DOING BUSINESS IN Guatemala

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### Business Structures:
What types of business structures are permitted?

- **Individual merchant:** an individual person who performs a commercial activity with the goal of obtaining a profit.
- **Corporate merchant:** Group of two or more people that create a corporation, with a personality and assets of its own, and with the goal of performing a commercial activity to obtain a profit. In Guatemala, corporate merchants must be organized in any of the following structures:
  - **Sociedad colectiva:** There are no shares. Each partner contributes to the company capital. All partners have a collateral, unlimited, and compound responsibility on the company’s obligations.
  - **Sociedad en comandita simple:** There are no shares. There are two kinds of partners: named partners, who have a collateral, unlimited and compound responsibility on the company’s obligations, and limited partners, whose responsibility on the company’s obligations is limited to the amount they contributed.
  - **Sociedad de responsabilidad limitada:** While there are no shares, the partners’ responsibility for the company’s obligations is limited to the amount they contributed.
  - **Sociedad anónima:** The company’s capital is divided and represented by shares. Each shareholder’s responsibility is limited to the amount of shares he subscribed (obliged to pay).
  - **Sociedad en comandita por acciones:** There are two kinds of partners: named partners, who have a collateral, unlimited and compound responsibility on the company’s obligations, and limited partners, whose responsibility on the company’s obligations is limited to the amount of shares subscribed (obliged to pay).

### Taxation:
Briefly explain the country’s tax regime including rates and how rates differ based on business structures.

- **Value Added Tax (VAT):** fixed rate of 12% added on every goods or services purchase.
- **Income Tax:** Guatemala taxes its citizens and resident or non-resident individuals on their incomes for the sales done or services rendered in Guatemala and on other Guatemalan-source income. There are different Income Tax regimes:
  - Earnings on Profitable Activities Regime: payable on a yearly basis, with quarterly advances.
  - Utilities Regime: Fixed rate of 25% on overall income minus costs and deductible expenses, on utilities regime.
  - Simplified Regime: Overall income under US$40,000.00 (approx.): 5% rate; or Overall income over US$40,000.00 (approx.): US$20,000.00 + 7% rate on the excess of the first US$40,000.00.
  - Dividends: fixed rate of 5%.
  - Non-Residents, without permanent domicile, Regime: fixed rates range from 5% to 25%, depending on the activity.
- **Solidarity Tax:** fixed rate of 1% over the higher taxable base between: a) ¼ of the net assets, or b) ¼ of gross income. This tax may be accredited to the Income Tax, or vice versa.
### Immigration: Summarize immigration laws, including visas available for foreign employees.

Laws governing immigration issues are the following:
- Migration Code (Decree No. 44-2016 of the Congress of the Republic).
- Regional Agreement on Migratory Procedures.
- Alba-Kenneth Alert System Law (Decree No. 28-2010 of the Congress of the Republic).
- Law against Sexual Violence, Exploitation and Trafficking in Persons (Decree No. 9-2009 of the Congress of the Republic).

According to the Migration Code, the types of visas available in Guatemala are the following:
- Tourist visa.
- Business visa.

Whenever a person is willing to live in the country for more than a year, he/she should request his/her residency:
- Temporary residence: granted for 2 years, when overdue the Permanent Residence should be requested.
- Permanent residence: while the residence itself is permanent, the stamp must be renewed every 5 years. Likewise, for passport expiration, the stamp must be transferred to the new document.

### Foreign Investment Review and Issues: Does the government review and approve foreign investments? What factors are considered?

The government does not review or approve foreign investments, as these are managed privately. Therefore, there are no factors considered.

### Dealing with the Government: Identify major issues when dealing with local and federal governments.

Guatemala has no federal government, based on its internal structure. It has local (or municipal) governments, and the central government. Major issues while dealing with these governments are:
- Permits and licenses, which may sometimes require complicated conditions and requisites.
- Municipal regulations that set conditions and requisites.
- Bureaucracy, which may complicate the procedures and may slow down their progress.
- Local governments have to consider the indigenous governments, which may have to be consulted before an important project / investment is approved to be undertaken.

### Dispute Resolution and Court Systems: Summarize the court system, including the use of juries and arbitration.

The Guatemalan court system is an exclusive power of the Judicial Branch. It is presided by the Supreme Court, which controls the lower courts, such as appeals court, lower courts and county courts. Jurisdiction is an exclusive power of the judiciary, and as such, there are no juries on the Guatemalan Court System. There is also a Constitutional Court, whose primary function is the defense of the constitutional order. Therefore, it is an independent court, separated from the Supreme Court, the Judicial Branch and any other State branch.
There is an Arbitration Law in Guatemala, which applies to any national and international arbitration that takes place in Guatemala. Currently, there are two main institutions that provide institutional arbitration services in Guatemala: Centro de Arbitraje y Conciliación de la Cámara de Comercio de Guatemala (CENAC) – Chamber of Commerce-, and Centro de Resolución de Conflictos de la Cámara de Industria de Guatemala (CRECIG) – Chamber of Industry.

