

A blue silhouette map of Guatemala is positioned behind the text. The map shows the country's outline, including its major geographical features like the northern mountains and the southern coastal plain.

# DOING BUSINESS GUATEMALA

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*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.*



# GUATEMALA

Official name: **Republic of Guatemala**

Capital: **Guatemala City**

**Main cities:** Guatemala City, Quetzaltenango and Puerto Barrios

**Form of Government:** Presidential Republic

**Surface:** 108,889 Km<sup>2</sup>

**Population:** 17,422,821 (2021)

**Official language:** Spanish

**GDP (PPP): Per Capita:** USD \$8,637 (2019)

**Fiscal year:** Calendar year

**Official currency:** quetzal (GTQ)

**Exchange parity with the annual average USD:** 7.73 GTQ per \$1

## **Main competitive advantages of investing in Guatemala**

- Main recipient of remittances in Central America
- Great diversity of natural resources in an interesting variety of climates
- Technically trained quality workforce
- Strategic position and connectivity with international markets

**Exports:** \$11.8 billion (2019)

**Main export markets:** United States of America, Central America (El Salvador, Honduras, Costa Rica, Nicaragua), European Union and Mexico

## **Main export products:**

- Wardrobe items
- Cardamom
- Banana
- Sugar
- Refined petroleum

## **TRADE AGREEMENTS in FORCE:**

### **Multilateral agreements**

- Member of the World Trade Organization

### **Customs Unions:**

- Members of the Central American Common Market (CACM)

### **Free Trade Agreements:**

- Central America - United Kingdom;
- 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;
- 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:**

- Ecuador (AAP.A25TM N ° 42);
- Belize;
- Venezuela (ACE N ° 23)

### **Bilateral Investment Agreements:**

- Germany
- Argentina
- Austria
- Belgium / Luxembourg
- Korea
- Cuba
- Spain
- Russian Federation
- Finland
- France
- Israel
- Italy
- Netherlands
- Czech Republic
- Sweden
- Swiss & Trinidad
- Tobago

## Guatemala at a glance

### Good time to invest:

- The largest economy in Central America with \$76.2 billion<sup>1</sup> in GDP
- GDP growth of 3.6% in 2020

### Economic engine in Central America

Guatemala accounts for 35% of the economy in the region, stands out for sustaining competitive advantages in economic and sociodemographic terms, and maintaining stability in the main macroeconomic indicators of inflation, exchange rate, interest rate, and fiscal deficit and.

### Macroeconomic stability:

- Guatemala's net position on its international reserves has been increasing in recent years. The country has a \$12.7 billion cash reserve the largest in the region, as well as 24.6% public debt as a percentage of GDP, the lowest level of sovereign debt in Latin America;

- Country Risk Rating (2018): Fitch Ratings (BB Stable), Moody's (Ba1 stable), Standard & Poor's (Stable BB), OECD (4). Specifically, Moody's Investors Service qualifier improved and changed from negative to stable. Moody's significantly values the authorities' historic commitment to meeting public debt obligations and highlights reasonable levels of indebtedness and low levels of fiscal deficits compared with exports and imports. Moody's emphasizes that Guatemala's institutional strength has

improved and the country has become less susceptible to risky events.

### Doing business rankings<sup>2</sup>

Guatemala improved in the 2020 Doing Business Ranking by becoming one of the five Latin American economies that managed to move up by improving in its:

1. Management of Construction Permits indicator
2. Minority Shareholders Investors Protection indicator
3. Cross-Border Trade indicator.

The country had a special recognition in 2019 granting the first place in Latin America and the Caribbean in improving competitiveness for opening companies, having improved 50 positions, keeping its 12th position out of the 33 economies of America.

Guatemala has had significant improvements in Cross-Border Trade, Property Registration, and Electricity Obtention supported by more than 13 Regulatory and Administrative reforms since 2018 and made possible by reforms of:

- Properties Guarantees Act
- Tax list of the Ministry of Environment and Natural Resources to obtain environmental permits
- Trade Code
- Improving Property Ownership of the Property Registry

<sup>1</sup> All dollar amounts shown herein are in USD. The exchange rate between the quetzal, legal tender in Guatemala, and the United States dollar, at the time of publication, is Q.7.70 per \$1.00.

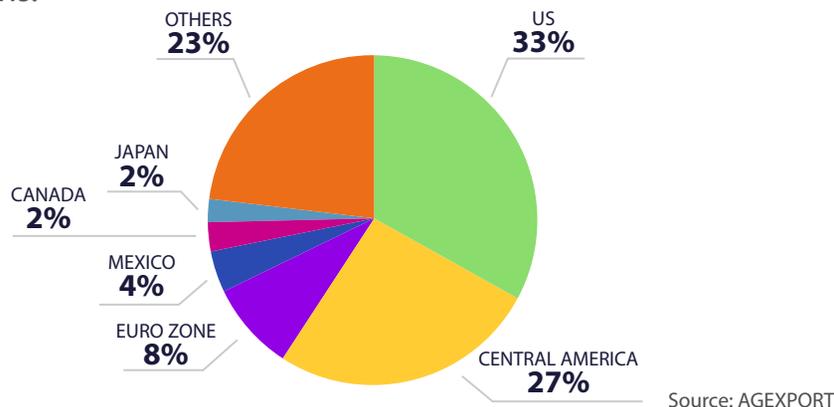
<sup>2</sup> Doing Business is an indicator of the World Bank that provides a measurement for the improvement of the business climate of 190 economies around the world.

## Access to major markets

- Gateway to Mexico, the largest market in Latin America with a GDP of \$2, 274 billion.
- Closeness and Free Trade Agreement with the United States, the world's largest market, with a GDP of \$18, 418 billion in 2019.
- Access to the \$266 billion Central American market.
- Access to the European market through the Association Agreement.
- Exports to more than 140 countries.

Guatemalan products have an increasing share of the world's main markets, with clothing, organic and high-value agricultural products, alcoholic and non-alcoholic beverages, and even industrial refrigerators and electric power originating in Guatemala. Guatemalan products supply markets such as the United States, Central America, Mexico, and various European countries.

