

Doing business in Nicaragua

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OVERVIEW

1. What are the key recent developments affecting doing business in your jurisdiction?

Nicaragua has experienced a number of recent developments, which include a mixture of business, economic and political developments, together with new legislation, which affect doing business in Nicaragua. For example, the Nicaraguan Interoceanic Grand Canal Project, which is a major project (also known as a "mega-project"), involves the active participation of the government, administrative agencies and state powers which so far has resulted in:

- The enactment of a special legal regime governing such projects, including laws for the development of infrastructure and transportation as well as a concession agreement entered into by and between the government and a foreign entity in charge of the canal construction.
- Uncertainty on the expropriation procedures that might be implemented in the grand canal's route.
- The raising of certain environmental concerns.

This project has been promoted by the government, and is being regarded by some sectors as a political event. From a business point of view, while some investors prefer to wait and gather more information on this project before actually beginning to do business in Nicaragua (this is particularly true for investment projects involving land or natural resources located nearby the canal's route), some others hope that this project, if executed, will become an opportunity to do business on a large scale. However, it is yet to be seen how this project will actually evolve in practice.

LEGAL SYSTEM

2. What is the legal system based on (for example, civil law, common law or a mixture of both)?

The Republic of Nicaragua is organised as a unitary system, which is based on the constitutional rule of law, and the Political Constitution of Nicaragua is the supreme law.

Nicaragua is a presidential representative democratic republic, and the President of Nicaragua is both head of state and head of government. There is a multi-party system, and executive power is exercised by the government. Legislative power is vested in both the Government (for example, regulations, presidential decrees, and so on) and the National Assembly. The judiciary is independent of the executive and the legislature.

The general legal system is based on civil law, and includes a wide range of special laws, codes, regulations and other forms of legislation.

FOREIGN INVESTMENT

3. Are there any restrictions on foreign investment (including authorisations required by central or local government)?

As a general rule, there are no restrictions on foreign investment. In the last couple of years, the government has taken several steps to make it easier for foreign investors to make investments in Nicaragua. The requirements and procedures are the same for both national and foreign investors. Foreign nationals can be shareholders in Nicaraguan entities. However, there are very few business sectors where there are restrictions on foreign national shareholders, and in these business sectors a majority of capital stock percentage must be held by Nicaraguan nationals. In addition, legal entities in Nicaragua (including entities with foreign national shareholders) must have a legal representative who must be either:

- A Nicaraguan national.
- A foreign national residing in Nicaragua.

4. Are there any restrictions on doing business with certain countries or jurisdictions?

There are no restrictions on Nicaragua doing business with other countries. However, countries considered as "tax havens" are taxed differently in Nicaragua from other, non-tax haven countries, though currently there is not an official list of countries classified as "tax havens" by Nicaragua. Nicaragua has signed trade agreements and collaboration agreements with a number of different countries, such as the US, Central-American countries and the Dominican Republic, Mexico and so on.

5. Are there any exchange control or currency regulations?

Law 732 "Organic Law of the Central Bank of Nicaragua" (Law 732) establishes that the official currency in Nicaragua is the *Córdoba* (NIO), and all prices, payments, fees, charges, and so on should be expressed (or cancelled) in NIO (except for banks and financial institutions). However, under Law 732 there are certain exceptions to the above restriction for those obligations expressed in another currency other than NIO. Provided that these obligations can be converted into NIO by applying a determined (or determinable) currency exchange rate at the moment of payment, they are allowed (although some other legal provisions may also apply in these cases).

6. What grants or incentives are available to investors?

There are tax incentives available in the following sectors (amongst others) for both national and foreign investors:

- Exports.
- Free zones.
- Foreign investments.
- Exploration and exploitation of hydrocarbons and geothermic resources.
- Fishing.
- Coffee.
- Energy.
- Tourism.

BUSINESS VEHICLES

7. What are the most common forms of business vehicle used in your jurisdiction?

Most common business vehicles in Nicaragua are as follows:

- Corporations (*Sociedades Anónimas*), which comprise capital divided and incorporated into shares.
- Limited liability companies (LLC) (*Sociedades Colectivas de Responsabilidad Limitada*), which are formed by partners whose capital in the company are in the form of a "participation" or "contribution" (as opposed to "shares" in corporations).
- Branches of foreign entities (branch) (*Sucursales de Entidades Extranjeras*), which are established as branches of foreign parent companies.

These three vehicles are the ones most frequently used by foreign investors. When it comes to choosing a specific vehicle, most investors take into account their pre-existing corporate or organisational structure abroad and try to keep it, or to follow it (to the extent that that is possible), for their business in Nicaragua. The most flexible corporate structure can be found in corporations, as a result of their share structure and the corporate governance requirements. Trusts are also available, but the costs associated with these can be considerable.

8. In relation to the most common form of corporate business vehicle used by foreign companies in your jurisdiction, what are the main registration and reporting requirements?

Registration and formation

Whether a corporation, limited liability company (LLC) or a branch is being used, they must all be incorporated by means of a public deed before a Public Notary, and should be recorded with the Mercantile Registry, the Nicaraguan Tax Authority and the Municipal Authority where the company is doing business.

