Guatemala

RISK & COMPLIANCE REPORT

DATE: February 2017

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Executive Summary - Guatemala	
Sanctions:	None
FAFT list of AML Deficient Countries	No
Higher Risk Areas:	US Dept of State Money Laundering Assessment Not on EU White list equivalent jurisdictions Corruption Index (Transparency International & W.G.I.) World Governance Indicators (Average Score) International Narcotics Control Majors List Offshore Finance Centre Compliance of OECD Global Forum's information exchange standard
Medium Risk Areas:	Non - Compliance with FATF 40 + 9 Recommendations Weakness in Government Legislation to combat Money Laundering Failed States Index (Political Issues)(Average Score)

Major Investment Areas:

Agriculture - products:

sugarcane, corn, bananas, coffee, beans, cardamom; cattle, sheep, pigs, chickens

Industries:

sugar, textiles and clothing, furniture, chemicals, petroleum, metals, rubber, tourism

Exports - commodities:

coffee, sugar, petroleum, apparel, bananas, fruits and vegetables, cardamom

Exports - partners:

US 39.2%, El Salvador 11.4%, Honduras 6.8%, Mexico 5.4%, Nicaragua 4% (2012)

Imports - commodities:

fuels, machinery and transport equipment, construction materials, grain, fertilizers, electricity, mineral products, chemical products, plastic materials and products

Imports - partners:

US 38.4%, Mexico 11.9%, China 8.3%, El Salvador 5.1%, Colombia 4.2% (2012)
Investment Restrictions: Guatemala has programs initiated to promote foreign investment, enhance competitiveness and expand investment in the export, energy, and tourist sectors. There are no restrictions on foreign investment in the telecommunications, electrical-power-generation, airline, or ground-transportation sectors. Foreign banks may open branches or subsidiaries in Guatemala subject to Guatemalan financial controls and regulations. Foreigners are prohibited from owning land immediately adjacent to rivers, oceans and international borders

Contents

Section 1 - Background

The Maya civilization flourished in Guatemala and surrounding regions during the first millennium A.D. After almost three centuries as a Spanish colony, Guatemala won its independence in 1821. During the second half of the 20th century, it experienced a variety of military and civilian governments, as well as a 36-year guerrilla war. In 1996, the government signed a peace agreement formally ending the conflict, which had left more than 200,000 people dead and had created, by some estimates, some 1 million refugees. In January 2012, Guatemala assumed a nonpermanent seat on the UN Security Council for the 2012-13 term.

Section 2 - Anti – Money Laundering / Terrorist Financing

FATF status

Guatemala is not on the FATF List of Countries that have been identified as having strategic AML deficiencies

Compliance with FATF Recommendations

The last Mutual Evaluation Report relating to the implementation of anti-money laundering and counter-terrorist financing standards in Guatemala was undertaken by the Financial Action Task Force (FATF) in 2016. According to that Evaluation, Guatemala was deemed Compliant for 15 and Largely Compliant for 14 of the FATF 40 Recommendations.

Key Findings

The Republic of Guatemala has various legislative, regulatory and institutional structures standing to cope with the fight against money laundering and terrorist financing (ML/FT). The level of compliance of the country is highlighted regarding most of the technical criteria of the FATF Recommendations. However, in certain areas of the AML/CFT system of Guatemala, improvements to achieve better effectiveness outcomes are required.

It is important to stress the activities of Guatemala in risk identification through the National Risk Assessment (NRA). In general, there is an adequate level of understanding of ML risks, as well as an adequate level of coordination and cooperation by the authorities and the private sector. However, in the case of TF risks, both the authorities and the Obligated Subjects (hereinafter OSs) still need a better understanding of the associated risks.

The financial intelligence generated by the Financial Intelligence Unit (Intendencia de Verificación Especial –IVE–, in Spanish, hereinafter IVE) is used by the competent authorities both in ML investigations as in predicate offences and asset forfeiture processes. The IVE gathers information from several sources of OSs and government agencies. In the field of TF, given the absence of TF related cases, verification of the existence and use of financial intelligence on TF was not possible.

Guatemala has provided evidence on combating ML and predicate offences related to most of its identified threats. It is also empowered to forfeit assets from the proceeds of illegal activities. Additionally, the country has a property management system that allows their administration and disposition. However, while there is a legal mean which provides for the Court forfeiture of property of corresponding value, this law has not been applied in practice yet in the case of asset forfeiture procedures.

Deficiencies in the appropriate criminalization of TF would affect the effectiveness in the fight against TF. There has not yet been any case or investigation on TF. Guatemala has recently created the prosecution agency specialized in TF, which is considered a positive step in the fight against TF.