The country has trade agreements to boost its commercialization in major global markets. It has established trade agreements with more than 10 main markets around the world, which allow thousands of our products to enter with lower tariff and non-tariff restrictions.

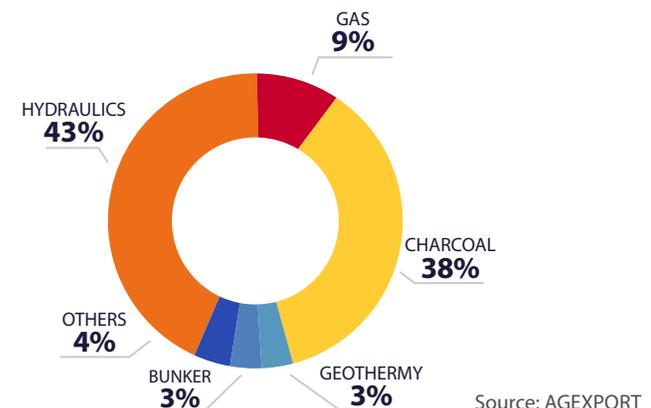


## Infrastructure

Guatemala has the most modern infrastructure in Central America with a road network of 14,000 kilometers.

The public-private project program announced by ANADIE includes the Tecún Umán cross-border port, the light rail train, a municipal central highway, and a state administrative center which raises expectations for business investment.

Guatemala has the most successful electricity system in the entire Central American region. By allowing significant domestic and foreign investment companies to be established for the generation and distribution of electricity, Guatemala has become a formidable competitor, offering the lowest rates in all of Central America. The connection of new power generation plants ensures a sustainable provision of energy resources for companies. The country has also dabbled in large efforts to reduce dependence on fossil fuel-based energy. Currently, only 3% of the country's energy is produced by bunker fuels. The rest of the energy is produced from clean and renewable sources.



## **Tax incentives**

*Guatemala has 3 special regimes containing certain tax benefits including temporary income tax exemptions, and exemption from some taxes, tariff duties, and import charges:*

- a. Free Trade Zone Regime*
- b. Exporting Activity and Maquila*
- c. Free Commerce and Industry Areas (ZOLIC)*

*This results in significant incentives for the establishment of enterprises in Guatemala with 11 free trade zones around the republic that allow the development of a wide range of economic activities.*

## **Customs union**

*Progress in the consolidation of the Central American Customs Union favors the flow of business in the country. The integration of Guatemala, Honduras, and El Salvador customs continues to advance. This union services 33 million people, 75% of the region's population of 44 million in Central America, and features:*

- 48.5% of the Regional GDP.*
- Commercial Trade of more than \$4.47 billion in 2018.*
- More than 77% of products in free circulation as a result of 98% of harmonized tariffs.*
- Implementation of Invoice and Single Central American Declaration, which reduced the uptime operation process from 11 hours to 5 minutes.*

*Guatemala City, also known as Nueva Guatemala de la Asunción, is the capital and main seat of government of the Republic of Guatemala. It is located in the Valle de la Ermita (Valley of the Hermitage), the Municipality of Guatemala, Department of Guatemala, within the south-central region of the country. At an altitude of 1500 meters above sea level, the Valle consists of flat land surrounded by mountains, a spectacular setting.*

*Containing an area of 108,889 square kilometers, the Republic of Guatemala is slightly smaller than the US state of Tennessee. Located in the northwestern tip of Central America, it is bordered on the north and west by Mexico, on the east by Belize, Honduras, El Salvador, and the Atlantic Ocean, and on the south by the Pacific Ocean.*

*Guatemala's access to both the Pacific and the Atlantic is of strategic importance in international trade. Moreover, the country's location at the center of Mesoamerica makes it the obligatory entrance and exit for all land shipments between the United States and the rest of Central America.*

*In 2018, the Republic of Guatemala had a population of 17.3 million with a density of 155 inhabitants per square kilometer. Women are estimated to make up 51% of the population, which has been growing at over 2% a year throughout the decade. Guatemala is considered to have the highest level of potential productivity in Central America. The country offers a significant demographic advantage, ensuring a young workforce for*

*decades to come. In addition to being the largest population in all Central America, the population is also quite young, ensuring talent availability for the coming years. If the average age of Guatemalans is currently less than 20 years, it is still estimated to be around 32 years of age by 2050.*

*The main steps to starting operations in Guatemala are as follow:*

**1**

*Choose the desired legal structure of the activity. Please see the "**Forms of Operating in Guatemala**" section.*

**2**

*Register the company with the Mercantile Registry and the Superintendence of Tax Administration to obtain the necessary legal and accounting documents. Please see the "**Tax System**" section.*

**3**

*Acquire adequate operating facilities. The facilities can be leased, purchased, or built. Depending on the desired alternative, certain requirements must be met. Please see the "**Real Estate**" section.*

**4**

*Give notice of concluded labor contracts to the Ministry of Labor and Social Welfare, through the General Directorate of Labor or the nearest administrative office. Please see the "**Labor Matters**" section.*

**5**

*Protect your intellectual property before the start of operation in Guatemala. Please see the "**Intellectual Property**" section.*

**6**

*Determine with our experts if a government **permit** is necessary to carry out your activities in Guatemala or a specific registration is necessary.*

**7**

*Start operations in **Guatemala!***

The two most common legal entities authorized to do business in Guatemala are the “Sociedad Anónima” (S.A.) and the “Sociedad de Responsabilidad Limitada” (S.R.L. or Ltda.). The investor can also be part of a Trust or open a Subsidiary or a Branch.