LLCs must contain at least one of the names of their partners in their legal name, followed by the words "*y compañía limitada*" to limit the responsibility of the partners. Corporations should include the words "*Sociedad Anónima*"; and branches must include the words "*Sucursal Nicaragua*". These vehicles can be incorporated and registered in about 35 days. Some additional permits and registrations may apply, depending on the business sector, and the timescales for obtaining permits and registrations can vary,

depending on the permit to be obtained and the governmental agency involved. The following websites can provide further information:

- Mercantile Registry (www.registropublico.gob.ni).
- Municipal Authority of Managua (www.managua.gob.ni).
- Tax Authority (www.dgi.gob.ni).

Reporting requirements

Generally, the reporting requirements are as follows:

- Tax Authority: the following must be provided (these are all done online):
 - monthly tax returns for VAT;
 - income tax payments;
 - minimum definitive payment;
 - withholding tax payments.
- Municipal Authorities: the following must be provided:
 - income municipal tax and certain contribution rates (on a monthly basis);
 - real estate municipal tax (paid annually in arrears);
 - tax returns.

Tax returns and payments are made directly at the Municipal Authority's Headquarters.

Share capital

There are generally no registration or reporting requirements for share capital. However, some regulations on minimum capital and adjustment of capital are applicable to the banking and financial sector.

Non-cash consideration

Shares can be issued for cash or in-kind consideration.

Rights attaching to shares

Restrictions on rights attaching to shares. The articles of incorporation and bye-laws can establish restrictions on rights attaching to shares, which can vary on a case-by-case basis.

Automatic rights attaching to shares. The Nicaraguan Code of Commerce establishes that shares in corporations give shareholders equal rights, unless there are provisions stating otherwise in the corporation's articles of incorporation.

9. In relation to the most common form of corporate business vehicle used by foreign companies in your jurisdiction, outline the management structure and key liability issues.

Management structure

The highest authority for corporations is the shareholders meeting, and the administration of the corporation is entrusted to a board of directors (directors should also be shareholders). LLCs can appoint administrators with the authority to legally represent and act on behalf of the company, and such administrators may or may be not partners in the company. If administrators are not appointed, then any partner is lawfully entitled to act on behalf of the company. Branches are managed by their parent company's board of directors and/or shareholders, as applicable, though the branch in Nicaragua should also have an individual granted with full power-of-attorney to represent the branch in the country.

Management restrictions

There are no restrictions on foreign managers, but the legal representative must be either a Nicaraguan citizen or a foreign citizen resident in Nicaragua. However, if a foreign manager is appointed who will be working in Nicaragua, certain immigration requirements may apply.

Directors' and officers' liability

For corporations, the Nicaraguan Code of Commerce provides that directors are not liable (either personally, jointly or severally) for the corporation's obligations. However, directors will be liable (either personally, jointly or severally) before the corporation and third parties in the event of:

- Non-execution of the corporation's administrative mandate.
- Breach of the corporation's bye-laws.
- Breach of the law.

In addition, the Nicaraguan Criminal Code establishes criminal sanctions (including, among others, imprisonment) for directors and officers:

- Participating in the decision-making process or in agreements which are in their interest but are harmful to the corporation.
- Consenting to agreements in breach of the corporation's bye-laws or the law, which are harmful to the corporation or the public.

Parent company liability

There are no specific provisions on this matter under Nicaraguan law. However, it is possible that the claimants may try to pursue legal action against a parent company in the case of litigation, claims or disputes.

EMPLOYMENT

Laws, contracts and permits

10. What are the main laws regulating employment relationships?

The main governing law regulating employment relationships in Nicaragua is the Labour Code. It applies to all employees working in Nicaragua, whether they are nationals or foreign nationals. Immigration law establishes the rules applicable to a non-resident worker, who must obtain a work permit in order to work in Nicaragua. The Labour Code is a law of public order, and the provisions under the Labour Code apply over any choice of law stipulated in the employment contract. Further, any provisions in the employment contract which contradict the provisions of the Labour Code are inapplicable. Provisions under the Labour Code cannot be waived.

For employees working abroad, the general principle is that they are subject to the applicable law of the jurisdiction where they are working. However, there are some provisions in the Labour Code which prohibit the execution of labour contracts with Nicaraguan employees in Nicaragua, which provide for those Nicaraguan employees to render services or perform tasks abroad without the prior approval of the Labour Ministry, which should dictate the necessary conditions and requirements for these cases. Please note that the application of this provision in practice is still unclear.

11. Is a written contract of employment required? If so, what main terms must be included in it? Do any implied terms and/or collective agreements apply to the employment relationship?

The Labour Code establishes that only certain labour contracts can be made verbally. Verbal labour contracts can be made only for the following types of work:

- Fieldwork.
- Housekeeping work.
- Temporary or occasional work that does not exceed of ten days' duration.

In all other cases labour agreements must be written. The main terms to be included in a labour agreement, among others, are as follows:

- Date and place of the agreement.
- Identity and domicile of the parties.
- Description of the work and the place of performance.
- The duration of work (for the day, and for the week).
- Whether the work is completed in the daytime or the night time (or a mixture of the two).
- Whether it is a fixed-term or indefinite period agreement.
- Compensation payable, and the form and place of payment.
- Signatures of the parties.

