

# Open for investment



Investing in Nicaragua is becoming more attractive as the legal market becomes more open and stable. For investors looking for an entry point into Central America and the rest of the region Nicaragua offers plenty of opportunities.

Located in the heart of the Americas, Nicaragua has emerged as a fast-paced growing economy in the Central American isthmus. Its vastness in natural resources, privileged geographical location, variety of business opportunities and a strong legal-institutional framework, makes Nicaragua an attractive country to do business.

In recent years, as a result of both direct and indirect foreign investment projects, Nicaragua has witnessed the development and growth of some economy sectors, such as mining, energy, telecommunications, free trade zones, tourism, finance, real estate and others. This has helped with the diversification and expansion, not only of businesses and economy dealings, but also of the legal, regulatory and institutional bodies providing the legal certainty required to create an adequate investment climate.

The Nicaraguan economy has been evolving alongside the globalisation phenomenon, giving rise to a number of different opportunities with an increasing presence of multinational companies, foreign investors and entrepreneurs devoted to a wide range of businesses, projects and enterprises, which have experienced the achievement of higher goals by investing in Nicaragua.

## How to do business in Nicaragua

Nicaragua has a solid legal platform upon which investors can design and develop different business structures and adjust them to fit their specific needs and purposes. Conducting research and obtaining advice in advance on the law and requirements applicable to a specific project, is a key step that should be taken early on to consider business alternatives in an efficient manner.

## Setting up a legal entity

Most investors do business by setting up corporations, limited liability companies or branches of foreign entities. When choosing the type of entity, certain matters should be considered, such as the timing, requirements, management, transferability of ownership, the specific type of entity the law requires, approvals, national capital percentage and other conditions or restrictions.

As a general rule, both foreign legal entities and individuals can be shareholders in a corporation and partners in limited liability companies. Foreign entities can also be parent companies of branches in Nicaragua. Despite certain differences among each form of entity, there are some general rules that apply to all of them:

- They should be incorporated in a public deed before a notary and recorded with the mercantile registry, tax and municipal authorities.
- Some further registrations and obtainment of approvals, permits, licences or concessions, depending on the business sector involved, may also apply.
- Legal representatives before governmental agencies and before certain third parties should be Nicaraguan or foreign with residency in the country.

In most cases, the incorporation and registration processes are completed in approximately 30 days, though further registrations with regulators and other specific governmental agencies may take additional time, depending on the agency involved and the type of permit required.

There are no minimum or maximum limits for the capital stock of these entities, save for some rules on the incorporation capital and further capital

adjustments for the banking and financial sector. However, it is important to consider that certain official registration fees are calculated on the capital stock amount, and capital increases involve the amendment of articles of incorporation and by-laws. This process, depending on the type of entity (eg, corporations) may require a judicial approval besides its further registration with the mercantile registry.

For corporations, the board of directors may comprise legal entities and/or individuals, whether foreign and/or national, which should also be shareholders. If they are legal entities, they exercise their authority through individuals appointed as representatives for the board. The different positions on the board of directors are typically a president, secretary and treasurer, though the parties may decide to organise the board in the form that best suits their needs, including in any event a president and secretary. A comptroller should also be appointed.

For limited liability companies, partners may appoint administrators, whether they are partners or not, to legally represent the company according to the powers and authorities granted in the administration mandate; otherwise, any partner is lawfully entitled to act on behalf of the company. Branches of foreign entities are managed by their parent companies' directors, administrators or shareholders, as the case may be, though the branch should be legally represented by Nicaraguan individuals or foreign residents granted with a full power of attorney to act on behalf of the branch in the country.

Disregarding the form of entity chosen, once the entity is set-up, recorded, and applicable permits are obtained, then investors are ready to continue with the enterprising project of investing in the heart of the Americas.

#### **Business and law at a glance**

Business opportunities in Nicaragua are diverse and ample. That being said, it is important to know and understand the legal regime applicable to a determined business sector or project. This includes the requirements to be met, terms and conditions to comply with and, in general, the legal aspects necessary to make well-informed decisions, conduct an appropriate risk assessment and to do business according to law.

Given the recent increase in the development of real estate-related projects in the country, the following highlights some of the legal aspects related to this business sector in Nicaragua.

#### **Real estate**

Nicaragua has been sought by real estate developers for a variety of projects, including hotel, condominium/housing development, tourism infrastructure; and by investors in different sectors such as energy, mining, forestry, livestock, agribusiness and others. Nicaragua is the largest country in Central America, with land and water sources that make it attractive for such projects. It also has a legal regime regulating ownership rights, title, transfer and other related matters.