These are the main characteristics of the S.A. (Corporation) and S.R.L (Limited Liability Company):

**A. S.A.: The S.A. (Sociedad Anónima)** has similar characteristics to a United States corporation.

a. Responsibility of the shareholder: is limited to the amount of his contribution; the shareholder is not responsible for the obligations of the company.

b. Capital: The capital contributed to the S.A. is divided into registered shares with the nominal value and number of shares decided by the shareholders; multiple actions can be represented in a single share title.

c. Authorized capital: the maximum amount of value for which an S.A. can issue shares can be expressed in the Articles of Incorporation and Bylaws in quetzales (national currency) or US dollars. However, the payment of the shares in the authorized amount may be deferred until necessary. The actions may be of different classes, subject to different rights or limitations.

d. Subscribed capital: the amount that shareholders agree to pay as capital, which may be less than the authorized amount. Each

shareholder can subscribe to a different number of shares. At the time of signing shares, it is essential that each shareholder pay at least twenty-five percent (25%) of the nominal value of each subscribed share.

e. Paid capital: The monetary amount of the shares for which the partners have effectively paid, with the right to make subsequent payments to comply, within a certain time, with the obligation contracted to pay the subscribed capital. The minimum capital currently paid is two hundred quetzals (Q.200.00) equivalent to \$25.00.

f. The number of shareholders: A minimum of two persons is required to form a commercial company, who must remain as partners or shareholders throughout the existence of the company. It is common to find corporations where one person has ninety-nine percent of the shares and another person one percent, simply to meet the requirement of having two shareholders. However, there is no maximum shareholder limit. For someone to be considered a shareholder, he/she must be registered as such in the Company's Register of Shareholders.

g. Freedom of transfer of shares: unless there is a stipulation in the deed of incorporation that limits the freedom of transfer of ownership, shareholder shares can be freely transferred to third parties.

h. General Assembly of Shareholders: The General Assembly of Shareholders is the highest governing body of the S.A. and expresses the corporate will in matters within its competence.

Participation or decision-making in assemblies, meetings, administrative sessions, the sending of calls and any communication between the partners and the commercial company may be carried out by any method of distance communication, as stipulated in the corporate deed.

i. Administration: The administration of the Company may be the responsibility of a single administrator or be in charge of a Board of Directors under whose charge is the administration of the company. Management is not limited to shareholders, and the General Shareholders' Meeting elects an administrator or board of directors for a maximum period of three years, although the administrator or administrators may be re-elected as many times as they wish. The appointment of an administrator is revocable by the General Assembly at any time. The administrator, or the Board of Directors, as the case may be, shall have the legal representation of the company, inside and outside the court, as well as the use of the corporate name, unless otherwise indicated in the articles of incorporation. The Board of Directors may grant powers on behalf of the company, but the sole administrator can only do so if he is expressly authorized to do so. The first Sole Administrator or President of the Board of Directors appointed should have a personal Tax Identification Number (NIT), which must not be administratively blocked, for company registration before the Superintendency of Tax Administration (SAT).

j. Inspection: The operations authorized in the articles of incorporation can be audited by the shareholders, by one or several accountants or auditors, or by one or several commissioners, according to the provisions of the articles of incorporation.

k. Term: The term of the S.A. starts from the date of registration in the Mercantile Registry and may be defined or indefinite, extending the term defined by a shareholders agreement.

l. The tax rate for the distribution of profits and payment of dividends, regardless of the accounting method used, is five percent (5%).

m. If the entity will participate in public procurement events, it must manage its registration with the State General Procurement Registry and obtain the prequalification corresponding to the business line.

n. All commercial activity requires an environmental impact study approved by the Ministry of Environment and Natural Resources and must have a valid environmental license.

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

The S.R.L. has similar characteristics to those of a limited liability company in the United States of America, commonly called LLC:

a. Responsibility of the partners: an S.R.L. is a corporate structure by which members of the company cannot be personally liable for the debts or responsibilities of the latter. It combines the characteristics of a corporation and a society. The number of members cannot be less than two or more than twenty.

b. Purpose or name of the company: the company can have any name but must refer to the main activities. The name can also be

formed with the full name of one of the partners or with the last name of two or more of them, but in both cases, it is mandatory to add the word "Limited", or the legend "and Limited Company", since otherwise, the liability of the partners becomes unlimited.

c. Capital: Unlike the S.A., the S.R.L. does not distinguish between authorized, subscribed and paid capital; The established capital investment must be paid in full before the SRL can operate. There is no minimum capital; the capital must be indicated by the Partners at the time of signing the deed of incorporation.

d. Inspection: Each member has the right to supervise the actions of an administrator, and any agreement that contradicts this is void.

e. General Meeting of Partners: The General Meeting of Partners is the predominant governing body of the S.R.L. and expresses the will of the S.R.L. Participation or decision-making in assemblies, meetings, administrative sessions, the sending of calls and any communication between the partners, and the commercial company, may be carried out by any method of distance communication, as stipulated in the corporate deed.

f. Transfer of social participation: members are prohibited from assigning or taxing their social participation without the prior and unanimous consent of the other partners. And, when such consent exists, the partners have the right to acquire the capital of the shareholder whose disposal has been approved. Any new member can be admitted without the unanimous consent of the remaining partners.

g. Administration: The administration of the S.R.L. will be in charge of one or more administrators or managers who may or may not be partners and who will have legal representation. Administrators cannot pursue in their own name or that of others the same type of business that constitutes the object of the company unless otherwise agreed. The first Sole Administrator or President of the Board of Directors appointed should have a personal Tax Identification Number ("NIT", which must not be administratively blocked) for a company's registration before the Superintendencia de Administración Tributaria (SAT). This requirement is not needed for any administrators subsequently appointed.

h. Term: The term of the SRL begins from the date of registration in the Mercantile Registry and can be constituted by a defined or indefinite term. A defined term can be extended.

i. Fiscal status: Guatemalan tax laws do not offer a different treatment between an S.A. and an S.R.L., compared to some jurisdictions, such as the United States of America, in which a Limited Liability Company can be treated as an intermediary entity to eliminate possible double taxation.

j. The tax rate for the distribution of profits, regardless of the denomination or accounting method used, is five percent (5%).

k. The initial capital can be paid in United States dollars or quetzals, legal tender in Guatemala.