Collective agreements can apply, provided that they are properly issued and approved by the Labour Ministry.

There are certain rights implied in a labour relationship even though they are not expressly included in the labour agreement, such as (among others):

- The right of employees to earn wages no less than the minimum.
- The right to labour benefits such as severance, vacations, 13th month payment, and any additional benefits granted by employers to employees deemed as acquired labour rights under the applicable law.

12. Do foreign employees require work permits and/or residency permits?

Foreign employees must have either a temporary work permit or a working residency card to be able to work in Nicaragua. Timing and procedures can vary on a case-by-case basis; but in general it takes between two to six months for permits to be issued. The following documents (amongst others) will need to be supplied to the Immigration Authority and the Labour Authority, as required in the application:

- Birth and health certificates.
- Criminal record.
- Passport (with no less than six months' validity).
- Labour contract (for review and approval).

The main governmental authorities responsible for issuing permits are the Immigration Authority and the Labour Authority.

Termination and redundancy

13. Are employees entitled to management representation and/or to be consulted in relation to corporate transactions (such as redundancies and disposals)?

Employees are not entitled to management representation, or to be consulted, in relation to corporate transactions.

14. How is the termination of individual employment contracts regulated?

Employment contracts can be terminated at will, and notice is not required. Dismissals fall into two categories:

- **Justified dismissals.** These are dismissals where the employer is justified in dismissing the employee, and can include the following:
 - the employee commits a serious offence endangering life and/or the physical integrity of the employer or his co-workers;
 - the employee violates the terms of the employment contract;
 - the employee makes a slanderous expression against the employer which either discredits the company, or causes economic damage.

Justified dismissals must be approved by the Labour Ministry prior to the dismissal being made.

- **Unjustified dismissals.** These are dismissals where the employer has no justifiable cause to dismiss the employee. Unjustified dismissal triggers the payment of severance pay (which can be up to five months' salary and can include other labour benefits).

15. Are redundancies and mass layoffs regulated?

Redundancies and mass layoffs must be authorised by the Labour Ministry.

TAX

Taxes on employment

16. In what circumstances is an employee taxed in your jurisdiction and what criteria are used?

The concept of "resident for tax purposes" has applied in Nicaragua since January 2013, when the Tax Concertation Law came into effect. Individuals are considered as "resident for tax purposes" (and therefore subject to taxation in Nicaragua) when they meet any one of the following criteria:

- They spend more than 180 days in Nicaragua in a tax year (the 180 days does not have to be taken continuously).
- The individual's centre of economic interest is within Nicaragua.

Nicaraguans residing abroad are still subject to taxation in Nicaragua where:

- They are members of a Nicaraguan diplomatic mission or consular post.
- They hold a government post or other official position in Nicaragua.

Any legal entity created under Nicaraguan laws with their tax domicile or permanent establishment in Nicaragua is also subject to tax in Nicaragua.

All employees in Nicaragua earning over NIO10,0000 are subject to labour income tax (at the progressive rates established by law), which is withheld by the employer.

Non-residents working in Nicaragua are subject to labour income tax at a fixed tax rate of 15%, which is withheld by the employer on each salary payment made.

17. What income tax and social security contributions must be paid by the employee and the employer during the employment relationship?

Employees pay labour income tax at progressive tax rates depending on the amount they earn. This tax rate ranges from 15% to 30%, and the tax is withheld and paid by the employer. Employees also pay 6.25% of their salary as a contribution to the social security system. The employer pays 18% of the employee salary as a contribution to the social security system, and 2% is paid as a Technological Institute contribution.

Tax resident employees

For employees who are resident for tax purposes, income tax is charged at the following progressive tax rates, depending on the income earned (deductions for social security must be made before calculating the applicable tax rate(s)):

- From NIO0.01 to NIO100,000: 0%.
- From NIO100,000.01 to NIO200,000: 15%.
- From NIO200,000.01 to NIO350,000: 20% (plus NIO15,000).
- From NIO350,000.01 to NIO500,000: 25% (plus NIO45,000).
- NIO500,000.01 and above: 30% (plus NIO82,500).

The tax is withheld each month by the employer.

Non-residents working in Nicaragua are subject to labour income tax at a fixed tax rate of 15%, which is withheld by the employer on each salary payment made.

Non-tax resident employees

There is no concept of a "non-tax resident employee", since all employees working in Nicaragua (whether resident for tax purposes, or non-resident) are subject to labour income tax (*see above, Tax resident employees*). Under the Immigration Law, all foreign employees working in Nicaragua must have either a temporary work permit or a working residency card, and are subject to labour income tax.

Employers

Employers are subject to a social security contribution (at a rate of 18%) and a Technological Institute contribution (at a rate of 2%), which is paid monthly after the Social Security Institute issues the official invoice.

Business vehicles

18. When is a business vehicle subject to tax in your jurisdiction?

Tax resident business

Legal entities incorporated as a business or mercantile entities (that is, other than non-profit organisations) are subject to taxation in Nicaragua.

Residents for tax purposes are the following:

- Individuals staying in the country for more than 180 days (the 180 days do not have to be continuous).
- Those with their main economic interest in the country.
- Foreign residents.
- Trusts or any other vehicle incorporated in Nicaragua, or foreign entities with a permanent establishment in Nicaragua.

