equal to twenty one days of their salary.

### **G. Vacations**

Employees have the right to 15 days of paid vacations after completing 200 days of work. These days are paid with the base salary plus 30 percent and must be paid before the employee leaves for vacation.

### **H. Work hours**

There are 2 basic work shifts in El Salvador:

- The day shift can take place between 6:00 am and 7:00 pm and cannot exceed 8 hours per day and 44 hours per week.
- The night shift can take place between 7:00 pm and 6:00 am of the following day and cannot exceed 7 hours per day and 39 hours per week.

Work shifts that last more than 4 night hours per day are deemed as a night shift.

### **I. Workplace Health and Safety**

Companies must comply with the regulation established in this matter. The Labor Ministry is in charge of supervising the

*compliance of this regulation and has the authority to carry out inspections of workplaces.*

*Some of the most important safety measures that every company must implement are:*

- A company policy on occupational health and safety (OHS) characterized as concise and signed by senior managers or directors;*
- Management Program for the Prevention of Occupational Risks, a document that must contain all measures and procedures taken by the company.*
- Formation of OHS committee at companies;*
- Regarding structural safety, special requirements within the workplace should be adapted for people with disabilities;*
- Specific standards on noise, lighting, ventilation, and material are required, whereby the place of work may not exceed the levels of risk that are established;*
- Greater care in the use of chemical substances, requiring inventories, a material safety data sheet in Spanish, and specific training in handling these substances.*

*By failing to comply, employers may be sanctioned. Penalties range from \$1,200.00 to \$8,400.00.*

### **J. Social Security/Pensions**

*Employers have the obligation to register before the Social Security and make a contribution on behalf of their employees.*

*Workers contribute 3% of their salary and employers contribute 7.5% of their total payroll.*

*Additionally, employees have the right to be a part of a pension fund managed by private entities, to which workers contribute 7.25% of their salary and employers contribute 7.75% of their total payroll.*

### **K. Nurseries**

*Starting January 1, 2022 employers are obligated to install and maintain nurseries in the workplaces. The Nurseries Act regulates the conditions that employers with 100 or more employees must fulfill for the successful installation of nurseries to benefit their employees, either in the workplace or in an annexed and independent place determined by the employer.*

*If the employer does not comply with these requirements, he will be sanctioned with a fine of five to eight minimum wages in the current commercial and service sector, by the Ministry of Labor and Social Welfare, taking into account the economic capacity of the employer and without implication that he is exempted from compliance with this obligation.*

### **L. Law for the Inclusion of Persons with Disabilities**

*On January 1, 2021, the Special Law for the Inclusion of People with Disabilities came into force, incorporating new obligations for employers. The purpose of this law is to recognize, protect and*

*guarantee the full exercise and enjoyment of the rights of persons with disabilities under equal conditions to guarantee that barriers that hinder the full development of persons with disabilities are eliminated.*

*Every private employer has the obligation to hire at least one person with a disability for every 20 workers that they have at their service, ensuring decent work and gender equality for their hiring. The employer that has less than 20 workers at his service is exempt from this obligation. Whoever is exempt from this obligation, prior qualification by the Ministry of Labor, must contribute an amount equivalent to the current monthly minimum wage of the commerce and services sector according to the number of employees that should be hired.*

### **M. Remote Work**

*The purpose of this law is to promote, harmonize, regulate, and implement remote work as an instrument for the generation of employment and modernization of public, private, autonomous and municipal institutions, through the use of information and communication technologies, taking advantage of such technologies in the provision of services to the public and the population in general. Telework uses different modalities depending on the place where it is carried out and the form of communication.*

*It is important to mention that the implementation of this modality is strictly voluntary for both the worker and the employer. There must be an agreement between the parties to the employment relationship, in which terms and conditions are*

*established. Under no circumstances can it be coercive.*

*The employer is obliged to provide the worker with the equipment, connections, tools, programs and applications that are necessary and indispensable for the execution of the work in accordance with the provisions of article 29 of the Labor Code. In the event that the worker voluntarily provides his work equipment, he will be compensated by the employer for its depreciation.*

*The ordinary daytime effective working day should not exceed eight hours a day, nor the night seven hours. The daytime workweek shall not exceed forty-four hours nor a weekly nightshift thirty-nine.*

*In El Salvador, intellectual property is classified into three categories: patents, trademarks, and copyrights. These rights are governed by the Constitution, the Intellectual Property Law, Law of Trade Marks and Other Marks, as well as international agreements signed by El Salvador, such as the Paris Convention for the Protection of Industrial Property, Berne Convention for the Protection of Literary and Artistic Works, Patent Law Treaty, Trade Mark Law Treaty, the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of Registration of Marks, and others.*

### **A. Patent**

*Under Salvadoran law, a patent is a privilege granted to the creator, or to the person who improves an existing invention. The Intellectual Property Law classifies patents into three categories: inventions, utility models, and industrial designs. Inventions are ideas actually applied to solve a specific technical problem.*

