

## **Foreign Investment and M&A Legal Overviews for Honduras**

*Consortium Legal*

### **1. Foreign Direct Investment (Greenfield Investment)**

#### **1.1. Are there any governmental and regulatory approvals required for FDI? If so, please give brief details (e.g., trigger threshold, relevant authority and timing requirements)?**

The Law for the Promotion and Protection of Investment, Decree No. 51-2011, establishes ratifies the general principal, that all foreign investments will have the same treatment and protection as national investments. Therefore, there are no government and regulatory approvals required for FDI.

However, there are government processes and notifications that are required in order to incorporate a subsidiary or branch in the jurisdiction of Honduras, that are applicable for all foreign and national investments. For purposes of this questionnaire, we will refer only to the scenario of the incorporation of a Honduran subsidiary (hereon the "Honduran Entity"). In general terms, the processes and notifications are the following:

- (i) incorporate the Honduran Entity before a Honduran notary public
- (ii) register the public deed of incorporation at the Mercantile Registry
- (iii) notify the Servicio de Administración de Rentas (the "Honduran Tax Authority") in order to obtain the Registro Tributario Nacional (the fiscal identification number), and official receipts, and
- (iv) notify the the municipality where the Honduran Entity will have its administrative offices and domicile, in order to obtain the municipal operations permit.

In the case of FDI, the foreign investors that wish to incorporate a Honduran Entity, send a power of attorney in favor of attorneys at a local firm, which act as their representatives solely for the purpose of incorporating the Honduran Entity and executing the processes and notifications mentioned in the paragraph above. The timing to execute these processes and notifications normally takes between two to four weeks from the date that the local law firm receives the power of attorney.

The Honduran Tax Authority requires that the Honduran Entity have a physical address in Honduras and a local representative for notification purposes. As a result, a special power of attorney to act as the legal representative of the Honduran Entity is recommended. Local law firms and accounting firms may provide this additional service on a temporary basis.

#### **1.2. Are there any industry sector controls on foreign investment?**

As mentioned before, Honduran law does not distinguish between foreign and national investment. In this sense, certain sectors have controls on investments in general (foreign and national). Some of the sectors that have specific regulatory frameworks are banking, insurance, securities, mining, telecommunications, free trade zones, and energy.

Honduras also has a consumer protection law, antitrust law and environmental laws. All investments must also comply with municipal ordinances, regarding municipal taxes, operation permits, building permits and in some cases, there are also municipal sector controls and tariffs. There are also laws that regulate the export and import of goods and the foreign currency received by the sale of exports of local goods.

Finally, it is important to mention that Honduras regulates local foreign exchange, specifically the U.S. Dollar and the Euro. The Central Bank of Honduras establishes daily the foreign exchange rate for these two currencies and limits its price. The Central Bank also requires banks of the Honduran financial system to sell a certain percentage of its foreign exchange earnings and assets to the Central Bank.

**1.3. Are there any localization requirements for FDI in your jurisdiction (e.g. minimum ratio of local employees, minimum ratio of local procurement)?**

Yes, according to our labor legislation, Honduran Entities have to have a ratio of ninety percent (90%) that must be Honduran employees; and eighty-five percent (85%) of the total salaries earned by the Honduran employees.

**1.4. What are the requirements for granting foreign employees work visas?**

In our legislation, the Special Permit to Stay is the equivalent of a work visa. It must be taken into consideration that foreigners, depending on their nationality, may also require a Consular Visa or a Consulted Visa to be able to enter the country.

In the case of Chinese citizens, they require a consular visa prior entry to Honduras. It is advisable that the foreigner or the contracting company, consult for their particular case, prior to making any visit to the country or hiring.

**1.5. Are there any exchange control restrictions for remittance of capital, profits and dividends?**

There is an express foreign exchange control for the remittance of capital, profits and dividends by a Honduran branch to a foreign entity in the banking sector.

There is also an express foreign exchange control on profits made by local exporters, as they are required to sell all foreign exchange earnings to the Honduran Central Bank and must therefore buy foreign currency from local authorized foreign exchange brokers (banks and foreign exchange houses).

As mentioned above, the Honduran Central Bank regulates foreign exchange transactions

and any Honduran Entity seeking to perform transactions with another currency, must enter into foreign exchange transactions under the thresholds limits and under the foreign exchange rate established by the Honduran Central Bank through its authorized foreign exchange brokers.

**1.6. What are the most common types of corporate legal entities established for FDI? For each type of corporate legal entity, please introduce the internal corporate governance structure.**

The most common type of commercial companies are the Corporations (in Spanish Sociedad Anónima) and Corporations with Limited Liability (in Spanish Sociedad de Responsabilidad Limitada). A Corporation is a form of business organization characterized by its capital stock divided into shares. In order to incorporate a corporation in Honduras, certain legal steps must be followed. This includes drafting the articles of incorporation, which must contain information on the name of the corporation, the corporate purpose, the capital stock, the duration of the corporation, the form of administration and representation, among other relevant aspects.