*l. If the entity will participate in public procurement events, it must manage its registration with the State General Procurement Registry and obtain the prequalification corresponding to the business line.*

*m. All commercial activity requires an environmental impact study approved by the Ministry of Environment and Natural Resources and must have a valid environmental license.*

## Comparative table

FEATURE	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 Guatemala</b>	The tax rate for dividends, earnings and profits, regardless of denomination or accounting method to be used is five percent (5%).	The tax rate for dividends, earnings and profits, regardless of denomination or accounting method to be used is five percent (5%).
<b>Tax Treatment by the United States</b>	There is no special treatment.	It can be treated as an intermediary entity to eliminate possible double taxation.
<b>Capital - Currency</b>	Capital can be in US dollars or quetzales.	Capital can be in US dollars or quetzales.
<b>Share in the capital</b>	Participation is represented by shares that are freely transferable (except for any shareholder agreement where specific authorization is required). As long as the certificate that represents the shares is endorsed, the transfer is valid. There may be different kinds of transactions, with different rights or limitations.	Participation is represented by quotas or social participation, which resemble membership. The quota or social participation is not freely transferable since the unanimous approval of the other partners is necessary; and, once the approval has been obtained, the transfer must be documented in a contract of assignment of rights and the modification of the bylaws of the entity. All partners have equal rights.
<b>Capital increases</b>	By law, shareholders have a preferential right to acquire any new shares issued by the company in proportion to the shares they have at the time of the new issue.	The law does not establish a preferential right of the partners. To increase the capital, the new amount must be fully paid before formalizing the increase by public deed, a formality that is always necessary.
<b>Administration</b>	The administration can be a Sole Administrator, or a Board of Directors, as appointed by the General Assembly of Shareholders. The administration is in charge of ordinary business manners and is the company's legal representative.	The administration can be a Sole Administrator, or a Board of Directors, as appointed by the General Assembly of Shareholders. The administration is in charge of ordinary business manners and is the company's legal representative.
<b>Inspection</b>	Inspection is supervised by the shareholders themselves, by one or several accountants or auditors, or by one or several commissioners, depending on the procedure established in the articles of incorporation.	Each member has the right to supervise the actions of the administrators; any agreement that contradicts this right is void.
<b>Debt possibilities</b>	By having a documented legal status and its own assets, the S.A. can contract rights and obligations, such as a credit.	By having a documented legal status and its own assets, the S.A. can contract rights and obligations, such as a credit.
<b>Term</b>	It can be a definite or indefinite term.	Puede ser un término definido o indefinido.
<b>Liability</b>	The liability of the shareholders is limited to the amount of their contributions. The S.A. will respond with its own assets.	The liability of the shareholders is limited to the amount of their contributions.

### **C. Trusts:**

*Trust agreements are commonly used by individuals or legal entities in Guatemala to manage their commercial or personal interests. The trust structure is regulated in the Commercial Code and requires three parties: the grantor, the trustee, and the beneficiary. Under the terms of the trust agreement, the grantor disposes of certain assets as a gift for a specific legal purpose, transferring them in ownership to the trustee, which in Guatemala can only be a banking institution that is required to manage them and deliver the fruits of the trust to the beneficiary. The law allows the grantor and the trustee to be the same person.*

### **D. Subsidiaries/Branches:**

*The subsidiary or branch is a Guatemalan company whose shares belong to a foreign company, mitigating the responsibility of the foreign entity. To form a subsidiary, the legal process to follow is the same as to form any other Guatemalan Society. In addition, foreign companies can administer their business in Guatemala through the branches of the parent company, which is the same foreign company that is registered in the Mercantile Registry of Guatemala and, therefore, must comply with some special proof of validity:*

- Check that the foreign company is properly constituted under the laws of the country in which it was organized.*
- Present a certified copy of the articles of incorporation and bylaws, as well as any modification, along with a corporate resolution that has been duly adopted by the competent*

*governing body of the foreign company to operate a branch within the country, and appoint a representative in Guatemala, with broad powers of representation.*

*-Allocate capital for the operations of the branch, as well as a guarantee in favor of third parties for an amount not less than \$50,000, which must remain in force for as long as a branch operates in Guatemala, also forcing the parent company to respond with the assets it may have abroad if necessary.*

*-Submit to the jurisdiction of the courts of Guatemala, as well as its laws, for all acts and business of a private nature that occur in the territory or that will affect Guatemala.*

*.*

*If the branch will participate in public acquisition events, it must manage its registration with the State General Acquisitions Registry and obtain the prequalification corresponding to the business line. For prequalification purposes, the branch can accredit the experience of the parent company.*

*All commercial activity requires an environmental impact study approved by the Ministry of Environment and Natural Resources and must have a valid environmental license.*

*The tax system in Guatemala is based on the principle of territoriality, according to which only the activities or operations carried out in Guatemala and the income generated in the Guatemalan territory will be taxed. Therefore, local taxes will not be levied upon any income generated by foreign sources outside the territory. Only the income generated in Guatemala will be subject to the tax system of Guatemala, regardless of the taxpayer's citizenship or nationality, residence or domicile. In Guatemala, the income, documents, assets, and activities of individuals and companies are subject to tax review.*

*The main taxes are:*

### **A. Income Tax (ISR):**

*ISR levies all income obtained by persons, entities or assets, national or foreign, residents or non-residents, within the country, according to their origin: a) Income from lucrative activities; b) Labor-generated income; and c) Passive income from a capital investment and capital gains.*

*The income tax category of lucrative activities establishes a tax on profits, as well as occasional lucrative activities. Taxpayers enrolled in the lucrative activities regimen determine their taxable base by deducting exempt income and deductible costs and expenses from gross income and adding costs and expenses incurred in generating the exempt income. Once the tax base is determined, a tax rate of 25% is applied. This will be the applicable regimen by default.*

*Taxpayers can alternatively register under an optional simplified regime on income from lucrative activities, in which case they determine their taxable base by deducting exempt income from the gross income. Once the taxable base is determined, a 5% or 7% tax rate is applied, according to the following range of monthly taxable income: from Q.0.01 to Q.30,000.00 (approx. \$4,000\*), 5%. Above Q. 30,000.01, a fixed amount of Q.1,500.00 (approx. \$200) is due on the first \$4,000 of taxable income with 7% applied to the surplus.*

*In the category of labor income, the taxable income is determined by deducting from the net income the deductions established by law. Once the taxable income is determined, the tax rate of 5% or 7% is applied, according to the following range of taxable income: from Q.0.01 to Q.300,000.00 (approx. \$40,000), 5%, and above of Q.300,000.01 and thereafter a fixed amount of Q. 15,000.00 (approx. \$ 2,000) is due on the first \$4,000 of taxable labor income plus a 7% tax rate on the surplus.*

