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ESTABLISHING BRANCHES OF FOREIGN CORPORATIONS IN CENTRAL AMERICA, PANAMA AND BRITISH HONDURAS

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This article attempts to explain the requirements for establishing or qualifying a branch of a foreign corporation in the Central American Republics of Guatemala, El Salvador, Honduras, Nicaragua and Costa Rica, and in Panama and British Honduras.

Before discussing the laws of each country, it is stressed that no attempt has been made to discuss the advantages or disadvantages relating to the establishment of a branch of a foreign corporation *vis a vis* other legal entities. The selection of the most appropriate vehicle to carry out a particular business abroad depends on individual factors and circumstances best known to the lawyer and his client. Nevertheless, it is submitted that the laws in the above-mentioned countries do not discriminate against conducting business operations in the form of a local corporation or branch, especially with regard to taxation. Thus, a foreign company can freely choose as its corporate instrument a branch of its own company, or a national company organized in accordance with the laws of the country in question.

The establishment of the Central American Common Market (CACM) makes, in the opinion of the writer, the subject of this paper timely. Not only do Central American and foreign-controlled companies export from one country to another, but they also seek to establish new branches in the area. Thus, with the increasing importance of the Common Market, the subject grows in interest and practicality. It should be noted that there has been no effort as yet to unify the legislation concerning the establishment of commercial entities within the CACM. But, in time this may happen, thereby reducing the steps that a company must follow to establish a branch in one of the CACM member countries, or even perhaps Panama or British Honduras. Uniformity of procedures is desirable and may well take place in this area as it has also taken place in other important fields of the law.

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GUATEMALA

In accordance with Articles 416, 417 and 418 of the Commercial Code of Guatemala, and Article 75 of Law Decree No. 229 of June 23, 1964, the documents necessary to register a branch of a foreign company in this country are the following:

1. Certified copy of the charter and bylaws of the company, properly authenticated and legalized by the Consul of Guatemala with consular responsibility in the state of incorporation.
2. Certification by the public authority (Secretary of State, or other official) with jurisdiction over corporations in the state of incorporation to the effect that the company is properly constituted and authorized to operate in accordance with the laws of the place of incorporation. This is often referred to in the United States as a "Certificate of Good Standing". As with 1 above, this certification should be legalized by the Consul of Guatemala.
3. Certification by the Secretary of the company, notarized, authenticated and legalized by the appropriate Consul of Guatemala, of the agreement or resolution for the establishment of a branch and the designation of capital.
4. Power of Attorney authorizing a person in Guatemala to carry out the registration of the branch. This power should also be authenticated and legalized by the Consul of Guatemala.
5. Power of Attorney designating the person authorized to manage the branch in Guatemala. This power should also be authenticated and legalized by the Consul of Guatemala.
6. Certified copy of the last balance sheet of the company, duly signed, notarized and authenticated. The Consul of Guatemala must legalize this document also.

Since these documents are assumed to have been executed outside of Guatemala and in a foreign language, they should be translated into Spanish and given the "*pase de ley*" (go-ahead) in accordance with Guatemalan laws. They can then be presented to the various public offices to complete the registration.

When it is sought to establish a branch of a foreign company in Guatemala, several government agencies become involved. These include the Direccion General del Impuesto sobre la Renta, the Asesor Juridico del Ministerio de Gobernacion, and the Procurador General de la Nacion. The last step is the grant of the decree of authorization by the President

which is published in the *Diario Oficial*. This formalizes the authority to do business in Guatemala.

The minimum capital generally required of a branch of a foreign company is U. S. \$10,000, or its equivalent. This capital should be registered with the Bank of Guatemala as a foreign investment thereby insuring the benefits of repatriation of capital and remittance of profits enjoyed only by duly registered foreign capital.

In accordance with Guatemalan law, the agreement or resolution to open a branch adopted by the stockholders or Board of Directors of the foreign company should state the following:

1. That the branch is subject exclusively to the laws of Guatemala and to the jurisdiction of its courts with regard to all business or activities within Guatemala, and that neither the branch nor its personnel will invoke the laws of other countries with regard to such business or activities. The rationale is that a foreign company may enjoy only the rights that the laws of Guatemala grant to its citizens.
2. That if the Company withdraws from the country, it agrees to fulfill the requirements of Law Decree No. 229 of June 23, 1964.
3. That the Company is accountable for the business and activities carried out in the country, not only with the properties (*bienes*) that it possesses and those that it might possess in the Republic of Guatemala, but also with those that it owns outside of Guatemala.

Branches of foreign companies pay a one-time inscription tax of one thousand *quetzales* (1 *Quetzal* = U. S. \$1) within 10 days following the registration date. An annual quota of 500 to 1000 *quetzales*, depending on economic capacity, must be paid by January 15.