Non-profit organisations incorporated and registered as such are exempt from all taxes on their income (both national taxes and local taxes).

Non-tax resident business

There is no recognised concept of a "non-tax resident business". Only non-profit organisations, or those operating within free trade zones, can be subject to tax exemptions.

19. What are the main taxes that potentially apply to a business vehicle subject to tax in your jurisdiction (including tax rates)?

Nicaraguan taxation follows the territorial income principle. For national taxes, businesses are subject to:

- A fixed rate of income tax, charged at 30% on income earned in Nicaragua, which is paid by means of monthly tax returns.
- A monthly payment of 1% of gross income from their economic activities, payable to the Municipal Authorities.

At the end of each fiscal year, companies must issue an Annual Income Return to be filed with and paid to the tax authorities within the following three months (January to March).

Income tax from capital income and capital gains is paid by means of definitive withholding tax.

Income from capital income is fixed at:

- 10% withholding when paid to residents.
- 15% withholding when paid to non-residents.

Income from capital gains is fixed at 10% withholding (whether it is paid to residents or non-residents).

Dividends, interest and IP royalties

20. How are the following taxed:

- **Dividends paid to foreign corporate shareholders?**
 - **Dividends received from foreign companies?**
 - **Interest paid to foreign corporate shareholders?**
 - **Intellectual property (IP) royalties paid to foreign corporate shareholders?**
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Dividends paid

Dividends are considered as capital income and are taxed at the following withholding tax rates:

- 10% when paid to residents.
- 15% when paid to non-residents

The withholding tax applies whether the shareholders are individuals or legal entities.

Dividends received

Dividends are considered as capital income and are taxed at the withholding tax rate of 10% when they are paid to a resident legal entity from a foreign company. In this case the paying company should withhold the 10% rate of tax. However, it is difficult to apply this in practice, because foreign companies are unable to file tax returns with the Nicaraguan tax authorities. As a result, the receivers of such dividends should account for the 10% withholding tax that is applicable.

Interest paid

Interest payments are considered as capital income and are taxed at the following withholding rates:

- 10% when paid to residents.
- 15% when paid to non-residents.

The withholding tax applies whether those in receipt of interest payments are individuals or legal entities.

IP royalties paid

IP royalties are considered as capital income and are taxed at the following withholding rates:

- 10% when paid to residents.
- 15% when paid to non-residents.

The withholding tax applies whether those in receipt of IP royalty payments are individuals or legal entities.

Groups, affiliates and related parties

21. Are there any thin capitalisation rules (restrictions on loans from foreign affiliates)?

There are no thin capitalisation rules in Nicaragua. However, financial losses reflected in companies' financial statements are deductible for income tax purposes.

22. Must the profits of a foreign subsidiary be imputed to a parent company that is tax resident in your jurisdiction (controlled foreign company rules)?

There are no such rules in Nicaragua.

23. Are there any transfer pricing rules?

Transfer pricing rules will be applicable from the beginning of 2016. All "related parties" will be subject to the transfer pricing rules, and all transactions among related parties will be valued in line with the free competition principle, which establishes that all transactions among related parties will be valued using the price that would apply for a similar transaction between independent parties.

The tax authorities will be authorised by law to re-qualify such transactions if they prove that the economic reality of such transactions differs in any way from the position adopted by taxpayers, or if they consider that the price is substantially lower than the price that independent parties would have adopted.

Customs duties

24. How are imports and exports taxed?

Imports are subject to the following taxes:

- Import tax, which varies depending on the imported good.
- Excise tax, which also varies depending on the imported good.
- Value added tax (VAT), fixed at a rate of 15%.

Depending on the goods imported and the countries involved, some exceptions or different duty rates may apply. Exports are taxed with a 0% tax rate which allows VAT accreditation for exporters.

Double tax treaties

25. Is there a wide network of double tax treaties?

Nicaragua is not a party to any double tax treaty with any country.

COMPETITION

26. Are restrictive agreements and practices regulated by competition law? Is unilateral (or single-firm) conduct regulated by competition law?

Competition authority

The main competition authority in Nicaragua is the National Institute for the Promotion of Competition (*Instituto Nacional de Promoción de la Competencia*) (*Procompetencia*) (www.procompetencianic.org), which provides guidance on the competition law rules. However, given the recent development of competition law, competition-related matters concerning the regulated sectors should be resolved by the corresponding regulatory entities, and *Procompetencia's* scope for providing guidance in such sectors is limited.

Restrictive agreements and practices

Law 601 "Competition Promotion Law" (Law 601) prohibits acts, conduct, agreements, covenants or contracts between competitor and non-competitor economic agents (whether express or tacit, or written or verbal) which are aimed at:

- Limiting or restricting competition.
- Preventing access to, or eliminating from the market, any economic agent.

Law 601 expressly forbids certain practices between competitor economic agents (PCA). The following PCA are forbidden:

- Covenants and agreements to fix, increase, concert or manipulate prices or other sale or purchase conditions on goods or services in any way, which are offered or demanded in markets, or exchange information with the same object or effect.
- Covenants and agreements to divide, distribute, designate or impose portions or segments of an actual or potential market of goods and services, by means of clients, sellers, suppliers, by kind of sold products, times and determined or determinable spaces, or by any other means.
- Covenants and agreements to eliminate other entities from the market, or limit access to the market by other entities, purchasers or sellers of determined products.
- Covenants and agreements to fix or limit production amounts, establishing an obligation to produce, process, distribute, or

commercialise only a restricted or limited amount of goods, or restricting the volume or frequency of services.