*In the category of capital income and capital gains, two sources of capital income are recognized: (i) real estate income such as rent, subleases, and incorporations or assignment of rights over the immovable asset, provided that such income does not constitute the taxpayer's main lucrative activities; and (ii) mobile capital income, such as interest payments, royalties, dividend or profit distribution. Capital gains and losses are those that result from any transfer, assignment, sale, exchange, or other forms of negotiation of property and rights outside the scope of normal commercial activity. The applicable tax rate for this income category (both capital income and capital gain) is 10%, except for*

*the distribution of dividends to which the 5% tax rate applies.*

*The income obtained by non-resident taxpayers with a permanent establishment is taxed according to the categories mentioned above, while the income of non-resident taxpayers without a permanent establishment is subject to different tax rates which start as low as 3% and rise as high as 25% depending on the nature and origin of the income.*

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

*The VAT is levied on (a) the sale or exchange of goods and rights over them; (b) the rendering of services in the national territory; (c) imports; (d) the lease of movable and immovable property; (e) the first sale or exchange of real estate property; and (f) donations (not because of death) of movable and immovable property. The tax rate of VAT is 12%, and the tax return must be filed monthly and tax due must be paid monthly to the tax authority.*

### **C. Solidarity Tax (ISO):**

*The ISO is levied upon persons legal entities, trusts, participation contracts, irregular companies, de facto companies, trust assignments, branches, permanent or temporary agencies or establishments, co-ownership, community property, undivided hereditary assets, and any other form of business organization that own assets, engages in mercantile or agricultural activities in the national territory and obtains a gross income margin of 4%.*

*The tax period is quarterly. The tax base is the greater among a quarter of the value of net assets or a quarter of the gross income, whichever is higher. However, in case the net assets exceed more than four times the gross income, the taxable base will be a quarter of the gross income. The tax rate is 1%. The ISO and the ISR can be offset with one another. Persons, legal companies or entities, or assets subject to the ISR under the optional simplified regime on income from lucrative activities are exempt from payment of the ISO.*

### **D. Sole Tax on Real Estate (IUSI):**

*The IUSI levies upon rustic, rural, and urban real estate, comprised of land, structures and buildings attachments to the property, and any improvements, as well as permanent crops, all of which must be located in Guatemala, as well as the taxpayer's ownership or possession. The tax base is comprised of the value of the different properties belonging to the same taxpayer. The applicable rates are established according to the following range of registered values: Up to Q.2,000.00 (approximately \$267) is exempt from this tax; from Q.2,000.01 to Q.20,000.00 (approximately \$2,670) pays Q.2 (\$0.25) per thousand of registered value; from Q.20,000.01 to Q.70,000.00 (approximately \$9,357) pays Q.6 (\$0.75) per thousand; and over Q.70,000.01, Q.9 (\$1.15) per thousand is paid. The tax is annual but paid in quarterly installments.*

### **E. Free Trade Zones, Maquila Regime, and the Free Zone of Industry and Commerce of Santo Tomas de Castilla (ZOLIC):**

*The Free Zones, Maquila, and ZOLIC regimes are special systems established to stimulate the economy and exports, and therefore contain some fiscal benefits. Free Zones are areas guarded and controlled by the customs authority. Both the entity that administers the Free Zones as well as the industrial, commercial, and service users, benefit from certain fiscal privileges, such as i) Exemption from taxes and customs duties for the imports of machinery, among other assets; ii) Exemption from ISR for a specific term; iii) VAT exemption.*

*The purpose of the Law of Promotion and Development of the Exporting and “Maquila” Activity is to promote, encourage and develop in the national customs territory, the production of goods for export or re-export. Among the tax benefits available to companies that operate under this regulation are (a) the temporary suspension of the payment of customs duties and taxes on imports, including VAT; (b) total exemption of the ISR that is obtained or comes from the export of goods generated within any of the maquila regimes established in the law; (c) total exoneration of ordinary and extraordinary taxes on exportation and related activities. Worth mentioning is that this law was reformed by decree 19-2016, where the activities that can be carried out under this modality, as derived from the provisions of the World Trade Organization, were further delimited.*

*Additionally, Guatemala has ZOLIC, which is a decentralized organization with functional autonomy of the Government of the Republic of Guatemala. ZOLIC’s main objective is to promote trade and industry in special areas, creating logistics centers that allow the authorization of additional customs for the operation*

*of industry, commerce, and service activities, with benefits of tax exemptions from ISR, VAT, and Import Tariff Rights (Derecho Arancelarios a la Importación, DAI), among others.*

*The entity must be established in a specific physical location to carry out its operations, having as an option the lease, purchase, or construction of real estate.*

### **A. Lease of the facilities for the operation:**

*If the foreign company wishes to lease facilities to develop its operations, then depending upon the activities of the line of business to be conducted, a real estate lease with private persons or even with the State, if they were owned by it, could be required.*

*The lease is governed by the rules found in the Civil Code, Decree Law 106 and certain laws as the case may be, such as the Regulations to regularize and grant the Lease of Real Estate Property of the State, Government Agreement No. 905- 2002 of the Presidency of the Republic of Guatemala.*

*Leases are formalized by signing a contract and must have, as a minimum, the following:*

- a. The full names and identification of the parties, in accordance with the legal capacity with which they act;*
- b. Identification and complete description of the property;*
- c. Description of the movable assets found within the property that is the object of the lease;*
- d. Purpose or destination of the lease;*
- e. Rent price;*
- f. If needed, the intervention of a third party that is constituted as guarantor of the lessee and, as the case may be, surety insurance;*
- g. If the term of the lease is greater than three years, such lease must be granted in a public deed and registered in the General Property Registry;*

- h. All information regarding notifications and communication between the parties; and,*
- i. Any clause that the parties consider necessary or important.*

*Recently, in Guatemala, as part of the Plan for the Economic Recovery of Guatemala, the Congress of the Republic approved the Leasing Law, Decree Number 2-2021, which contemplates the possibility for individual or legal persons to lease movable and immovable property with an option to purchase at a certain time, which contributes to the development of small and medium enterprises, facilitating access to financing. This Law contemplates five minimum provisions in the Lease Contract:*