Once a branch is authorized by the government to operate in Guatemala, business must be commenced within a period of one year from the date of the publication of the authorization in the *Diario Oficial*. This period of time may be extended for one year for justifiable reasons under Article 78 of Decree No. 229 on June 23, 1964. Article 81 of this decree provides that a branch of a foreign company must publish a financial statement (*balance*) for its local operations clearly distinct from the financial statement covering the Company's activities outside the country.

The approximate cost of establishing a branch is U. S. \$2,500. A period of about five months is required for registration.

EL SALVADOR

Neither the Commercial Code of El Salvador, nor any of its other laws delineate the requirements for establishing a branch of a foreign company in that country. However, three articles of the Commercial Code are pertinent:

1. Article 299. Corporations legally constituted in a foreign country with no branch or any other type of representation in El Salvador may engage in commercial acts which are not contrary to national laws.
2. Article 300. Corporations incorporated in a foreign country, but resident in El Salvador and exercising their principal functions in the country, will be considered for all effects national companies, subject to all the provisions of the Code.
3. Article 301. Companies incorporated in a foreign country but which have not complied with the requirements of the preceding articles will be subject to penalties under Salvadorean law. Their agents, whatever their nature, will be jointly and severally liable for all obligations contracted or undertaken in behalf of the Company even though such obligations may have been disclaimed by the representative.

It is interesting to note that under Article 299 a foreign company may engage in commercial activities not contrary to national law even without a branch or any other formal corporate structure in El Salvador. This provision is not found in the legislation of other Central American countries, nor Panama, which require a foreign company to qualify under applicable legislation or, at minimum to be duly registered in the Public or Commercial Registry.

Nevertheless, a branch may be registered in El Salvador, and the Commercial Registry requires the following documentation:

1. Certified copy of the charter and bylaws of the company, authenticated and legalized by the Consul of El Salvador with consular responsibility in the state of incorporation.
2. Certification by appropriate governmental authorities in the state of incorporation to the effect that the Company is authorized to operate in accordance with the laws of said state. This certification should also be legalized by the Consul of El Salvador.
3. Certification by the Secretary of the Company, notarized, authenticated, and legalized by the Salvadorean Consul, showing the agreement or resolution to establish the branch. In this resolution,

the capital assigned for the operations of the branch should also be indicated, and this should not be less than U. S. \$40,000 or its equivalent if the branch is going to engage in industrial activities, or U. S. \$80,000 or its equivalent if it is going to engage only in commercial activities (Decree No. 279 of March 4, 1969).

4. Power of Attorney for a designated person to carry out the registration of the branch. This power should be authenticated and legalized by the Salvadorean Consul.
5. Power of Attorney naming the general agent (*apoderado general*) of the branch in El Salvador. This power should also be authenticated and legalized by the Salvadorean Consul.

The capital assigned to the Branch must be registered in the Ministry of the Economy as "foreign capital". The purpose of this registration is to assure free remittance of net profits in an annual amount not exceeding 10% of the registered capital in accordance with Article 40 of the Reglamento de la Ley de Control de Transferencias Internacionales.

All documents written in another language must be translated into Spanish.

An initial financial statement showing the capital of the branch should be provided. It is not necessary to present financial statements for the overall operations of the Company, as is the case in Guatemala.

Documents executed outside of the country, which have been properly legalized by the appropriate Salvadorean Consul, should also be legalized in El Salvador by the Ministry of Foreign Affairs before presentation to the various public authorities in the Republic.

The average cost of registration of a branch in El Salvador is U. S. \$1,500; registration takes approximately one month.

HONDURAS

Articles 308, 309 and 310 of the Commercial Code of Honduras set forth the requirements for establishing a branch of a foreign company.

Article 308 provides that a corporation constituted in accordance with foreign laws and desiring to engage in commerce in the Republic must: (1) prove that it is legally constituted in accordance with the laws of the state where incorporated, (2) prove that the law of the place of incorporation, plus the charter and bylaws of the Company permit the creation of branches under the requirements of the Honduran Code, and

that the decision to establish a branch has been validly adopted, (3) designate on a permanent basis an agent in the Republic with sufficient powers to perform all activities and businesses in Honduras, (4) establish a patrimony or capital sufficient to support the commercial activity to be carried out in Honduras (reduction of said capital can only be accomplished by observing the requirements established for the reduction of capital, and only with prior authorization from the Ministry of Finance), (5) prove that its purposes are consonant with the national laws and are not contrary to public order, and (6) indicate its willingness to comply with the laws and to be subject to the jurisdiction of the courts and authorities of Honduras in relation to judicial or other acts occurring or having legal effect within the national territory. Proof of compliance with the above requirements must be submitted for approval to the Ministry of Finance which, if it finds them consonant with the public interest, will grant authorization to the Company to commence business in the Republic. The Ministry will indicate the period within which the corporation must initiate its operation, and will order its registration in the Commercial Registry where the company establishes its principal office.