- Establishing, agreeing or co-ordinating bid fixing, restraining or limiting prices in auctions or in any other bidding form (with the exception of an offer filed jointly by economic agents which is clearly identified as such in the document filed by bidders).

Agreements between national producing agents and external purchasing agents which set out more favourable conditions for national producers will not be construed as limiting the free market and will not be contravention of competition law.

Certain practices between non-competitor economic agents (PNCA) are forbidden by Law 601 where the following criteria are met:

- The alleged responsible party for the practice has a dominant position in the relevant market.
- The practice is related to goods or services corresponding or related to the relevant market.
- The practice prevents or limits access to, or removes competitors from, the market and, in any event, causes harm to the interests of consumers.

Where these criteria are met, the following practices between non-competitor economic agents (PNCA) (whether express or tacit, or written or verbal) should be considered as in breach of Law 601:

- Any unjustified agreement for the exclusive distribution of goods or services between non-competitor economic agents, or wholesale suppliers or distributors of one product only selling under the condition that retail purchasers do not buy or distribute competitor products.
- Imposing prices and/or other conditions which distributors or retailers must observe when supplying goods or services to buyers.
- Selling goods on the condition that the buyer acquires other goods or services, or rendering services on the condition that the buyer acquires other goods or services.
- Selling or buying goods on the condition that the goods or services of a third party are not used.
- Refusing to sell, supply or purchase to a specific economic agent, where those goods or services would ordinarily be available to sell, supply or purchase and there are no alternative suppliers operating in the relevant market.
- Applying unequal conditions for equivalent performance, resulting in some competitors being placed at a disadvantage compared to others.
- Any agreement among several economic agents to put pressure on clients or suppliers with the purpose of dissuading them from certain conduct, or obligating them to act in a specific manner.
- Using any form of predatory practices.

The provisions of Law 601 that prohibit any act or conduct which may harm, limit or affect free competition also apply to foreign entities doing business in Nicaragua.

Under the Nicaraguan Criminal Code, pecuniary sanctions and a term of imprisonment (between two to six years), along with disqualification from carrying out a professional activity for the same period, can be imposed on those that breach competition law by exercising any of the following practices:

- Imposing (directly or indirectly) prices or other conditions of sale or purchase on goods or services, or exchanging information in order to create the same effect.

- Imposing limitations or restrictions on the production, processing, distribution and commercialisation of goods or services.
- Impeding or obstructing the entry into the market, or the permanency, of other economic agents, or excluding them from the market.

Unilateral conduct

There are no specific provisions which cover unilateral conduct. However depending on how PCA and/or PNCA are conducted or carried out (for example, one economic agent imposing anti-competitive conditions over others) it is possible to have one economic agent conducting unilateral anti-competition practices (instead of bilaterally or multilaterally). Much will depend on the practice's structure and how it is implemented, and actions will be reviewed on a case-by-case basis.

27. Are mergers and acquisitions subject to merger control?

Transactions subject to merger control and turnover tests

Law 601 (and its regulations and amendments) provides that the following transactions constitute a concentration:

- When formerly independent economic agents embark on contracts, agreements or treaties with the purpose of acquiring, consolidating, integrating or combining their businesses so that they will no longer be independent entities.
- When one or more economic agents who already control at least other economic agents, acquire by any means the direct or indirect control of all, or a portion, of another economic agent, or agents.
- Any other agreement or act which tacitly or legally transfers to an economic agent the assets of another, or grants a right of control of another's business.

In general terms, the above forms of concentrations are permitted provided that their effect does not limit, harm or restrain free economic competition in equivalent, similar or substantially related goods or services. These provisions do not apply to mergers carried out with insolvent economic agents.

However, if a concentration meets either of the following thresholds, it must be notified to and approved by the Competition Authority:

- When as a result of the concentration, a market share equal to or greater than 25% in the relevant market is acquired or increased.
- Where economic agents involved in the concentration have a combined income equal to or greater than 642,857 minimum salaries (about US\$100 million).

The regulations to Law 601 provide that the calculation of the income test includes all of the assets and income received and accrued by the economic agents during their last fiscal term (in a periodic, eventual or occasional way), whether:

- Acquired in cash, goods and compensations coming from sales or profits derived from manufactured, produced, treated or purchased goods.
- Acquired in Nicaragua or abroad.
- Acquired through the rendering of services, leasing, subleasing, works, compensated activities of any nature, earnings or profits produced from real estate properties, movable assets, or capital earnings, as well as any other income of any nature (before tax deductions).

The Competition Authority takes into consideration the average minimum salary in effect on the day prior to the notification.

Main substantive test

There is a preliminary period of 35 business days for the Competition Authority to analyse the notification and determine whether or not the transaction causes, or may cause, anti-competitive effects. If the transaction is found to not be anti-competitive, then a resolution authorising the transaction is issued. However, in the event the Competition Authority considers it necessary to conduct further research and analysis, it can initiate an investigation phase that can take up to approximately 180 additional business days.