- 1. Financial Leasing Contract, Financial Leasing or Financial Leasing with an option to purchase is the contract by which a person, autonomous equity or entity, called lessor, acquires according to the request and specifications of the lessee, and for account and interest of this, certain goods, which he delivers as a lease to the lessee for a specified period and receives in exchange the right to pay rent, granting the lessee, at the expiration of the contract term, the option to continue with the contract with new conditions, or to acquire the leased goods according to the amount previously established or its residual value;*
- 2. Housing or Housing Financial Leasing Contract, or Housing or Housing Financial Leasing with the option to purchase real estate for housing;*
- 3. Housing Financial Leasing or Social Interest Housing Financial Housing Leasing or Social Interest Housing or Housing Financial*

*Leasing or Social Interest Housing with the option to purchase are all contracts that refer to real estate destined for decent housing, adequate and healthy, in accordance with the provisions of the Housing Law, Decree Number 9-2012 of the Congress of the Republic of Guatemala;*

*4. Real Estate Financial Leasing Contract, Real Estate Financial Leasing or Real Estate Financial Leasing with an option to purchase: This contract applies to real estate projects for the acquisition of real estate for the use of commercial, industrial establishments, clinics, professional offices, educational centers, warehouses, and others*

*5. Operational Leasing Contract or Operational Lease is a contract that applies to the lease of movable property such as machinery and equipment according to an established term and rent that the lessee is obligated to pay to the lessor, without being able to terminate the contract before the expiration of the agreed term, unless otherwise agreed;*

*Worth mentioning is that the Decree will become effective after its publication in the Official Gazette in March 2021 and may be subject to partial or total unconstitutionality.*

### **B. Purchase of real estate on which to locate operation facilities:**

*Before investing in the acquisition of any real estate, it is advisable to conduct a thorough investigation of the history of the property, including its notations, liens, charges, and limitations on the use of the land, as well as its limits. While the*

*investigation is being carried out, it is common to sign with the owner of the property a contract of promise of sale, through which the owner agrees to sell the property to the interested party, establishing in advance the terms and conditions of the sale, as well as the term in which the respective sale contract must be signed.*

*The contract of sale of real estate must be registered in the General Property Registry, which means that the transaction must be carried out before a notary. This contract must include the identification of the parties, a description of the property, the sale price, and the form of payment. It is recommended that the contract be entered in the Registry as soon as possible, in order to guarantee the registration of the new property right.*

*In order to register the sale in the General Property Registry, proof of no pending property tax, specifically the Single Property Tax (IUSI), which has a quarterly payment period, must be attached.*

*The costs of the sale are generally covered by the buyer, including taxes, registration, and notary fees. These are not always the same and vary according to the value of the property that is the object of the contract.*

*In general, commercial companies established in centers or corporate offices are subject to a system of co-ownership or horizontal property that may limit their use in some way and additional rules may apply to those established by law, which requires a thorough analytical review of such system. In these locations, a monthly maintenance fee is usually required.*

All real estate destined for business or commercial activities must have an environmental impact study approved by the Ministry of Environment and Natural Resources, and with a valid environmental license. Also, if the property has a wastewater treatment plant, it must comply with water quality parameters and technical specifications in terms of infrastructure.

### **C. Construction of the facilities to operate:**

In Guatemala, the authority responsible for granting construction licenses, as well as collecting the Single Property Tax (IUSI), is the Municipality. However, before applying for a building license, it is necessary to obtain the following requirements:

- a. Municipal Solvency, where it is established that no amount is owed as a Single Property Tax (IUSI);
- b. Certification of the General Property Registry, with the complete history of the property, issued in the last six months;
- c. Owner's Personal Identification Document;
- d. Ornamental ticket valid for the property;
- e. Certification of cultural property to determine if possible use and construction on the property are valid;
- f. Certificate issued by an Engineer or Architect who is a member of the profession, in charge of the project, as well as an ornamentation ticket and valid personal identification documents;
- g. Receipt of payment for the viability of drinking water;
- h. Verify the availability of basic services in the area (electricity, telephone, internet, telecommunications, garbage and waste collection, drainage, and drinking water system).

In some Municipalities they request: a) Environmental Instrument approved by the Ministry of Environment and Natural Resources; and b) Depending on the magnitude and location of the project and the road impact that it may have, it must carry out the type of evaluation that corresponds to it: b.1) Road Impact Review, this is a minor-scale review through verification plans establish whether there would potentially be negative impacts on local traffic; and b.2) Road Impact Study, constitutes a more detailed evaluation that includes processional estimates if there will potentially be negative impacts on local traffic, normally using specialized computer applications.

It is advisable to verify if the municipality of the place where the construction project will be carried out has a Territorial Ordinance Plan that establishes additional requirements such as

- a. final disposal of wastewater;
- b. height of buildings;
- c. structural requirements;
- d. risk reduction;
- e. surety bonds or insurance;
- f. responsibility for environmental commitments;
- g. disposal of rubble and materials;
- h. solid waste disposal plan, among others.

Additionally, as part of the Territorial Ordering Plan (POT), in the case of the Department of Guatemala, Municipality of Guatemala,<sup>3</sup> it is necessary to obtain a General or Specific Feasibility Report, as the case may be, by the Urban Planning

<sup>3</sup>Construction requirements and regulations may vary depending on the Municipality in which the property is located.

Directorate, in which will determine the viability of the project. For this purpose, it must have: a) Architectural plans of the property with the design proposal; b) Details of the project parameters, and c) location of the property.

After obtaining all the documents mentioned above, the F-02 form and the descriptive memory format must be completed, where information about the project is detailed. You can proceed to request the construction license. If it is authorized, a construction license payment order must be generated before its delivery.<sup>4</sup>

### **D. Permits, additional licenses, voluntary certifications for the construction of the facilities:**

#### 1. Environmental instruments and licenses before the Ministry of Environment and Natural Resources.

For this purpose, it is necessary to comply with the following requirements:

- i) Environmental categorization of the industry according to the exhaustive list;
- ii) Document for compliance with the terms of reference;
- iii) Affidavit of the legal representative and a consultant;
- iv) Certification of the property registry;
- v) Proof of registration before the Superintendence of Administration Tax;
- vi) Certified localization plans that delimit location, services,

and infrastructure; vii) Business license and company license; viii) Original proof of the articles of incorporation and their modifications and where appropriate, the appointment of the Legal Representative.