#### Corporations

Corporations are made up of three corporate bodies, which are:

- (i) General Assembly of Shareholders: This is the supreme body of the corporation and is composed of all the shareholders. The General Assembly makes fundamental decisions for the company, such as the approval of financial statements, the election of directors and the distribution of dividends. Decisions are made by majority vote, unless the company's bylaws establish a special majority.
- (ii) Board of Directors: This is the body in charge of the administration and representation of the corporation. It is made up of a determined number of directors, elected by the General Shareholders' Meeting. The Board of Directors makes strategic decisions, establishes corporate policies and supervises the management of the company's executives. It also appoints and removes key executives, such as the general manager.
- (iii) Commissaries: The commissaries are responsible for supervising and controlling the management of the corporation, as well as protecting the interests of the shareholders.

The main function of the commissaries is to conduct audits and review the company's financial statements to ensure their accuracy and compliance with accounting standards. They also supervise compliance with legal and statutory provisions and ensure transparency in the company's operations.

The commissaries are elected by the General Assembly of Shareholders and their number may vary according to the provisions of the company's bylaws. Generally, they must be professionals qualified in accounting or auditing and act independently of the company's

management.

### Corporation with Limited Liability

A Corporation with Limited Liability is a form of business entity in which the equity holders have limited liability for the debts and obligations of the entity. This type of Corporation is considered a close corporation as there is a limit on the maximum amount equity holders. Capital contributions are represented by equity participations which are not considered securities and therefore cannot be endorsed. The transfer of equity participations has to be unanimously approved by the Equity Holders Assembly and the transfer of equity participations can only be performed by celebrating a public deed. The Corporation with Limited Liability is governed by the articles of incorporation.

In a Corporation with Limited Liability, each equity participation has a nominal value and the partners contribute funds in exchange for these equity participations. The minimum equity participation required to incorporate an Corporation with Limited Liability in the case of the Honduran legislation, the equity participation shall not be less than L5,000.00 (approximately \$205.00).

In a Corporation with Limited Liability, the administrative body is represented by a General Manager, as opposed to Corporations, where it is possible to choose between the figure of the Sole Administrator or that of a Board of Directors. The General Manager therefore has the legal representation of the Corporation with Limited Liability.

### **1.7. What is the procedure of registration and incorporation of foreign-owned companies?**

Please refer to answer of question 1.

## **2. M&A Laws and Regulations**

### **2.1. What are the principal laws and regulations applicable to M&A transactions?**

The Honduran Commercial Code, Competition Issues through the Commission for the Defense and Promotion of Competition and the Regulated Sectors through their specific entities.

### **2.2. Are M&A transactions subject to foreign investment screening? If so, please give brief details (e.g. trigger threshold, relevant authority and timing requirements).**

There is no specific regime with this orientation in Honduras. The Honduran Constitution only reserves certain sectors to investment and ownership by Honduran nationals, such as the controlling ownership of news outlets and media companies, as well as prohibiting foreign ownership of land near the borders. Under distributorship law, only a company with a majority stake by Honduran nationals can be registered as a local distributor of a foreign principal.

**2.3. Are M&A transactions subject to merger control? If so, please give brief details (e.g. trigger threshold, relevant authority and timing requirements).**

Yes, the Honduran Law for the Defense and Promotion of Competition (hereinafter "the Law") was enacted in February 2006, published in the Official Gazette of the Federation on February 4, 2006, based largely on other Latin American, European and American antitrust regulations and derived from the constitutional provision prohibiting monopolies, oligopolies and monopsonies. The Administrative Regulations of the Law for the Defense and Promotion of Competition (hereinafter "the Regulations"), were promulgated by the Regulator in July 2007, after a period of consultation with professionals in the field and based mainly on other Latin American regulations. The administrative body or Regulator in charge of the application of the Law is the Commission for the Defense and Promotion of Competition. The regulator has been increasingly active over the past few years in investigating mergers.

**2.4. Are there any other approvals required for foreign buyers in M&A transactions? If so, please give brief details (e.g. trigger threshold, relevant authority and timing requirements)?**

Yes, each sector has a specific regulator which within its range of applicable jurisdiction has this type of authorization, such as the National Banking and Insurance Commission, which is in charge of regulating all financial institutions. Therefore, every regulated sector requires authorization from the regulator.