A key starting point for real estate projects is to determine the geographical location of the land or properties involved. There are special laws and regulations establishing certain conditions that may apply, depending on the location of the properties and their legal background, among which are the following:

#### ***Act No. 749 Law on the Borders Legal Regime (Act 749)***

In effect since the year 2010, Act 749 classifies the border territory in three zones: (i) Border Integration and Development Zone (BID), (ii) Border Security Zone (BS) and, (iii) Border Protection Especial Zone (BPE). BID and BPE comprise the 15 kilometres from borders inwards, and BS is located within the five kilometres from borders inwards.

According to Act 749, foreign individuals and foreign legal entities cannot acquire, by any title, real property within BS, providing an exception

for concessions or lease authorisations granted by means of a presidential agreement for reasons of public or social interest. BS property may only be transferred to Nicaraguan individuals in accordance with legally acquired and recorded title. Nicaraguan legal entities, with Nicaraguan partners whose nominative shares cannot be transferred or endorsed to foreign parties, may also acquire property within BS for sustainable development productive investments.

Nonetheless, concessions or lease authorisations for land within BID may be granted to foreign individuals and foreign entities. The maximum concession period is, for individuals, 99 years, and for legal entities 25 years; in the case of lease authorisations, the maximum period is 10 years.

#### ***Act No. 690 Law for the Development of Coastal Zones (Act 690)***

Nicaragua has developed a legal framework governing the use and exploitation of coastal zones in both the Pacific Ocean and the Caribbean Sea aimed at guaranteeing people's access to these zones and to regulate their use and ownership.

The main law on coastal zones is Act 690, in effect since the year 2009, which, amongst other matters, determines and delimits the areas for both the public and the regulated use in coastal zones.

The state holds the exclusive ownership rights on areas for public use, including (i) the uncovered area between the high tide and low tide plus 50 metres from the maximum average tidemark on-shore; (ii) for natural lakes and lagoons, five metres from the historical maximum average mark on-shore; (iii) for islands greater than two square kilometres with permanent population, five metres from the historical average of the winter maximum water level, or tides, on-shore; and, (iv) for artificial lakes created or acquired by the state, the one determined by the original boundary markers.

Certain activities are restricted in the areas designated for public use, such as housing construction, construction of transportation routes, installation of aerial high power lines and permanent commercial advertisement by any means, as well as any others that may interrupt or prevent people from accessing and circulating freely in coastal zones, excepting cases subject to special laws.

An important highlight is that Act 690 establishes that those rights legally acquired and permits (eg, use of soil, environmental permits) obtained before Act 690, in those areas considered of public use under Act 690, should be respected, providing more legal support for the development of projects and legal relationships commenced before Act 690.

On the other hand, the regulated area (also known as restricted area), comprehends the area where the zone for public use ends plus 200 metres on-shore, and is oriented to (i) the construction and functioning of touristic services with permanent work; (ii) the construction of wharfs for touristic marines in permissible areas; (iii) development of housing projects for recreational and family use; and, (iv) cultivation and plantations for subsistence purposes. Zones legally declared as protected areas are not subject these regulations.

With the exception of those rights legally acquired before Act 690 (which are respected under Act 690), there is a general restriction prohibiting the transfer of ownership within the restricted areas, being possible, however, to obtain concessions from the corresponding governmental authorities (eg, municipal or regional authorities, depending on the location of coasts) by following the applicable procedures.

Concessions may be granted to national individuals or legal entities, or to foreign residents in Nicaragua, for a period of 20 years, extendable, or up to 59 years, the latter contingent on whether the National Commission for the Development of Coastal Zones considers that the project's investment amount, economic impact and employment generation potential, may require a long-term contractual relationship.

**Indigenous communal property**

The Nicaraguan people are multiethnic, and the political constitution recognises the existence of native and afro-descendent people, as well as the different forms of property, among which is communal property.

There are several laws and regulations setting forth the legal regime on this type of property, such as Law No. 28 Statute for the Autonomy of the Atlantic Coast Regions (Act 28) and its regulations; Law No. 445 Law on the Communal Property Regime of Indigenous Peoples and Ethnic Communities of the Atlantic Coast Regions, and of the Bocay, Coco, Indio and Maíz Rivers; and others. These laws establish, among other things, that the communal property is constituted by the land, water and forests that traditionally have belonged to the Atlantic (Caribbean) coast communities, and this property cannot be alienated, donated, sold, seized, attached or subject to embargoes, nor to encumbrances, and are imprescriptible.

Despite the above characteristics and restrictions, businesses and projects involving this type of property have been successfully developed by investors. Certain projects, related to activities of exploration or exploitation of natural resources, infrastructure, energy, mining, agribusiness and others, are executed, total or partially, in communal properties; and the use of the land becomes feasible by means of lease agreements executed among the indigenous communities authorities and investors, besides obtaining any other necessary permits for the project.

There are also indigenous communities established in different zones of the Pacific coast of Nicaragua, in different departments or municipalities, and the communal property regime has very similar characteristics as the abovementioned; being important for investors to determine whether a project would require the use of this form of property.