Guatemala has taken regulatory measures for the implementation of United Nations Security Council (UNSC) Resolutions 1267/1989 and 1988 on terrorist funds and assets and UNSC Resolutions 1718 and 1737 on funds and assets related to the financing of proliferation of weapons of mass destruction (FPWMD). However, the regulatory framework still needs to be strengthened to enforce the obligations set out in Recommendations 6 and 7, particularly regarding the implementation of UNSCR 1373.

Financial Institutions (FIs) in the financial system are aware of the nature and level of ML risks in their sector and, in general, have appropriate policies and procedures to mitigate and control these risks. However, in the case of microfinance institutions (except those registered as non-profit organizations (NPOs) that meet the criteria to be considered OSs), they are not yet OSs to the AML/CFT regulations in Guatemala.

It is observed that designated non-financial businesses and professions (DNFBPs or non-financial OSs), still need to increase their efforts to adequately understand their obligations, as well as the ML/TF risks to which they are exposed. Activities carried out by lawyers and notaries referred to by the FATF Standards are not all subject to AML/CFT regulations and they are not supervised for such purpose. Casinos and video lotteries are not OSs under AML/CFT regulations.

The IVE performs the supervision of AML/CFT obligations of FIs and DNFBPs with a ML/TF riskbased approach (RBA). Although the IVE has imposed some monetary sanctions on OSs, it is considered that these are limited and that the sanctions regime is not proportionate, dissuasive or effective.

The issuance and the circulation in the market of bearer shares are forbidden. The IVE has efficiently disseminated typologies regarding legal persons and arrangements. Information on beneficial ownership of corporations cannot be gathered reliably, since legal entities are not obliged to gather such information from their shareholders, irrespective of the fact that they may be natural persons or legal persons or arrangements. Access to information on legal persons or arrangements cannot be performed in a timely and effective fashion for the OSs to conduct their CDD.

Guatemala has a wide range of legal and administrative instruments to foster international cooperation from all relevant agencies aimed at preventing and combating ML/TF. In this sense, the country has provisions in force to provide broad levels of collaboration with foreign authorities.

Risks and general situation

Pursuant to the ML/TF NRA, the major threats were drug trafficking, illicit cross-border transportation of cash, goods smuggling and extortion. Also, active/passive bribery, offence including embezzlement and corruption of public officials are legally defined as medium crime threats in the ML context. In terms of vulnerabilities, the ML/TF NRA detected as medium-high funds transfer companies (FTC) and the credit union had medium-high level of importance as vulnerable to ML activities. On the side of DNFBP, casinos –video lotteries, lawyers and notaries are not subject to AML/CFT requirements and ML/TF NRA regulations determined a high level of vulnerability to ML for those activities.

Guatemala has considered, with a limited scope, the ML/TF risks of the volume of the informal economy and the impact in the context of ML/TF. Additionally, microfinance companies, whose activity is not regulated and not subject to obligations, were not considered in the ML/TF NRA, with the exception of funds from microcredits loaned by entities in the microfinance sector which in the context of risks related to financial inclusion were rated with a medium-low vulnerability level. The ML/TF NRA determined that TF represents a medium-low level of threat.

US Department of State Money Laundering assessment (INCSR)

Guatemala was deemed a Jurisdiction of Primary Concern by the US Department of State 2016 International Narcotics Control Strategy Report (INCSR).

Key Findings from the report are as follows: -

Perceived Risks:

Guatemala is not considered a regional financial center. It continues to be a transshipment route for South American cocaine and heroin destined for the United States, and for cash returning to South America. Smuggling of synthetic drug precursors is also a problem. Reports suggest the narcotics trade is increasingly linked to arms trafficking.

Historically weak law enforcement agencies and judiciary, coupled with endemic corruption and increasing organized crime activity, contribute to a favorable climate for significant money laundering in Guatemala. However, beginning in April 2015 numerous corruption cases at the highest levels have shed a new light on money laundering, launched new criminal investigations, and forced a sitting president, vice president, and other leading lawmakers to resign and await criminal trials from prison. The scandal known as "La Linea" involved trade-based money laundering and customs fraud; importers paid millions of dollars in bribes to avoid huge customs tax payments.