**2.5. Do labor unions play a role in M&A? Are there customary practices for human resources management post-M&A?**

Yes, the Honduran labor legislation recognizes additional protections and/or benefits for workers affiliated to a labor union. If a local company already has a labor union previous the M&A, there will also be a collective labor agreement, i.e., a general contract that regulates the relations of the workers affiliated to the union. Honduran labor legislation recognizes two types of labor unions: the first is formed by employees that maintain a work relationship with one company; and the second is formed by employees that maintain work relationships with companies but develop or perform the same activity in the same industry (i.e. beverage companies). Labor unions are usually formed by employees of the same company. Regarding, customary practices for human resources management post – M&A, it is not recommended to carry out any actions that may be considered as a deterioration/downgrading of the employee conditions, since claims may be filed by the employees.

**2.6 What are the principal minority shareholder rights?**

As a general rule, majority shareholders of 51% of the Honduran Entity's capital stock may take all of the corporate decisions in a Shareholder's Assembly or the Board of Directors, either through first meeting or a second meeting if quorum is not met. Minority shareholders have the same rights as the rest of the shareholders of the company. The only difference established by law, is that the minority shareholders that represent 25% of the company's

capital stock, have the right to appoint 1/3 of the members of the board of directors. They also have the right to request that a shareholder's meeting be held in order to discuss the distribution of dividends and the balance sheet.

### **3. Special Topics for Chinese Investors**

#### **3.1. What is the latest regulatory news related to lithium mining? If there are no lithium projects, are there developments in other key electric car battery minerals like nickel, manganese, cobalt, and graphite? Bauxite (aluminum), copper, and iron are also components in electric car batteries.**

Honduras has Mining Legislation and Regulations; however there's no specific regulations for the specific materials mentioned. To the best of our knowledge, concessions are focused on iron and to a lesser extent, silver, gold and non iron minerals. Eventhough it is not publicly known that there are lithium deposits in Honduras, it may be possible that mining exploration concessions have been granted for lithium.

#### **3.2 Is there any debate by the competition authority about limiting M&A by Chinese SOEs in certain sectors (e.g. electricity)?**

There is no specific authority for this specific sector, the law defines such acts as natural monopolies and will be taken into consideration according to the development of the sector.

#### **3.3 Since there is no investment treaty between Honduras and China currently, how can Chinese investors protect themselves when investment disputes arise? Under the circumstance that investors cannot use arbitration to settle a dispute, would Honduras provides extra legal protection for Chinese investors?**

The Law for the Protection and Promotion of Investments, Decree 51-2011 guarantees investors the full recognition of international arbitration awards and those issued in accordance with the provisions of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), the Inter-American Convention on International Commercial Arbitration and the Convention on the Settlement of Investment Disputes between States and Nationals of other States and treaties for the reciprocal protection of investments approved and ratified by the State of Honduras.

The agreement of subjection to foreign jurisdiction within the contracts signed in Honduras between foreign investors and nationals or between foreign investors and the State is declared lawful.

Insofar as it does not contravene the provisions of international treaties, disputes arising in connection with the application of this Law between natural or legal persons, national or foreign owners of an investment and the State shall be resolved as far as possible by negotiation or mediation.

When an agreement cannot be reached through negotiation and mediation, foreign investors

whose nationality corresponds to a State that has signed and ratified the ICSID Convention or has subsequently acceded to it, may resort to one of the following dispute settlement mechanisms:

- (i) International arbitration before ICSID in accordance with its Convention Establishing ICSID and its internal rules.
- (ii) National or international arbitration before one of the National Mediation and Arbitration Centers; and,
- (iii) Ordinary Justice.

Investors from countries that are not parties to the ICSID Convention may resort to one of the following dispute settlement mechanisms in cases where an agreement has not been reached through negotiation and mediation:

- (i) International arbitration using the ICSID complementary mechanism.
- (ii) National or international arbitration before one of the National Mediation and Arbitration Centers.
- (iii) Ordinary Justice.

Once the action has been initiated using any of the options set forth in the preceding paragraphs, the mechanism chosen may not be changed except by mutual agreement between the Investor and the State.

When the arbitration is national, it shall be understood that the requests submitted before a specific center shall bind the parties to abide by the norms and rules of the same.

The national natural or juridical persons who do not reach an agreement through negotiation or mediation may resolve their differences with the State regarding the rights and obligations established in the Law for the Promotion and Protection of Investments through national arbitration before any of the arbitration centers authorized in the country or may opt for ordinary justice when they deem it convenient. It is understood that the requests submitted to a specific center oblige both the investor and the State to abide by the norms and rules of the same.

The Investment Promotion and Protection Law, Decree 51-2011, establishes protection mechanisms for all foreign investors. The law states that in order to guarantee investors greater legal certainty, disputes related to the following matters will be heard through arbitration, whether or not there is an arbitration agreement negotiated between the parties:

- (i) Disputes between shareholders.
- (ii) Investor-to-investor disputes.
- (iii) Intellectual Property Disputes.
- (iv) Disputes related to representation, agency or distribution agreements.
- (v) Disputes related to anti-competitive practices and/or unfair competition among investors.

(vi) Real Estate Disputes

**The above answers are prepared by June 7, 2023.**

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