**Agrarian reformed property and others**

During the 1980s, profound changes were implemented in the legal regime for real property in Nicaragua. A process known as agrarian reform was undertaken, affecting many properties on a large scale throughout the country.

Certain laws were passed during the 80s and early and mid-90s, such as the Agrarian Reform Law (Decree 782) and its amendments (Law 14), and others, which, together with some regulations and administrative norms, established a special legal framework for properties affected by the agrarian reform process.

During this stage of Nicaraguan history, the political climate of the country was unstable and volatile, a revolution was in course, and many properties were confiscated and transferred to the state, and turned into 'reformed properties' under the agrarian reform program. The state further issued a type of title known as the 'agrarian reform title', under which the confiscated property was conveyed to third parties identified as agrarian reform beneficiaries, and those titles were recorded with the corresponding land registries.

During the years following the revolution and the agrarian reform, many of those beneficiaries transferred their properties to third parties, mainly by means of purchase/sale deeds; but also, many of the confiscated owners filed claims demanding compensation, and legal issues were raised even among the same beneficiaries which, in some cases, argued to have title and rights over the same property.

In light of the unsteadiness caused by these events, in recent years the Attorney General Office established certain administrative measures meant to restrain any illicit trafficking of real estate properties and to contribute to the celerity of the registration process and legal commercialisation of the same.

These measures included obtaining certification from the Attorney General for the transfer of properties derived from agrarian reform titles, up to the second registration entry, upon request of any of the main governmental agencies involved in the transfer of properties process, such as the physical

and tax cadastral offices, and the land registries. When dealing with reformed property, it is possible that other agencies will be involved, such as the Intendancy of Property.

The Attorney General's certification is also required for properties (i) located in coastal zones, reserve and border areas, according to applicable law; (ii) whose immediate precedent is derived from the extinguished banking institutions; and (iii) derived from title by adverse possession and acquisitive prescription.

**Key highlights to keep in mind****Geographical location of the property**

Determine the geographical location of the property, confirming whether it is within a restricted zone, such as reserve or border areas, coastal zones, or within a communal regime property, which is usually confirmed by conducting proper due diligence.

**Due diligence**

Conduct due diligence in advance to determine the legal status of the property, including the review of title, land surveys, cadastral certificates and documents and records at certain governmental agencies such as the land registry, physical cadastral office, municipal authorities, and others that may be required or recommended on a case-by-case basis. Others that might apply are the Attorney General Office, Intendancy of Property, judicial and tax authorities, Environmental Ministry, and others.

**Due diligence goals**

Due diligence should confirm, among other things, title status, ownership, any restrictions, whether any special law affects or may affect the property or title, transfer of ownership, any impending litigation or encumbrances, real estate tax payment status, as well as the status at the physical cadastral office.

**Acquisition and registration of real estate property**

After the due diligence exercise, if investors decide to acquire the property involved, the next step is the execution of the purchase/sale deed, before public notary, and its further registration with the corresponding land registry. The latter requires the clearance of certain procedures, such as registering the change of ownership with the physical cadastral office, and payment of the corresponding transfer taxes. The relevant municipal authorities should also be informed of the change of ownership for the update of records.

**Title insurance**

Many investors choose to insure titles through a title insurance company, seeking more protection of their financial interest in case of losses derived, mainly, from title defects. Title insurance companies conduct their own and independent due diligence over the property to determine coverage and exclusions.

**Land registry system**

The land registry system in Nicaragua is not centralised. There is one land registry for each of the departments and autonomous regions into which the Republic of Nicaragua is politically and administratively divided. Each land registry is located in the main or principal city of each department, and titles should be recorded with the land registry for the jurisdiction of the property involved.

**Transfer tax**

The transfer tax is calculated over the greater amount between the price in the purchase/sale deed and the tax appraisal established by the cadastral tax authority. The tax rate ranges from 1% to 4% depending on the amounts involved.

**Real estate municipal tax**

The real estate municipal tax is paid on an annual basis in arrears, within the first six months following the taxed year. The tax rate is 1% over the

taxable basis, according to the municipal cadastral appraisal.

### Permits

Depending on the nature of the project (eg, if associated with industries such as energy, mining, agribusiness, and so on), some other permits may be required, and procedures should be cleared with the relevant governmental offices in advance. The most common required permits are those granted by the municipal authorities for use of soil and construction, environmental permits issued by the Environmental Ministry and licences and/or concessions granted by ministries for the specific sector.

### Financing

The Nicaraguan legal system allows the creation of security interests over real property by means of mortgage granted before a public notary and further recorded with the land registry. Many important projects and businesses in Nicaragua in different sectors of the economy, such as, energy, mining, hydrocarbons, tourism, agribusiness and others, are conducted through financing and loans secured with real property. Conducting due diligence is likewise recommended for lenders before entering into financial arrangements to be secured with real property.

At the heart of the Americas, investors from all sectors are warmly welcomed. Join the experience!



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