With the "La Linea" corruption scandal acting as a catalyst, the UN-backed anti-impunity body, the International Commission against Impunity in Guatemala (CICIG), and the Public Ministry turned their attention toward pursuing more regional politicians who have long enjoyed impunity, despite multiple accusations of malfeasance. In a 2015 report, the CICIG asserts that Guatemala's political parties derive half of their financing from corruption or from criminal groups. Politicians create corrupt networks sourcing illicit funds from kickbacks, bogus public works contracts, and occasional alliances with local drug traffickers. Over the last few decades, organized crime groups – particularly those involved with narcotics trafficking – have infiltrated politics through money and violence. Meanwhile, wealthy elites and businesses have privately financed candidates and political parties to gain access to public resources and pursue special interests. Money collectors the CICIG calls "recaudadores" are responsible for handling dirty money within these networks, in order to influence both local and national politics.

According to law enforcement agencies, narcotics trafficking, corruption, and extortion are the primary sources of money laundered in Guatemala; however, the laundering of proceeds from other illicit activities, such as human trafficking, firearms, contraband, kidnapping, tax evasion, and vehicle theft, is substantial. Money laundering occurs in the real estate sector, ranching, and concert business. Law enforcement agencies report money laundering occurs via groups of air travelers heading to countries, such as Panama, with slightly less than the amount of the Guatemalan reporting requirement ($10,000), and through a large number of small deposits in banks along the Guatemalan border with Mexico. In addition, lax oversight of private international flights originating in Guatemala provides an additional avenue to transport bulk cash shipments directly to South America.

Guatemala's geographic location makes it an ideal haven for transnational organized crime groups, including human and drug trafficking organizations. The Central America Four Border Control Agreement among El Salvador, Guatemala, Honduras, and Nicaragua allows for free movement of the citizens of these countries across their respective borders without passing through immigration or customs inspection. As such, the agreement represents a vulnerability to each country for the cross-border movement of contraband, trafficked persons, and illicit proceeds of crime. As a result of this agreement, Guatemalan customs officials are not requiring travelers crossing their land border to report cash in amounts greater than $10,000, as required by law.

There is a category of "offshore" banks in Guatemala in which the customers' money (usually Guatemalans with average deposits of $100,000) is legally considered to be deposited in the foreign country where the bank's head office is based. In 2014, there were six "offshore" entities, with head offices in Panama, the Bahamas, Barbados, and Puerto Rico. These "offshore" banks are subject to the same AML/CFT regulations as any local bank. Guatemala has 17 active free trade zones (FTZs). FTZs are mainly used to import duty-free goods utilized in the manufacturing of products for exportation, and there are no known cases or allegations that indicate the FTZs are hubs of money laundering or drug trafficking activity. A significant number of remittances are transferred through money service businesses and may be linked to the trafficking of persons.

Casinos are currently unregulated in Guatemala and a number of casinos, games of chance, and video lotteries operate, both onshore and offshore. Unregulated gaming activity presents a significant money laundering risk.

Do financial institutions engage in currency transactions related to international narcotics trafficking that include significant amounts of US currency; currency derived from illegal sales in the U.S.; or illegal drug sales that otherwise significantly affect the U.S.: YES

Criminalization of money laundering:

"All serious crimes" approach or "list" approach to predicate crimes: All serious crimes

Are legal persons covered: criminally: YES ***civilly:*** YES

Know-your-customer (KYC) rules:

Enhanced due diligence procedures for PEPs: Foreign: YES ***Domestic:*** YES

KYC covered entities: Banks and offshore banks; credit unions; finance, factoring, and leasing companies; bonded warehouses; credit card companies, cooperatives, issuers, or payment agents; stock brokers; insurance companies; Institute of Insured Mortgages; money remitters and exchanges; pawn brokers; public accountants and auditors; raffles and games of chance; nonprofit entities; dealers in precious metals and stones, motor vehicles, and art and antiquities; real estate agents, lawyers, notaries, and other independent legal professionals; and churches that receive funds from the Government of Guatemala

REPORTING REQUIREMENTS:

Number of STRs received and time frame: 1,013: January 1 - October 31, 2015

Number of CTRs received and time frame: 8,194,138: January 1 - September 30, 2015

STR covered entities: Banks and offshore banks; credit unions; bonded warehouses; finance, factoring, and leasing companies; credit card companies, cooperatives, issuers, or payment agents; stock brokers; insurance companies, brokers, and independent agents; Institute of Insured Mortgages; money remitters and exchanges; pawn brokers; public accountants and auditors; raffles and games of chance; nonprofit entities; dealers in precious metals and stones, motor vehicles, and art and antiquities; real estate agents; armoring services and rental of armored vehicles; providers of fiscal domicile and other corporate services

money laundering criminal Prosecutions/convictions:

Prosecutions: 41: January 1 – November 13, 2015

Convictions: 41: January 1 – November 13, 2015

Records exchange mechanism:

With U.S.: MLAT: NO ***Other mechanism:*** YES

With other governments/jurisdictions: YES

Guatemala is a member of both the Caribbean Financial Action Task Force (CFATF) and the Financial Action Task Force of Latin America (GAFILAT),

Enforcement and implementation issues and comments:

As a result of the "La Linea" corruption scandal, banks are increasingly facing pressure and fines for failing to complete suspicious transaction reports, in some cases allegedly directly linked to money laundering activities and customs fraud. However, fines for irregular bank activities are small. Additionally, the Special Verification Agency (IVE), which is the Guatemalan financial intelligence unit, and banks themselves are taking a more careful look at bank transfers. The IVE is also looking into money wiring services for suspicious activities.

Recent multiple arrests for corruption and more aggressive law enforcement appear to be bringing down the levels of illicit cash moving through the international airport in Guatemala City. The recent appointment of a full-time prosecutor assigned to the airport has helped in these efforts. Additionally, there is a special police unit that works at the airport 24/7. There is no indication of terrorist financing activities.

A 2010 regulation establishes limits for cash deposits in foreign currency. According to law enforcement authorities, banks' purchases of foreign currency declined 6.8 percent in 2014 and 6.9 percent during the first nine months of 2015 in relation to the same period in the previous year. Structuring of transactions to avoid cash reporting requirements is not against the law in Guatemala.

Guatemala's AML law does not cover all designated non-financial businesses and professions (DNFBPs) included in international standards, in particular, lawyers. Notaries are covered under the CFT law, but no implementing procedures have been adopted for them. Under the CFT law, STR filing is optional for notaries. Reportedly, covered entities expressed fear that there may be repercussions if they file reports. Tipping off is not criminalized.

Although staffing of the IVE has increased over the last several years, as has the number of filed Suspicious Transaction Reports (STRs), there are still relatively few convictions for money laundering, most of which are for illegal transport of cash. The limited capacity and number of both law enforcement officials and Public Ministry, i.e., the Attorney General's Office (AGO), staff may hamper these authorities from enforcing the law and successfully prosecuting more cases. Furthermore, the AGO has too many cases and no case management system, leading to a lack of prioritization and years-long backlog of cases and seized assets. Currently, $15.1 million of seized cash sits in a vault at the Public Ministry, related to cases dating back to 2008.

The Government of Guatemala should put into force a gaming law to regulate the industry and reduce money laundering. A draft gaming law has been under consideration by Congress for the last few years. Guatemala should amend its AML/CFT legislation to criminalize structuring of transactions and tipping off, cover all applicable DNFBPs, and protect filers of STRs from liability. The Government of Guatemala should continue its efforts to shed light on entrenched corruption and investigate and prosecute organized criminal groups and others that attempt to exert control over politicians and political parties via tainted funds.

Current Weaknesses in Government Legislation (2013 INCRS Comparative Tables):

According to the US State Department, Guatemala does not conform with regard to the following government legislation: -

Arrangements for Asset Sharing - By law, regulation or bilateral agreement, the jurisdiction permits sharing of seized assets with third party jurisdictions that assisted in the conduct of the underlying investigation.

Disclosure Protection - "Safe Harbour" - By law, the jurisdiction provides a "safe harbor" defense to banks or other financial institutions and their employees who provide otherwise confidential banking data to authorities in pursuit of authorized investigations.

Criminalised Tipping Off - By law, disclosure of the reporting of suspicious or unusual activity to an individual who is the subject of such a report, or to a third party, is a criminal offense.

EU White list of Equivalent Jurisdictions

Guatemala is not currently on the EU White list of Equivalent Jurisdictions

World Governance indicators

To view historic Governance Indicators Ctrl + Click here and then select country

Failed States Index

To view Failed States Index Ctrl + Click here

Offshore Financial Centre

Guatemala is considered to be an Offshore Financial Centre

Reports

US State Dept Narcotics Report 2016 (introduction):

Guatemala remains a major transit country for illegal drugs. Transnational criminal organizations continue to take advantage of Guatemala's porous borders with Honduras, El Salvador, and Mexico and underfunded and underequipped law-enforcement institutions to smuggle narcotics, migrants, and other illicit goods through the country's land and sea territories. Guatemala continues to cultivate opium poppy and marijuana in the Western Highlands and Petén Department, respectively, but the level of opium cultivation decreased during the course of 2015.

Although Guatemala's efforts against drug trafficking in 2015 remained on par with past years, the antinarcotics fight (and government initiatives generally) was overshadowed and distracted by a series of ongoing government corruption investigations that ultimately led to the arrest of the President Vice President.