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<th>Foreign Corrupt Practices: What are the anti-corruption, anti-bribery and economic sanction laws which impact doing business in the country?</th>
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<td>Among the most important laws regarding anti-corruption and bribery in Guatemala are:</td>
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<td>Law Against the Laundering of Money and Other Assets (Ley contra el lavado de dinero u otros activos), which seeks to prevent, control, monitor and penalize the laundering of money or any other asset originating from any criminal activity, committed by any person or corporation. It also compels corporations and people to develop programs and procedures to ensure their assets, services or products are not used on the laundering of money and other assets, such as personnel training on the subject and audits to verify the company's compliance with its obligations under the Law.</td>
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<td>Law against Corruption (Ley contra la corrupción), which is a set of reforms to other criminal law, in order to adjust them to effectively combat corruption inside the Guatemalan governmental branches. Therefore, many of the reforms included are directed towards public officials and civil servants, in order to prevent them from engaging in corruption related activities, such as accepting bribes, using public funds for illegal or personal purposes, and unlawful enrichment, amongst others. Therefore, they are also directed to the people or companies that engage in such activities.</td>
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<td>Criminal Code (Código Penal): Contains the general regulations on Criminal Law, including regulation on crimes committed by public officials and civil servants, such as the ones mentioned earlier (bribery, unlawful enrichment, for example).</td>
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<td>There is also regulation regarding monopolies. In this case, according to article 130 of the Guatemalan Constitution, monopolies are prohibited. Therefore, the Guatemalan State is compelled to limit the operation of companies that, in harm to the national economy, control a significant part of an economic sector.</td>
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<th>Types of transaction: How may businesses combine?</th>
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<td>Companies may combine by the means of a merger. According to Guatemalan law, a merger occurs when companies wish to combine, either forming an entirely new company (and therefore, dissolving the older companies) or by one company absorbing the other and combining into the absorbing company (and therefore dissolving the absorbed company).</td>
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<td>Therefore, an isolated acquisition of shares, from one company by another, that does not dissolve a company, is not considered a merger.</td>
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<th>Competition Law: How do laws impact competition?</th>
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<td>Currently, there is no Competition Law in Guatemala, even though there is a law project being discussed on the Congress. There is, however, the aforementioned prohibition on monopolies, decreed by the Guatemalan Constitution. There is also some very general regulation regarding unfair trade on the Guatemalan Commercial Code. Acts considered unfair trade are, for instance, confusing or deceiving the public of specific people by false indications regarding the origin or awards obtained by the products, or directly damaging another merchant by imitating its name, brands, patents or any other element related to its corporation or establishments.</td>
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Major laws impacting employment and employee relations in Guatemala are:

- International Labor Organization Conventions ratified by Guatemala as a member of the International Labor Organization (ILO).
- Constitution of the Republic of Guatemala, which contains the basic labor rights and its structure.
- Labor Code (Decree 1441 of the Congress of the Republic and its reforms), which contains more specific regulation on the general issues regarding labor.
- Occupational Health and Safety Regulations (Government Agreement 229-2014), which contains the basic regulation regarding workplace safety and health.
- Regulation of Authorization of Permits for Foreigners (Government Agreement 528-2003), which regulates the structure for work permits to be given to foreigners.
- Law on the Economic Contribution Program for the Elderly (Decree No. 85-2005 of the Congress of the Republic)
- Annual Bonus Law for Workers of the Private and Public Sector (Decree No. 42-92 of the Congress of the Republic), which regulates one of the additional salaries given to workers, in addition to their basic salary. This bonus amounts to 100% of the worker’s salary, and must be paid during the first fortnight of July.
- Law regulating the annual bonus “Aguinaldo” (Decree No. 76-78 of the Congress of the Republic), which regulates another additional salary given to workers, in addition to their basic salary. This bonus amounts to 100% of the worker’s salary, and must be paid in two parts, during the first fortnight of December, and the second fortnight of January of the next year.
- Government Agreement number 297-2017. Minimum salary for the year 2018, which regulates the minimum wage for the different sectors and industries. The minimum wage tends to be updated annually, based on economic and social studies.

The main law that governs business combinations in the way of a merger is the Commercial Code. Contained within the Commercial Code are the regulations on share acquisitions and merger conditions and applicable rules. As a subsidiary and general regulation on commercial transactions, the Civil Code applies.