Article 309 provides that the Ministry of Finance will cancel the authorization if the corporation does not initiate its operations within the specified time limit, or if it is proven that the company has not complied with one of the aforementioned requirements. In both cases, the patrimony existing in the Republic will be disposed of by a bank designated by the Ministry of Finance in accordance with the instructions issued by said Ministry.

Article 310 provides that corporations not legally domiciled in Honduras will be considered established in accordance with foreign laws. The domicile for local purposes is at the site where the authorization of the Ministry of Finance establishes the main office of the corporation in Honduras.

The following documentation is necessary in Honduras:

1. Certified copy of the charter and bylaws of the company, with authentication and legalization by the Consul of Honduras with consular responsibility in the state of incorporation.
2. Certification by the appropriate governmental authorities in the state of incorporation to the effect that said company is authorized to operate in accordance with the laws of said state. This certification should also be legalized by the Consul of Honduras.
3. Certification by the Secretary of the company, notarized, authen-

ticated and legalized by the Honduran Consul certifying the agreement or resolution to open a branch, and indicating the capital assigned for operations in the Republic. The usual practice in Honduras has been to indicate a minimum capital of U. S. \$12,500, or its equivalent.

4. Power of Attorney in favor of a designated person to register the branch in Honduras. This power must be authenticated and legalized by the Honduran Consul.
5. Power of Attorney naming the general agent of the branch in Honduras. This power should also be authenticated and legalized by the Honduran Consul.

If the above documents are written in a foreign language, they should be translated into Spanish and authenticated. Once these steps have been taken, the petition to open a branch in Honduras is presented to the Ministry of Finance and Economy, which, after review, may grant the authorization for the initiation of operation of the branch. A period of six months from the date of the authorization to open the branch will be designated within which operations should commence.

In Honduras, it is not necessary to register the capital of the branch as "foreign capital". There is no restriction on the remittance of profits.

Registration in Honduras usually takes a period of four months, and involves an average cost of U. S. \$800.

NICARAGUA

Pursuant to Article 10 of the Commercial Code of Nicaragua, corporations legally constituted in a foreign country may do business in the Republic, or maintain an agency or branch. Their activities are regulated by those provisions of the Code dealing with establishment of businesses in Nicaragua, commercial operations and the jurisdiction of the local courts.

In order for a branch to carry out business in Nicaragua, it must be registered in the Commercial Registry pursuant to Articles 13 and 337 of the Commercial Code.

Article 337 requires branches of foreign companies to publish annually in the *Diario Oficial* a financial statement clearly indicating the assets and liabilities of the branch and the names of the persons in charge of its administration and direction. Appointment of an agent in the country with a general power of attorney duly inscribed in the Commercial Registry is also a requirement.

Under Article 338 of the Commercial Code, failure to comply with the above requirements creates joint and several liability in the persons acting in the company's name for all obligations undertaken in behalf of the Company in the Republic. This liability cannot be disclaimed.

A business association incorporated in a foreign country which carries out its principal commercial operations in the Republic and having the greater portion of its capital invested in Nicaragua, or having its Directors and shareholders meetings in Nicaragua, will be considered, for all intents and purposes, as a national company subject to the provisions of the Commercial Code (Art. 339).

The following documentation is required in order to register the company in the Commercial Registry:

1. Certified copy of the company charter and bylaws, authenticated and legalized by the Consul of Nicaragua with consular responsibility in the state of incorporation.
2. Certification by the appropriate governmental authorities in the state of incorporation to the effect that the Company is authorized to operate in accordance with the laws of said state. This certification must be legalized by the Nicaraguan Consul.
3. Certification by the company's Secretary, duly notarized, authenticated and legalized by the Nicaraguan Consul where the document is issued, certifying the agreement or resolution to open a branch, and the designation of capital. Nicaraguan law does not demand a specific amount of capital, but the custom is to designate capital of not less than U.S. \$1,000, or its equivalent. There are no requirements whatever to register the capital as foreign capital for purposes of repatriation or profit remittance.
4. Power of Attorney authorizing a specific person to register the branch. This power should be duly authenticated and legalized by the Nicaraguan Consul.
5. Power of Attorney designating a general agent for the Nicaraguan Branch. This power should also be authenticated and legalized by the Nicaraguan Consul.