Corruption

The Government of Guatemala does not, as a matter of policy, encourage or facilitate illicit drug production or distribution, nor is it involved in the laundering of the sale of illicit drugs proceeds. However, Guatemala's economic, governmental, and security challenges are exacerbated by widespread corruption, which permeates public and private institutions. Guatemalan Attorney General Thelma Aldana, in coordination with the UN International Commission Against Impunity in Guatemala (CICIG) have played a vital role in investigating hundreds of current and former government officials. The Embassy and the international community work closely with CICIG, a unique UN-sponsored entity under the leadership of Commissioner Ivan Velasquez since September 2013. CICIG was created in 2007 to bolster Guatemalan justice sector institutions by investigating criminal organizations operating within state institutions, drafting reforms, and reporting on justice-related topics. CICIG's mandate was extended to September 2017 by former President Perez Molina.

US State Dept Trafficking in Persons Report 2013 (introduction):

Guatemala is classified a Tier 2 country - a country whose government does not fully comply with the Trafficking Victims Protection Act's minimum standards, but is making significant efforts to bring themselves into compliance with those standards.

Guatemala is a source, transit, and destination country for men, women, and children subjected to sex trafficking and forced labor. Guatemalan women, girls, and boys are exploited in sex trafficking within the country, as well as in Mexico, the United States, Belize, and, to a lesser extent, other foreign countries. Foreign child sex tourists, predominantly from Canada, the United States, and Western Europe, as well as Guatemalan men, exploit children in prostitution. Women and children from other Latin American countries, principally from other Central American countries and Colombia, are exploited in sex trafficking in Guatemala. Guatemalan men, women, and children are subjected to forced labor within the country, often in agriculture or domestic service. Indigenous Guatemalans are particularly vulnerable to labor trafficking. Guatemalan children are exploited in forced labor in begging and street vending, particularly within Guatemala City and along the border area with Mexico. Guatemalan men, women, and children are also found in conditions of forced labor in agriculture, the garment industry, small businesses, and in domestic service in Mexico, the United States, and other countries. Transnational criminal organizations are reportedly involved in some cases of human trafficking, and gangs reportedly recruit children to commit illicit acts; some of these children may be trafficking victims. Latin American migrants transit Guatemala en route to Mexico and the United States. Some of these migrants are subsequently exploited in sex trafficking and forced labor in the destination countries of Mexico and the United States, and to a lesser extent, in Guatemala.

The Government of Guatemala does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. The Secretariat against Sexual Violence, Exploitation, and Trafficking in Persons (SVET) greatly enhanced government coordination on anti-trafficking initiatives. The government increased funding for the anti-trafficking secretariat and for an NGO providing comprehensive services to girl victims of trafficking. Authorities significantly increased their capacity to identify labor trafficking cases during the year and vigorously pursued the conviction of child sex trafficking offenders, though authorities did not convict any labor traffickers or sex traffickers who exploited adult victims during the reporting period. Officials identified a large number of potential victims and referred all victims to shelters. All minor victims received shelter, though few adults used government-offered services. The government took steps to establish three new shelters for trafficking victims. The attorney general's office continued to investigate cases involving official complicity in human trafficking. Authorities throughout the Guatemalan government greatly increased awareness efforts.

Latest US State Dept Terrorism Report 2009

U.S. assistance supported Guatemala's anti-money laundering, anti-corruption, and border security efforts and Guatemala cooperated with the United States in investigating potential terrorism leads. The U.S. Department of Defense continued to train the Guatemalan military's counterterrorist unit. In addition to threats posed by transnational narcotics organizations, Guatemala was a major alien smuggling route from Central and South America, which made it a potential transit point for terrorists seeking to gain access to the United States. Corruption, an ineffective criminal justice system, and a lack of resources have limited Guatemala's ability to combat transnational crime, especially in remote parts of the country. Guatemala's borders are porous and lack adequate coverage by police or military personnel.

International Sanctions

None applicable

Bribery & Corruption

Index	Rating (100-Good / 0-Bad)
Transparency International Corruption Index	28
World Governance Indicator – Control of Corruption	26

US State Department

Bribery is illegal under the penal code; however, corruption remains a serious problem that companies may encounter at many levels. Guatemala's score on the Transparency International 2013 Corruption Perceptions Index was 29 points out of 100, ranking it 26th out of 32 countries in the region.