Finally, the Competition Authority will issue a final resolution which can:

- Authorise the operation, either partially or totally.
- Condition the authorisation upon certain requirements being met.
- Order the concentration's reversal, either partially or totally.
- Reject the concentration request.

Parties can challenge the decision using the appeal procedure that is in place.

Foreign-to-foreign acquisitions and foreign exemptions

Regulations to Law 601 establish that concentrations derived from legal acts executed outside Nicaragua should request authorisation before taking legal or material effect in Nicaragua. As a result, approval from the Nicaraguan Competition Authority should be obtained before the transaction takes legal or material effect in Nicaragua where any of the thresholds triggering filing are met. There are no other specific provisions on this matter or on foreign exemptions.

INTELLECTUAL PROPERTY

28. Outline the main IP rights in your jurisdiction.

Patents

Definition and legal requirements. A patent is an exclusive right recognised for an invention that offers a new technical solution to a specific problem which is a product or a process applicable to them.

The legal requirements for patentability are:

- Novelty.
- Inventive activity.
- Industrial application.

The main types of patents are:

- Patent of invention.
- Utility model.
- Industrial design.
- Programme-carrying signals transmitted by satellite.
- Layout designs for integrated circuits.
- New variety of plants.

Registration. The Intellectual Property Office (*Registro de la Propiedad Intelectual*) is the office responsible for the registration of patents. The Intellectual Property Office provides information about procedures and the applicable law on its website (www.rpi.mifc.gob.ni).

Enforcement and remedies. Under the Law on Patents, Utility Models and Industrial Designs (Law 354), the patent holder has the exclusive right to prevent others from commercially exploiting the patented invention. Therefore, the patent holder can proceed against any person who engages in any of the following acts without his consent:

- Where the patent is a product:
 - producing and manufacturing the product;
 - offering for sale, selling or using the product;
 - importing it or storing it for any of the aforesaid purposes.
- Where the patent is a process:
 - using the process;
 - producing or manufacturing a product obtained directly by means of the process.

The patent holder can bring an action before the competent judicial authority against any person who engages in any act that constitutes an infringement of his rights.

In the case of joint ownership, any of the joint owners can, unless otherwise agreed, bring an action for patent infringement without the consent of the other joint owners (unless otherwise agreed).

The action will be notified to all persons who have any registry entries in their favour in relation to the title to which the proceedings relate. Those persons can intervene personally in the action at any time.

Length of protection. The protection is granted for a limited period of 20 years from the application's filing date.

Trade marks

Definition and legal requirements. A trade mark application must be filed with the Intellectual Property Office and must include:

- A request that includes:
 - name and address of the applicant;
 - place of incorporation and address of the applicant (when a legal entity);
 - name of legal representative (if applicable);
 - name and address of agent in the country, where he was appointed, and the designation required if the applicant has no domicile or establishment in the country;
 - the mark for which registration is sought (if it is a word without graphics, shape or special colours);
 - a list of products or services for which the trade mark should be registered, grouped by classes according to the International Classification of Goods and Services (WIPO Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks 1957), indicating the number of each class; and
 - the signature of the applicant or his agent.
- A reproduction of the mark in four copies where the trade mark has a script, shape or colour, or is a figurative, mixed or three-dimensional mark (with or without colour).
- The power or document attesting representation, as is the case.
- The documents or authorisations required (for the cases provided for in Articles 7 and 8 of the Law of Trade Mark and Other Distinctive Signs (Law 380)) (when relevant).
- The name of the country of which the applicant is a national (if the applicant has a nationality), the name of the state where the applicant is domiciled, and the name of the state in which the

applicant has an industrial or commercial real and effective establishment (if applicable).

- Payment of the prescribed fee.

Trade marks can consist of, among other things, words or groups of words, advertising slogans and phrases, letters, numbers, monograms, shapes, portraits, labels, coats of arms, designs, cartoons, borders, lines and stripes, and combinations and arrangements of colours, sounds or other perceptible signs (such as smells). They can also consist of the form, presentation or packaging of the goods or their containers or wrapping, or the means or place of retail of the related goods or services.

In general, a trade mark can be any visible sign capable of distinguishing goods or services.

Protection. The Intellectual Property Office is responsible for the registration of trade marks. It provides information about the procedures and the applicable law in its website (www.rpi.mific.gob.ni).

Only the owner of a registered trade mark will enjoy the exclusive right to prevent third parties from using, without his consent, in their commercial operations, identical or similar signs (including geographical indications) for goods or services related to the goods and services protected by a registered trade mark, where this use gives rise to the likelihood of confusion.

There is no protection for unregistered trade marks (with exception of well-known trade marks, which do not require registration for protection in Nicaragua).