Commercial transaction agreements are regulated by the Commercial Code and by the Civil Code as subsidiary regulation for transaction agreements in general.

Regarding government or stock exchange filings, while there are no requirements with the stock exchange, and no major filings with the government, there are several requirements in relation to the Commercial Registry. Mainly, the merger agreements must be registered in said registry. Additionally, these merger agreements and the last balance sheet of every involved company must be published 3 times during a 15 day period, as of January 2nd 2018, on the government gazette and on one of the most widely circulating newspapers. Starting on January 29th 2018, these must be published on an internal electronic platform managed by the Commercial Registry.
Guatemala has a stock exchange market, known as Bolsa de Valores Nacional, a private entity that provides the necessary tools, including essential corporate and stock information, for companies to perform exchange transactions. However, the Guatemalan stock exchange is a relatively new institution, and while it continues to grow, it is still a small market.

Regarding taxes, the business combination in the way of a merger is not directly subjected to any tax payment. However, the public deed in which the merger must be documented is subjected to Stamp Tax, and the transactions regarding independent assets could be subject to specific taxes too.

**Information to be Disclosed:**
What information must be made public in a business combination? Does this depend on the structure used?

Regarding a business combination in the way of a merger, the merger agreements must be registered on the Commercial Registry. Additionally, the merger agreements and the balance sheet of the involved companies must be made public, by the means of a publication. Starting on January 29th 2018, these publications must be done on an official electronic platform managed by the Commercial Registry.

**Disclosure of substantial shareholdings:**
What are the disclosure requirements for owners of large shareholdings in a company? Are the requirements affected if the company is a party to a business combination?

In general, companies keep their shareholders’ identity in reserve. Therefore, there is no obligation to disclose information related to large shareholders, except in case of a Judicial or Official order/instruction, nor is there any requirement they must comply with. These do not change during a business combination, as there is no legal obligation to disclose any information related to the shareholders.

However, in specialized businesses, such as banking, insurance and private security, amongst others, large shareholders and their companies must comply with additional requirements. For instance, the Law on Banks and Financial Groups (Ley de bancos y grupos financieros) compels the founding shareholders to have liquidity and good reputation. Additionally, banking companies must hand a list of all shareholders that possess more than 5% of the companies’ shares to the Banks’ Superintendency. Similar measures are contained on the Law regulating the Insurance activities (Ley de la actividad aseguradora), in which the liquidity and good reputation of its founding shareholders must be confirmed. In this case, insurance companies must present a list of all its shareholders, along with their respective participation percentages to the Banks’ Superintendency, and if a person or company wishes to acquire more than 5% of the company’s shares, or its total participation will reach said percentage, it must have the authorization of the Banks’ Superintendency. These do not change during a business combination, as there is no legal obligation to disclose anything related to the shareholders during a merger.

**Duties of directors and controlling shareholders:**
What duties do the directors or managers of a company owe to the company’s shareholders, creditors and other stakeholders in connection with a business combination? Do controlling shareholders have similar duties?

Directors or managers of a company do not hold any particular or special obligation or duty, in connection with a business combination. However, some of their general duties and obligations may be necessary, or remain applicable, in the merger process, as they direct the company’s day to day operations and general business and execute the shareholders’ decisions. Examples of this may be the directors and managers’ general responsibility for their actions, the summoning for shareholders’ meetings, and the presiding of shareholders’ meetings, amongst others.
Due to the fact that every business combination must be authorized by the shareholders’ meeting or its similar body in companies with no shares, shareholders hold a pivotal importance in the merger process. Therefore, shareholders of all involved companies must approve, in a shareholders’ meeting, the business combinations, in order for the combination to occur.

In companies with named partners or partners that have a collateral, unlimited and compound responsibility on the company’s obligations, their personal obligation remains applicable for any in existence prior to the business combination. Likewise, if a partner that holds any of the aforementioned qualities is against the business combination, said partner is allowed to part from the company, but his responsibility will remain in regard to obligations in existence prior to the merger agreements.

Transactions are managed privately, and all parts must give their legal consent in order for the transaction to be legally binding. Regarding a business combination, it must be approved by the shareholders’ meeting; this prevents the acquirer from pressuring the target company into agreeing to a merger. In other words, since the business combination must be authorized by the shareholders, there is little to no room for pressure on the acquirer’s part.

The government may not, acting as such, directly restrict a business combination in the way of a merger, not even for reasons of national security. However, given the fact that during the merger process there is an opposition period, during which the companies’ creditors may oppose the merger, the State, in its quality of creditor of one of the companies, may present an opposition.