Once the above has been obtained, the next step is to hire a professional registered as an environmental consultant who must present a study of the Environmental Effect investigation to the Ministry of the Environment and Natural Resources. After receiving the Environmental Impact Study, the aforementioned Ministry carries out a "field visit", which will serve to evaluate and, therefore, satisfactorily determine the environmental impact. The Ministry of Environment and Natural Resources issues an environmental resolution and requests the payment of compliance, the value of which will vary depending on the magnitude of the project. Once the bond has been secured a license that is valid for two to five years, renewable, must be obtained.

#### 2. Obtaining a medical opinion before the Ministry of Public Health and Social Assistance.

To ensure that the new construction complies with all sanitary regulations, in terms of disposal and access and potable water pipes, it is necessary to obtain approval of the Health Ministry, subject to the following requirements: i) Documento Personal de Identificación del solicitante;

- i) Personal Identification Document of the applicant;

<sup>4</sup> Depending on the business involved or the use made of the property, other requirements may need to be met.

- ii) Accreditation of the quality with which it operates;*
- iii) Respective registration depending on the legal entity;*
- iv) Photocopy of the approval resolution of the corresponding Environmental Assessment Instrument, issued by the Ministry of the Environment and Natural Resources;*
- v) Legalized photocopy of the pertinent environmental license;*
- vi) Certification or electronic consultation of the General Property Registry, which reflects the last valid domain registration of the property that is intended to be used, as well as any existing encumbrance, annotation, embargo, or limitation;*
- vii) Map of the project location, with geographic coordinates of reference, clearly identifying the streets, avenues, and adjacent properties;*
- viii) Project location plan, which clearly defines the polygon of land it occupies and its total area in which construction and free areas are clearly distinguished, together with a clear description of the types of materials used, such as vegetation, concrete, pavement, etc.*

### 3. Voluntary certifications for sustainable construction.

*The entities that develop sustainable projects or constructions for the environment focused on the mitigation of energy and water consumption in the implementation of the project, minimum generation of waste and pollution, use of products and construction materials that are friendly to the environment, etc. can be identified and classified according to sustainable construction systems around the world, by certifying the project with a Green Seal that is an added value to the work for the benefit of the project itself and the community.*

*In Guatemala, there is a non-profit organization that promotes sustainable strategies for the transformation of the market in the construction sector by promoting good environmental practices, known as the Guatemala Green Building Council, and has several tools that interested parties may voluntarily require, such as the certification of CASA Guatemala in the case of designs and construction of the residential sector with sustainable practices or sustainable guides in the construction process, among others. Also, it promotes the LEED independent certification program, internationally recognized for the design, construction, operation of sustainable constructions and buildings, that is, it is a tool for all types and sizes of constructions, in which validation of the project's performance is obtained from the environmental and economic performance and well-being of the occupants, which entails projects with low operating and maintenance costs and saving water and energy.*

*Opting for these certifications is optional, but they give a bonus to the entity that is developing the project and reflect its commitment to the long-term sustainability of construction.*

### 4. Special regimes.

*The Free Zones, Maquila, and ZOLIC regimes are special regimes established to stimulate the economy and exports, and therefore contain some tax benefits. For more information, see section E of Tax Systems.*

*The Guatemalan labor system is organized according to the principles of social justice and, under labor legislation, establishes minimum social rights that are inalienable for workers and in the form established by labor laws not susceptible to subversion through individual or collective hiring.*

### **A. Labor hiring system:**

*The employment relationship can be classified according to its duration, whether for an indefinite period, a fixed term, or for specific work.*

*a. The law provides for a trial period of two months in which the employer can terminate the employment relationship without incurring any liability.*

*b. Termination of the Work Contract. The termination can be given: when one or both parties put an end to it, either by the will of one of them, by mutual consent, or by cause imputable to the other; by the death of the worker; expiration of the agreed fixed term; completion of the work; insolvency, bankruptcy or judicial or extrajudicial liquidation of the company; or the incapacity or death of the employer. When the employment relationship ends with the employer's consent and without just cause, the payment of compensation in favor of the worker is required by law. The compensation amount must be calculated based on the average wage earned by the worker during the last six months, the annual bonus for workers in the private and public sector accrued in the proportion corresponding to six months.*

### **B. Work Shifts:**

*The day shift cannot exceed 8 hours a day, nor 44 hours a week. The night shift cannot exceed 6 hours a day, nor 36 hours a week. The mixed day and night shift cannot exceed 7 hours a day, or 42 a week.*

*Notwithstanding the foregoing, for jobs that are not executed in dangerous or unhealthy situations, the working day may be extended, by mutual agreement, up to 2 hours a day without these being considered as overtime, taking special care not to exceed the weekly limit working hours.*

*Work performed outside the daily time limits constitutes extraordinary work and must be remunerated with the addition of at least 50% more than the wages agreed by the parties. However, there are different types of workers who are not subject to the limitations of the working day, such as high-level employees, guards, commission agents, etc.*

### **C. Salary:**

*In addition to salary, the employer must pay the following inalienable work benefits:*

- a) Incentive bonus for workers in the private and public sector, which amounts to Q.250.00 per month.*
- b) Year-end bonus (Aguinaldo), which consists of a payment made in December of each year equal to 100% of the monthly ordinary salary.*
- c) Annual Bonus for Workers of the Private and Public Sector,*

which consists of a payment that is made in July of each year equal to 100% of the monthly ordinary salary.

d) Period of 15 days of paid holidays for each year worked.

<b>The minimum wage for non-agricultural activities for 2021:</b>	Daily = Q.92.88; Hourly = Q.11.61; Monthly = Q2,825.10
<b>The minimum wage for agricultural activities for 2021:</b>	Daily = Q.90.16; Hourly = Q.11.27; Monthly = Q2,742.37
<b>The minimum wage for export and maquila activities for 2021:</b>	Daily = Q.84.88; Hourly = Q.10.61; Monthly = Q2,581.77

**D. Occupational health and safety:**

Per government agreement number 229-2014, all workplaces must have an Occupational Health and Safety Organization, a Bipartite Committee composed of an equal number of worker representatives and sponsors. Similarly, these workplaces must employ professionals for the treatment of injuries (nursing assistant, professional nurse, or active doctor, all trained in occupational risk prevention and established according to the number of workers), and also have a plan of occupational risk prevention or a duly authorized occupational health and safety plan (which also depends on the number of workers per workplace), to protect the life, health, and integrity of the workers.