Guatemala enacted measures to reverse the perceived increase in government corruption that occurred under the Portillo administration (2000-2003). Various senior officials who served during the Portillo administration were investigated and sentenced for their role in corruption scandals including the former Superintendent of Tax Administration (SAT), Minister of Interior, Comptroller General, and Minister of Finance. However, six of these individuals were released from jail and placed under house arrest in 2008. Former President Alfonso Portillo was tried in Guatemala for embezzlement and was acquitted by a first instance court. After fighting for over three years, Portillo was extradited to the United States on May 24, 2013, and pleaded guilty in a U.S. court on March 18, 2014. One former president of Congress was sentenced to three years in prison for his involvement in a 2008 embezzlement scandal and a second former president of Congress will face trial on the same case. In September 2012, Mayor of Antigua Guatemala Adolfo Vivar was arrested, along with 10 others, and charged with embezzling 20 million quetzales (USD 2.5 million) of municipal funds. At year's end, Vivar was detained and his trial is pending. On June 3, former mayor of San Miguel Petapa Rafael Eduardo Gonzalez Rosales and five others were arrested for fraud and money laundering of approximately 34 million quetzales (USD 4.3 million) of municipal funds.

In December 2012, the Government of Guatemala created a Presidential Commission for Transparency and Electronic Government (COPRET by its Spanish acronym) to coordinate Executive Branch efforts on transparency, anti-corruption, electronic government, and open government issues. This Commission replaced the Transparency and Control Secretariat created by the Guatemalan Government in February 2012, but which subsequently was declared invalid by the Constitutional Court in November 2012.

The Comptroller General's Office and the Public Ministry are responsible for combating corruption. The comptroller general's mandate is to monitor public spending, and the attorney general's mandate is to prosecute crimes. Both agencies actively collaborated with civil society and were relatively independent; however, they lacked resources, which affected their capabilities. Under the leadership of Attorney General Claudia Paz y Paz, the Public Ministry worked with CICIG to improve the ministry's effectiveness and reported a significant drop in the impunity rate for homicide in Guatemala City, from more than 95 percent in 2010 to 70 percent in 2012. There was no similar improvement in the prosecution of official corruption cases.

Investors have historically found corruption especially pervasive in customs transactions, particularly at ports and borders away from the capital. Guatemala became a full party to the WTO Customs Valuation Agreement on August 10, 2004. The Superintendence of Tax Administration (SAT) launched a customs modernization program in November 2006, which implemented an advanced electronic manifest system and removed many corrupt customs officials. However, reports of corruption at major customs locations such as ports and border points remain prevalent.

Guatemala's Government Procurement Law requires most government purchases over 900,000 Quetzals (approximately USD 115,000) to be submitted for public competitive bidding. Since March 2004, Guatemalan government entities have been required to use Guatecompras, an Internet-based electronic procurement system, which has improved transparency in the government procurement process. Guatemalan government entities must also comply with Guatemalan government procurement commitments under CAFTA-DR. There has also been a growing number of complaints from U.S. stakeholders and companies regarding an increasing tendency by some government entities to undertake major procurements through unusual special-purpose mechanisms, such as on an emergency basis, enabling the procuring entity to make a direct purchase from a pre-selected supplier and avoid competitive bidding through the public tender process, or structuring the requirements of the tender in such a way so as to favor a particular foreign company. In August 2009, the Guatemalan Congress approved reforms to the Government Procurement Law, which simplified bidding procedures, eliminated the fee previously charged to receive bidding documents, and provided an additional opportunity for suppliers to raise objections over the bidding process. Despite these reforms, large government procurements are often subject to appeals and injunctions based on claims of faults in the bidding process (e.g., documentation issues and lack of transparency).

UN Anticorruption Convention, OECD Convention on Combatting Bribery

Guatemala ratified the U.N. Convention against Corruption in November 2006, and the Inter-American Convention against Corruption in July 2001, but had not implemented all of the latter document's provisions, such as criminalizing illicit enrichment. In October 2012, the Guatemalan Congress approved an anti-corruption law that increases penalties for existing crimes and adds new crimes such as illicit enrichment, trafficking in influence, and illegal charging of commissions. Guatemala is not a party to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

Corruption and Government Transparency - Report by Global Security

Political Climate

Guatemalans have experienced major changes in the political landscape during the last few decades. The country endured several civil wars up to 1996, military rule and several democratically elected, yet corruption-plagued governments whose legitimacy were highly questioned. Over the past decade, however, Guatemala has shown a stable political climate and will to pursue reforms conducive to a better business environment. Álvaro Colom Caballeros won the presidential elections of November 2007 having, like several of his political opponents, focused his campaign on improving security and ending impunity. However, he also coupled this platform with a social campaign intended to address the country's high levels of unemployment and poverty, which are particularly prominent in Guatemala's rural areas. During his presidency, several senior officials were dismissed in response to scandals, corruption charges, or policy ineffectiveness, according to Freedom House 2011. Presidential elections were held in September 2011, followed by a runoff election in November, which was won by a retired army general, Otto Pérez Molina, with more than 54% of the vote, after running a campaign vowing to crackdown on rampant crime and corruption in the country. Pérez is expected to take office on 14 January 2012.