Enforcement and remedies. The owner of a registered trade mark has the exclusive right of use of that trade mark, and enjoys the right to bring, before the courts, the relevant actions and measures against anyone who infringes his right. The owner of a registered trade mark can prevent any third party from carrying out the following acts:

- Apply or place the trade mark on similar or identical goods for which the trade mark is registered, or on products related to services for which it is registered, or on containers, wrappers, packaging or outfitting of those products.
- Delete or modify the trade mark for commercial purposes after it has been applied or affixed to the products (or it has been applied on containers, wrappers, packaging or outfitting of those products).
- Manufacture labels, containers, wrappers, packaging or other materials that reproduce or contain the trade mark, and selling or storing such materials.
- Refill or reuse for commercial purposes containers, wrapping or packaging bearing the trade mark.
- Use in trade an identical or similar mark to the trade mark for products or services, when such use may cause confusion or a likelihood of association with the registrant.
- Use in trade an identical or similar mark to the trade mark for goods or services where such use could cause the trade mark holder unjust economic or commercial damage by reason of a dilution of the distinctive force or commercial or advertising value of brand, or a misappropriation of the prestige of the brand or its owner.
- Publicly use an identical or similar mark to the trade mark, even for non-commercial purposes, where such use could weaken the distinctive force or commercial or advertising value of the trade mark or result in unfair exploitation of its prestige.

Length of protection and renewability. The registration of a trade mark will expire ten years from the date of its grant. Registration can be renewed indefinitely for successive periods of ten years.

Registered designs

Definition. An industrial design will be protected if it is new. It will be considered new if it has not been disclosed publicly before any of the following dates (the earliest date will apply):

- The date of the first public disclosure of the design by the designer or his successor in title or by a third party who has obtained it by any legal means.
- The filing date of the application for registration of the industrial design or, as the case may be, the filing date of the application claiming priority over that registration.

Industrial design is the particular aspect of a product that results from the characteristics of its shape, line, configuration, colour, material or ornamentation, among other things, and which includes all two-dimensional and three-dimensional industrial designs.

Registration. The Intellectual Property Office is responsible for the registration of industrial designs. However, the Intellectual Property Office's website does not offer information regarding the procedures or the requirements for registration of industrial designs.

Enforcement and remedies. The registration of an industrial design will confer on its owner the right to prohibit third parties from exploiting the industrial design. The owner of the registered industrial design can proceed against any person who, without his consent, produces, markets or uses, or imports or stores for any of those purposes, a product incorporating the registered industrial design, or a product which, by its appearance, gives the same overall impression as the design.

The industrial design's owner can bring an action before the competent judicial authority against any person who engages in any act that constitutes an infringement of his rights.

In the case of joint ownership, any of the joint owners can bring an action for infringement without the consent of the other joint owners being necessary (unless otherwise agreed).

The action will be notified to all persons who have any register entries in their favour in relation to the title to which the proceedings relate. Those persons can intervene personally in the action at any time.

Length of protection and renewability. The registration of an industrial design will have a term of five years from the filing date of the relevant application. The registration of an industrial design can be renewed for two additional periods of five years on payment of the prescribed fee. The renewal fee should be paid before the date on which it becomes due. However, it may also be paid within a period of grace of six months following the due date, subject to payment of the prescribed surcharge. The registration will remain in full force during the period of grace.

Unregistered designs

Definition and legal requirements. Any person who has the right to the protection of an industrial design will acquire it as a result of the first public disclosure of the industrial design, by any means and any place in the world, by the designer or his successor in title or a third party who has obtained the design as a result of any act performed by any of them.

Enforcement and remedies. Unregistered protection confers the right to prohibit third parties from copying or reproducing the industrial design. The owner of the right can proceed against any person who, without his consent, produces, sells, offers for sale or uses, or imports or stores for any of those purposes, a product incorporating the copied or reproduced industrial design.

Length of protection. Unregistered protection will be for a period of three years counted from the date of the public disclosure of the industrial design, by any means and any place in the world, by the designer or his successor in title or a third party who has obtained the design as a result of any act performed by any of them.

Copyright

Definition and legal requirements. Copyright describes the rights that creators have over their literary, handicraft, artistic or scientific works. The copyright in a literary, handicraft, artistic or scientific work belongs to the author by the mere fact of its creation.

Copyright has both a moral and economical dimension, which gives the creator (author) full control and an exclusive right to exploit the work.

Protection. The enjoyment and exercise of copyright and related rights are not subject to any mandatory formal registration, that being the registration and deposit of copyrights and related rights, which is optional and declarative. Non-registered and non-published works are protected from their creation. The Intellectual Property Office is responsible for copyright registration.

Enforcement and remedies. The owners of a copyright (whether the original owners or those who have derived rights or assigned rights) can request the cessation of any unlawful activity and demand compensation for any moral or economic loss caused as a result of copyright infringement. They can also request the adoption of interim protective measures (which are regulated by the Law on Copyright and Related Rights).

The cessation of the infringing activity can include:

- Prohibition on carrying out the infringing acts, including, among others, prohibiting the illicit imported goods from entering commercial channels immediately after such goods are released from customs, or preventing their export.
- Withdrawal from circulation of the illicit copies, or their destruction, or with the consent of the copyright holder, their donation for charitable purposes.
- Seizure and destruction of the materials and tools used in the production, creation or marketing of the illicit goods (except in cases where they are donated for charitable purposes with the consent of the copyright holder). The destruction or donation for charitable purposes of the materials and equipment will take place without any compensation to the infringer. When considering requests for the destruction of equipment, the judicial authorities will take into consideration the seriousness of the infringement, as well as the interests of third parties, holders of real rights, holders of rights of possession, and holders of a contractual or guaranteed interest (among other things).
- Seizure of any documentary proof relating to the infringement.