**E. Social Security:**

Employers with 3 or more workers must register with the Social Security System, while employers who provide transportation services have the same obligation with one or more employees. The employer's contribution amounts to 12.67% of the employee's salary with the employee's share at 4.83%.

**F. The Right to Unionize:**

Guatemala recognizes the right of free association and unionization of workers. This right may be exercised without discrimination and without being subject to prior authorization, and as long as it meets the requirements established by law. Workers cannot be dismissed for participating in the formation of a union and must enjoy this right from the moment they give notice to the General Labor Inspectorate.

In addition, only Guatemalans by birth may be involved in the organization, direction, and advice of union entities. The exceptions are cases of technical assistance from the government and the provisions of international treaties or agreements between unions authorized by the Executive Branch.

The formation of a workers' union requires the participation of twenty (20) or more workers; and for the formation of an employers' union, a minimum of five employers are needed. (In Guatemala, there has never been an employers' union).

Guatemala ha ratificado los siguientes tratados internacionales Guatemala has ratified the following international treaties on intellectual property rights: the Paris Convention for the Protection of Industrial Property; the Patent Cooperation Treaty; the Agreement on Trade-Related Aspects of Intellectual Property Rights; the Berne Convention for the Protection of Literary and Artistic Works; the WIPO Copyright Treaty (WCT), the Inter-American General Convention on Trademarks and Commercial Protection (Washington Convention); the Trademark Law Treaty (TLT); Multilateral Free Trade Agreements, such as the Free Trade Agreement between the United States, the Dominican Republic and Central America (DR-CAFTA); Free Trade Agreements between Mexico and Central America; the Association Agreement between the European Union and Central America (ADA) and Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, among others. All these agreements contain chapters related to intellectual property and demonstrate that Guatemala protects intellectual property. However, Guatemala has not yet signed the Madrid Agreement Protocol relating to trademark registration.

### **A. Invention Patent:**

An Invention in Guatemala can be protected by an invention patent filed through the local application or the Patent Cooperation Treaty (PCT), provided it meets three requirements: (i) novelty, (ii) inventive level, and (iii) susceptibility to Industrial application. The patent has a duration of 20 years from the presentation of the corresponding application.

### **B. Utility model:**

A utility model is any new form, configuration, or arrangement of elements of a mechanism or object, or any part of it, that allows a better or different operation or manufacture, providing some utility that it did not have before. A utility model will be protected when: (i) it is susceptible to industrial application and (ii) has novelty. The protection of utility models lasts for 10 years.

### **C. Industrial Design:**

An industrial design understood as the particular appearance of a product that results from any meeting of lines or combinations of colors, or any design, line, contour, configuration, texture or two-dimensional or three-dimensional external material, without changing its use or purpose, can be registered by its designer, natural or legal person, provided the design is new. The registration of an industrial design will last for 10 years and may be renewed once for five more years.

### **D. Trademark:**

By the Industrial Property Law, a trademark is any sign that is capable of distinguishing the product or service produced, marketed, or provided by an individual or legal entity, from other identical or similar product or service that is produced, marketed, or provided, including olfactory or sonic signatures. Multi-class brand applications are not considered.

*Trademark protection is valid for 10 years, renewable at the request of the interested party one year before its expiration. A grace period of 6 months is granted after the expiration date. Trademark rights can be lost if the mark has not been used in the country during the five years prior to the date on which the cancellation request occurs.*

### **E. Trade name:**

*Article four of the Industrial Property Law defines a trade name as “a mixed word or sign, with which a company, a commercial establishment or an entity is identified or distinguished”. The registration of a trade name has a declarative nature and an indefinite validity. The exclusive right over the name is acquired by its first public and commercial use, and only in relation to the commercial activity of the company, establishment, or entity with which it is identified. A trade name may be lost if, among other reasons, a party of interest claims a lack of exploitation by the name holder for more than 6 months.*

### **F. Expression or Advertising Sign:**

*Una expresión o señal de publicidad, mejor conocido como un “eslogan”, es una frase compuesta de palabras, aunque la ley de An expression or advertising sign, better known as a “slogan,” is a phrase composed of words, although Guatemala law holds that it can also be an identifying design that serves to attract the attention of the consumer without containing words. The word configuration or the design must be original and novel. Under current legislation, the validity of an advertising slogan lasts for*

*ten (10) years, with a six-month grace period for renewal after its expiration.*

### **G. Designation of Origin and Geographical Indication:**

*Designation of origin is a name that identifies or evokes a region, a locality, or a specific place, and identifies a product originating from that region or locality, when its characteristics are fundamentally or exclusively geographic, and whose production, transformation, and processing are carried out within the defined geographical area. A geographical indication, on the other hand, corresponds to every name, expression, image, sign, or combination thereof, which identifies a product as originating in a country, region, or locality of that country. Guatemala permits the registration of both the designation of origin and geographical indication.*

### **H. Plant Varieties:**

*Serendipitously, in 2014 the Congress of the Republic of Guatemala repealed the “Law for the protection of plant varieties”, decree number 19-2014. With this repeal, the country is left without the possibility of implementing adequate patent protection for plant varieties, which are considered as a part of Intellectual Property, and appears to be in breach of the commitments under free trade agreements ratified by Guatemala.*

### **I. Business Secrets:**

*The purpose of this section is to protect information related to trade and industrial secrets, prohibiting its disclosure to third parties or use by people who have had access to it, avoiding unfair competition as a result. Even if in order to obtain any record it is necessary to disclose certain information, the authority before which the record has been requested is prohibited from disclosing such secret information without the owner's permission. According to the Industrial Property Law, an industrial secret is considered unfairly acquired when the acquisition results from the breach of a contract or other obligation, breach of trust, bribery, infidelity, disloyalty, or the instigation to perform any of these acts.*

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