There are no specific conditions regarding tender offers in Guatemalan Law. However, it must be noted that a simple stock acquisition, without the dissolution of the absorbed company, is not considered a merger, and therefore not a business combination. Regarding the cash acquisition, financing may be conditional; there are no regulations that limit such transactions. However, cash acquisitions in general, while perfectly legal, must be dealt with caution, and regulations regarding money laundering and tax should be complied, given that there may be limitations, conditions or additional requisites in which a payment can be made on cash (for instance, documentary evidence that supports any transaction made on cash, such as deposit bills).
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<th>Financing: If a buyer needs to obtain financing for a transaction, how is this dealt with in the transaction documents? What are the typical obligations of the seller to assist in the buyer’s financing?</th>
<th>While financing for transactions is definitely available in Guatemala, there is no link between these operations, as they are managed separately. However, in some cases, generally in the financing operation, Banks may require the debtor to mention the purpose for which the financing is given in order for the creditor to ensure the money will be used for the purpose for which it is lent.</th>
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<td>Minority squeeze-out: May minority stockholders be squeezed out? If so, what steps must be taken and what is the time frame for the process?</td>
<td>Regulation to protect minority stockholders is scarce, but there are several regulations created to this end. For instance, in companies with no shares, modifications to the company’s statutes must be approved by all the partners, and in case this regulation is not contained on the statutes, any partner that does not agree with modifications can separate him/herself from the company. Regarding shareholder’s meetings or any of its similar bodies, starting on January 29th 2018, a reform will be included on the Guatemalan Commercial Code, which compels the meeting to have a “questions item” on the meeting’s agenda with the purpose of giving minority shareholders the opportunity to express their inconformity or non-compliance, even when other items in the agenda give them such opportunities.</td>
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<td>Cross-border transactions: How are cross-border transactions structured? Do specific laws and regulations apply to cross-border transactions?</td>
<td>There is no specific regulation on cross-border transactions, regarding business combinations. As such, there is no particular structure on these transaction and the parties can structure the deal in the way they see fit.</td>
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<td>Waiting or notification periods: Other than as set forth in the competition laws, what are the relevant waiting or notification periods for completing business combinations?</td>
<td>The merger agreements and the balance sheets must be published in the government’s official gazette and another newspaper of wide circulation. After the publications, a waiting period of 2 months begins. The 2 month period exists for the purpose of opposition from the companies’ creditors, if they have any reason to oppose the merger. After said period is over, the public deed formalizing the merger can be authorized.</td>
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<td>Sector-specific rules: Are companies in specific industries subject to additional regulations and statutes?</td>
<td>Like it was said before, specialized businesses such as banks, insurance companies and private security companies are subjected to additional and specific regulations, as well as the general regulation applicable to all companies. These regulations tend to include additional conditions and requirements for the companies to incorporate and function; generally derived from the importance of the activity they perform. Other activities, such as mining, energy production, government concessions and partnerships with the government, are subjected to heavy regulation, due to the nature of their activity. As such, environmental, administrative and other laws of public nature are applicable to these situations.</td>
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<td><strong>Tax issues:</strong> What basic tax issues are involved in business combinations?</td>
<td>Business combinations in the way of a merger are not directly subjected to any tax payment, nor is there a specific tax that applies to these figures. However, there are several operations, derived or related to a business combination, that are subjected to tax payment. Such is the case of the public deed in which the merger must be documented, which is subjected to a variant of Stamp Tax that is paid by purchasing a special paper in which the business combination is definitely sanctioned.</td>
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<td><strong>Labor and employee benefits:</strong> What is the basic regulatory framework governing labour and employee benefits in a business combination?</td>
<td>There are no additional benefits for the employees in a business combination, that is, the applicable legal figure in these cases is the “employer substitution”, which implies that the new employer must absorb the labor compliance responsibilities, being able to add and improve benefits but not decrease those already obtained in the previous employment relationship.</td>
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<td><strong>Restructuring, bankruptcy or receivership:</strong> What are the special considerations for business combinations involving a target company that is in bankruptcy or receivership or engaged in a similar restructuring?</td>
<td>There are no special considerations for business combinations with companies in bankruptcy or receivership. However, given the fact that said company is in bankruptcy because of its losses, the acquirer will eventually have to respond to the company’s creditors, who may even oppose the combination during the 2 month period.</td>
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<td><strong>Anti-corruption and sanctions:</strong> What are the anti-corruption, anti-bribery and economic sanctions considerations in connection with business combinations?</td>
<td>Given the fact that bribery and corruption related activities are criminal offenses under Guatemalan law, the sanctions for these vary from offense to offense, but they are sanctioned with jail time, as well as elevated fines. Additionally, some offenses may also carry sanctions in the form of prohibitions to perform certain activities, doing business with the government, running for a public office or working for the government, among others.</td>
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