According to the Heritage Foundation 2012, problems such as judicial weakness and corruption did not been improve during Colom's tenure. Colom's credibility with regards to fighting corruption has suffered from allegations made in 2007 claiming that his wife diverted funds from the congressional budget to fund a company controlled by her sister. In August 2008, another scandal hit the pages of the newspapers, as the President of Congress and a close ally had to resign after being indicted in connection with major misappropriation of congressional funds. As a consequence of these scandals, public opinion has pushed for more transparency in public expenditure and for an access to information law, which was eventually passed in September 2008. However, according to the US Department of State 2011, the government has been criticised by the press for not having provided sufficient resources to allow government and publicly funded offices to fully comply with this law. In May 2009, a Guatemalan lawyer, Rodrigo Rosenberg, released a videotape in which he accused Colom of wanting him murdered due to his knowledge of corrupt deals between high-ranking government officials, including Colom and his wife. By the time the tape was found and made public, Rosenberg had already been assassinated. Colom publicly rejected the accusation and opened for a special investigation unit with representatives from the US FBI to examine the case. In January 2010, the International Commission against Impunity in Guatemala (CICIG), a UN sponsored entity which investigated Rosenberg's death together with the FBI, announced that Rosenberg masterminded his own murder, contracting a hit on himself, thus clearing President Colom, according to a 2010 article by The Guatemala Times. Nevertheless, the case of Rosenberg mobilised large civil and international protests against the government. Another high-level scandal surrounding the country in recent years is related to former President Alfonso Portillo. According to a November 2011 article by Boston.com, Portillo is facing charges of money laundering related to his alleged embezzlement of USD 1.5 million in foreign donations. In August 2011, the Constitutional Court authorised a US request for Portillo's extradition to face charges. The latest developments on the case are reported by an August 2012 article by In Sight Crime, which notes that the Constitutional Court in Guatemala affirmed that Portillo will not be able to use an amparo, a legal tool used by Guatemalan criminals to delay extradition proceedings indefinitely on the grounds that it violates their constitutional rights. The date of extradition has not been decided yet. According to the same article, Portillo is the first former Guatemalan president to be tried for corruption.

Institutions which should secure the rights and security of the people, such as the police and the judiciary, exhibit alarming levels of corruption, impunity and involvement in organised crime, and leading observers have described these institutions as nearing collapse. According to the Latinobarómetro 2010, 19% of households consider that there has been 'some' or 'much' progress in reducing corruption in state institutions between 2008 and 2010. Despite of this, 41% of the households in Latinobarómetro 2011 (in Spanish) still believe that the greatest obstacle to democracy in Guatemala is the failure to curb corruption, while 18% of respondents claim that paying bribes when interacting with public officials is the only way to 'get things done'. A 2012 Latin America Corruption Survey reveals that only 2% of respondents believe that anti-corruption laws are effective in Guatemala. There is thus reason to believe that corruption in Guatemala is deeply-rooted in structural governance problems, which have facilitated impunity, poor oversight and control mechanisms and a fragmented political scene with a lack of support for anti-corruption campaigns.

Business and Corruption

Many reforms intended to promote market attractiveness, investments, and economic growth were initiated during the pro-business administration of President Berger (2004-2008), and former President Colom did also pledge to further improve the business environment and to promote foreign investment. Under current President Pérez Molina, growth and investment in Guatemala have also been central pillars of the government's plans. This has so far led to the approval of a 2013-2016 Country Partnership Strategy between the World Bank and Guatemala, which includes coordination and convening services to promote economic growth and financial assistance for development policies and investment projects totalling USD 525 million. The project is also designed to stimulate the growth of SMEs and help improve the business climate in the country by simplifying the red tape that currently impedes company start-ups and standard operations, as noted by a September 2012 article by the World Bank. Guatemala has signed the Dominican Republic - Central American Free-Trade Agreement (DR-CAFTA) which provides a framework for further market improvements and transparency, as it requires each participating government to ensure that bribery affecting trade and investment is treated as a criminal offence. As part of the DR-CAFTA implementation process, the Guatemalan Congress approved a law that strengthened existing legislation on the protection of intellectual property rights, government procurement, commerce, insurance, arbitration, and telecom laws, and to the penal code to ensure compliance with the DR-CAFTA, according to the US Department of State 2012. The country's already good trade relations with the EU are expected to be strengthened, as the Central American countries and the European Commission entered an Association Agreement based on political and economic cooperation in May 2010.