*It may be a product or a procedure. Utility models are any form, shape, or disposition of the elements of a device, tool, or any other part of the same which would provide a better or a different operation, utilization, or manufacture of the object that incorporates it, or somehow provides any new usefulness, advantage, or benefit. Industrial designs are any two-dimensional or three-dimensional form that is incorporated into a utility product and which gives the product a special appearance and at the same time can be used as a model or type for its manufacture.*

*The right to obtain a patent is exclusively that of the inventor or designer of an invention, utility model, or industrial design, or to his heirs. The same right belongs to the individual or entity that has instructed and paid for the creation of the invention. When several people develop an invention jointly, the right to the invention belongs to them jointly.*

*Invention patents are granted for a term of 20 years. If the invention concerns medical drugs, the term will be for 15 years. The patents granted for utility models have a 10-year term. The patents granted for industrial designs have a five-year term. These terms cannot be extended, and they are effective from the date on which they are filed before the Registry of Intellectual Property.*

### **B. Copyright**

*Copyright is a property right consisting of artistic, literary, or scientific work.*

*The right granted by the law consists of providing protection to the owner of the rights mentioned above so that he can exercise them without limitations. If the author is an individual, the protection is for his/her lifetime, plus 50 years from the date of his death, in favor of the heirs or successors in interest. In the case of an anonymous or pseudonymous work, the term of the protection will be 50 years from the date the author of the work is known. If the owner of a work is an entity person, the term of protection will be of 50 years, beginning from January 1 of the year following the year of the first publication. Copyrights cannot*

be renewed.

*Copyrights are transferable by inheritance, but the patrimonial right can be transferred by assignment. These contracts of assignment of rights or license of use must be formalized in a public deed, and registered in the Registry of Intellectual Property (“Registry”).*

*The contracts granted abroad are subject to the formalities required by foreign law. To be valid in El Salvador they must follow the authentication and translation procedure before their registration.*

### **C. Trademark**

*The property of trademarks and the right to their exclusive use is acquired by their registration in the Registry and is granted exclusively for the products or services for which they were registered. The owner of a trademark protected in a foreign country will enjoy the rights and benefits granted by local law, as long as the trademark is registered in El Salvador. Nevertheless, the law automatically protects well-known or famous marks.*

### **D. Trademark Registration Process**

*1. Application: The trademark registration process in El Salvador begins with an application filed in the Registry. The application is only for an individual trademark in a single class, i.e., there are no multi-class applications., a saber, no hay solicitudes multi-clase.*

*The law establishes that the trademark registration process must be carried out by attorneys representing the applicants, or by the applicants with the signature of a supervising attorney. Attorneys representing applicants must have a power of attorney (POA) duly registered in the Registry of Commerce. This POA must be legalized or annotated by a notary if it was granted abroad.*

*If it is a trademark and a design, or a trademark consisting only of a design, 20 copies of the brand are required to be filed along with the petition. This requirement also applies to word marks.*

*The application must indicate the class for which the products or services are requested to be registered, and an exact list of the products, goods, and services that the applicant wishes to protect with his brand. It must also include the physical address that the applicant wishes to appear on the registration certificate.*

*If a person has duly filed an application for registering a trademark in a foreign country (or his successor in title), he/she has a right of priority for the purpose of filing an application in El Salvador. These are called priority claims. In case that a priority claim of the trademark is desired in El Salvador, the interested party will need the certification of the application filed in the country of origin, issued by the Registry, in order to be filed along with the local application. For the priority claim to be valid, the filing must take place within three months following the original filing abroad.*

*2. Admission: Once the application has been filed, the Registry examines the request; if it fulfills all the requirements established*

*by the law, it is admitted, and an edict is released for its publication.*

*3. Publication: Edicts must be published in the Official Gazette and one newspaper of major circulation. Once the edict is published, a term of 60 days starts running for third parties claiming an interest in the trademark to present an opposition before the Registry.*

*4. Registration: Once the opposition period has passed, and if an opposition has not been filed, the interested party (or his/her attorney) must present originals of the publications and the receipts of the official fees to the Registry of Intellectual Property. Later, the trademark is registered, and the certificate of registration is issued to the applicant.*

*A registration process normally takes between six to nine months if it proceeds normally and without any conflicts with other trademarks previously filed or registered, such as opposition from third parties. If such conflicts arise during the application process, an additional year might be added. Trademark searches are recommended prior to the filing of applications to prevent future conflicts that may extend the registration period.*

*The official fees for filing an application are \$100 for trademarks and \$75 for trade names, plus publication expenses, which are approximately \$78.*

*According to our Sustainability efforts  
WE DO NOT PRINT THIS DOCUMENT*

*For more information about the content of this document,  
contact us at [info@blplegal](mailto:info@blplegal).  
+503 2505 9700*