Length of protection and renewability. Moral rights do not have a specific time limit, and the creator has moral rights for his entire life. Upon the death of the author, these rights are passed to his heirs.

Economic rights last for the lifetime of the author plus 70 years after his death (or after a declaration of their death, or a respective declaration of absence).

In the case of works which are pseudonymous, anonymous or collective works, the economic rights last 70 years from their publication, unless the name of the author is identified before the expiration of this period.

In the case of a joint work, the term of the economic rights will be calculated from the death of the last surviving co-author.

MARKETING AGREEMENTS

29. Are marketing agreements regulated?

Agency

The general principle is that agency contracts are atypical and, as such, should not be regulated by any specific law. All dispositions should be allowed between the parties provided that they do not contravene the law, morality or public order.

However, there is an important exception to this general principle. In 1979, a Decree-Law "Law on Agents, Representatives or Distributors of Foreign Companies" was enacted. This was known as "Decree 13", and it established a national legal regime aimed at governing the relationship between foreign companies or suppliers and distributors in Nicaragua. Decree 13 included certain mandatory conditions applicable to the termination of contracts, such as, among other things:

- A compensation payment which would be applied to foreign suppliers, so that they would have to compensate distributors in Nicaragua in the case of unilateral termination.
- A specific judicial procedure before the Nicaraguan courts to resolve any controversies in connection with these kinds of relationships.

Decree 13 was repealed as of 1 July 1998, but some further tax-related laws continue to provide for certain restrictions to apply to agreements entered into under Decree 13. In the year 2013, Law No. 822 "Tax Agreement Law" (Law 822) entered into force and, as further amended, is now in effect. Law 822 provides that:

- All agreements under Decree 13 should remain in effect and cannot be amended or invalidated (unless they are amended due to legal cause or by mutual agreement).
- The relationship between the parties can be proved by any means established by law.
- Disputed rights between the parties should be solved in a summary civil procedure before court, and contracts should be subject to Nicaraguan law irrespective of any choice of law in the contract).

Therefore, those agency, distribution and franchising relationships which began while Decree 13 was in force (that is, prior to 1 July 1998) will be subject to the conditions set out in Law 822. Furthermore, it is worth mentioning that certain aspects in Law 822 still remain a grey area in terms of their application in practice to agreements executed after Decree 13 was repealed (such as provisions on dispute resolution and applicable law).

Distribution

See above, *Agency*.

Franchising

See above, *Agency*.

E-COMMERCE

30. Are there any laws regulating e-commerce (such as electronic signatures and distance selling)?

There are no laws regulating e-commerce. However, there is an Electronic Signature Law (which came into force in 2013) but although this law does not yet apply in practice because there are currently no offices for the certification of electronic signatures.

ADVERTISING

31. Outline the regulation of advertising in your jurisdiction.

Law No. 842 "Law for the Protection of Consumer's Rights and Users" (Law 842) regulates advertising in Nicaragua.

DATA PROTECTION

32. Are there specific statutory data protection laws? If not, are there laws providing equivalent protection?

The Political Constitution of Nicaragua provides certain general rights concerning privacy and data collection. The main specific law on this matter is Law No. 787 "Personal Data Protection Law" (Law 787) and its regulations. Law 842 also establishes certain provisions relating to customers' data protection, and certain laws enacted under the Political Constitution of Nicaragua establish specific rights and forms of recourse (the "*habeas data*" recourse) which affected parties can exercise in connection with these matters.

PRODUCT LIABILITY

33. How is product liability and product safety regulated?

Product liability is regulated by Law 842. Every person involved in the supply chain, from the producer or manufacturer to the final seller, are joint and severally liable for defective products.

MAIN BUSINESS ORGANISATIONS

Customs Authority (*Dirección General de Aduanas*), Tax Authority (*Dirección General de Ingresos*)

W www.dgi.gob.ni

W www.dga.gob.ni

Main activities. The authorities responsible for regulating customs and taxes.

PRONicaragua (*Nicaraguan Investments Promotion Agency*)

W www.pronicaragua.org

Main activities. The Nicaraguan Investments Promotion Agency is responsible for promoting investment in Nicaragua.

Mercantile Registries and Property Registries (*Registro Públicos de la Propiedad Inmueble y Mercantil*)

W www.poderjudicial.gob.ni/registro_publico/

Main activities. Provides a national system of records of property rights and commercial organisations.

Employment/immigration organisations (*Ministerio del Trabajo, Dirección General de Migración y extranjería*)

W www.mitrab.gob.ni

W www.dgme.gob.ni

Main activities. In charge of regulating all matters concerning employee-employer relations.

ONLINE RESOURCES

National Parliament (*Asamblea Nacional*)

W www.asamblea.gob.ni

Description. Official website of the National Parliament, where laws are uploaded. It is in Spanish, and we are not aware of any trusted official or unofficial sites offering translations for Nicaraguan laws.

National Institute for the Promotion of Competition (*Instituto Nacional de Promoción de la Competencia*) (Procompetencia)

W www.procompetencianic.org

Description. The website for *Procompetencia*, which includes an English translation of Law 601 (Competition Promotion Law).

Practical Law Contributor profiles



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