Documents executed abroad must also be legalized in Nicaragua to have the desired effect in the Republic; further, they must be translated into Spanish if written in another language. Once these documents are registered in the Commercial Registry, the company can commence its operations in Nicaragua.

Registration in Nicaragua usually requires about two months, and involves a cost of approximately U.S. \$1,500.

COSTA RICA

Article 226 of the Commercial Code prescribes the requirements for the establishment of a branch of a foreign company in Costa Rica. This article provides that foreign companies wishing to open a branch in the Republic are required to appoint a general agent to carry out the business of the branch. The agent must reside in the country.

The following must be included in the Power of Attorney:

1. The purposes of the branch, and the capital assigned to same.
2. The purposes and capital of the company, the length of time it has been established and the names of its directors and officers.
3. An express declaration that the agent and the branch are subject to the courts and laws of Costa Rica governing all acts or contracts drawn up or executed in the country, and that the protection of the laws of the parent country is expressly renounced.
4. Evidence that the party issuing the power has authority to do so.

In those cases where registration is required, the Company's legal identity, as well as that of its agent, will be established upon presentation at the Commercial Registry of documentation attesting that the Company is established and authorized to operate in accordance with the laws of its domicile, together with documentation from the agent accepting his agency. The documentation described above must be legalized by the appropriate Costa Rican consul, or in case there is no Costa Rican consul, by the consul of a friendly nation.

The purpose of the declaration of the company's overall capital is to document its worth, and does not imply any obligation to pay additional fees to the Registry.

In view of the above, only one document need be prepared abroad, encompassing the branch's establishment papers and the power of Attorney to the local representative. The company's authorized representative should declare abroad and before a Notary Public the branch's purposes, that he has been authorized to establish a branch in Costa Rica, and the assignment of a fixed capital. In addition, he must appoint a person as General Agent to handle the affairs of the branch in Costa Rica. In the same document, the directors and officers should be listed, and the capital of the principal company stated. After this document is authenticated and legalized by the Costa Rican Consul where it is issued, it should be

legalized in Costa Rica by the Ministry of Foreign Relations, and translated into Spanish if initially written in a foreign language.

The combined document establishing the branch and granting the power of attorney should be filed in the Public Registry together with the following documents:

1. Acceptance of the general Power of Attorney.
2. Certificate issued by the appropriate Costa Rican Consul (or in his absence by the consul of a friendly nation) stating that the company is constituted and is authorized in accordance with the laws of the principal domicile.

Registration in Costa Rica usually takes two months, and involves a cost of approximately U. S. \$800.

PANAMA

To establish a branch of a foreign company in Panama, the following documentation must be filed in the Commercial Registry in accordance with Article 90 of Law 32 of February 26, 1927:

1. Certified copy of the charter and bylaws of the company, duly authenticated and legalized by the Panamanian Consul with consular responsibility in the state of incorporation. If there is no Panamanian Consul, then by the consul of a friendly country.
2. Certified copy of the company's last financial statement, indicating what part of the capital is to be used in Panama.
3. Certification that the company is constituted and authorized in accordance with the laws of the state of incorporation, issued and legalized by the Panamanian Consul.

Foreign corporations operating in the Republic of Panama which have not complied with the requirements of Law 32 of February 26, 1927, cannot initiate legal proceedings before the courts or authorities of the Republic. However, they may be sued in the appropriate forum. In addition they may be required to pay a fine not to exceed five thousand *balboas* (1 *balboa* = U.S. \$1) imposed by the Ministry of Finance and Treasury under Article 91 of Law 32 of 1927.

Foreign companies registered in the Commercial Registry should also register any amendments to their charters as well as any documents relating to merger and dissolution.

Registration in Panama usually takes one month and involves expenses of approximately U.S. \$500.

BRITISH HONDURAS

The establishment of a branch in British Honduras is a comparatively simple process. It is only necessary to file in the Public Registry a certified copy of the articles and bylaws of the Company, legalized by the British Consul, together with a list of the officers and directors of the company and their addresses. No minimum capital or registration thereof is required. The Company's representative or branch manager should have a general power of attorney, which should be recorded in the Public Registry. No power of attorney to register the branch is necessary; transmittal of the documents to local counsel for registration is sufficient.

The cost of registration is approximately U.S. \$100.00; registration takes about fifteen days.

Editor's Note: Dr. Juncadella has kindly made available draft documents patterned after legal forms actually used in establishing branches in the countries covered in his paper. The originals are in Spanish, but a free translation into English is also available. These documents may be obtained for the cost of reproduction by writing the *Lawyer of the Americas*.

Further, Dr. Juncadella has stated that his company plans to publish this article in Spanish and to distribute it free of charge to interested parties as a contribution to the development of the Central American Common Market.