Although most companies still consider corruption to be a major constraint on business operations, surveys indicate that the country has made progress in reducing the burden of corruption on companies over the past few years, especially in relation to bribes solicited by lower level public officials. According to the World Bank & IFC Enterprise Surveys 2010, 62% of the surveyed companies cite corruption as an obstacle to business activities. However, the percentage of companies reporting they expect to give gifts to 'get things done' went down from 13% in 2006 to 6.3% in 2010. It is important to note that large companies resort to making unofficial payments more frequently than small and medium-sized companies (SMEs) to obtain licences and permits, while the percentage of SMEs expecting to give gifts to secure government contracts (a little more than 15%) is more than fifteen times higher than those of large companies (1.3%). Transparency International 2007 reports that regulation regarding conflict of interest is insufficient and public officials are able to pursue their personal interests by creating front companies and then awarding them with public contracts. According to the World Economic Forum Global Competitiveness Report 2012-2013, business executives report that public funds are always diverted to companies, individuals or groups due to corruption and that it is not uncommon for government officials to favour well-connected companies and individuals when deciding on policies and contracts. To try to curb these malpractices, the government launched an initiative in 2004 to enhance transparency, the Guatecompras web portal (in Spanish), where all bids and information about awarded public contracts above a certain threshold have to be published. However, even though this initiative has been in operation for several years, substantial problems in procurement continue. Companies are recommended to use a specialised public procurement due diligence tool in order to mitigate the corruption risks associated with public procurement in Guatemala. Companies are also advised to strengthen integrity systems and to conduct extensive due diligence when planning to invest in Guatemala.

Although corruption is considered to be a major obstacle for business operations, there are other risks that affect the activities of companies. According to the US Department of State 2012, complex and confusing legal and regulatory frameworks, inconsistent judicial decisions, and bureaucratic impediments are all cited as sources continuing to deter investment. The trafficking of drugs is another problem for companies operating in Guatemala, as it fuels high murder rates and gang-related crimes. As a consequence, nearly 70% of the surveyed companies pay for security in Guatemala, while 44% of companies identify crime, theft and disorder as major constraints for doing business in the country, as illustrated in the World Bank & IFC Enterprise Surveys 2010. Similarly, according to the World Economic Forum Global Competitiveness Report 2012-2013, companies operating in Guatemala list crime and theft, corruption and inefficient government bureaucracy among the most problematic factors for doing business in Guatemala. Surveyed business executives also identify the lack of ethical behaviour of companies in their interactions with public officials, politicians and other companies as representing a competitive business disadvantage for Guatemala.

Regulatory Environment

According to Freedom House 2010, Guatemala's regulatory environment remains cumbersome, opaque, and inconsistent, contributing to a high incidence of bribery in the country. In addition, due to such an environment, there is a tendency among companies to bypass public registration and operate in an unregulated informal sector with ties to organised crime, according to the report. This perception is corroborated by the US Department of State 2012, which reports that the legal and regulatory systems are confusing and non-transparent and leave space for official discretion. In contrast, companies surveyed by the World Economic Forum Global Competitiveness Report 2012-2013 perceive the level of government administrative requirements to be fairly non-burdensome and as constituting a competitive advantage for Guatemala. Moreover, while business executives surveyed by the same report indicate that there are problems related to obtaining information about changes in government policies and regulations affecting their industries, these problems are not nearly as pronounced as those in other areas of concern, such as crime and corruption. The World Bank & IFC Doing Business 2013 reveals that starting a business in Guatemala is less time-consuming (40 days) than the average in Latin America & Caribbean (53 days). However, the number of procedures a company must go through in order to start up a business is still about twice as high as the OECD average. Many companies choose to hire intermediaries to ease their way through the bureaucracy, but there is little evidence that these intermediaries actually help move matters faster through the system. Moreover, companies can be held liable for the conduct of corrupt agents and are therefore recommended to conduct extensive due diligence when planning to invest or if already doing business in Guatemala.

According to the US Department of State 2012, complying with the country's complicated tax regulations, designed to reduce tax evasion, is often expensive for companies. According to the World Bank & IFC Enterprise Surveys 2010, 23.5% of companies identify tax administration as a major constraint on doing business. According to the same source, nearly 70% of service companies surveyed report that they compete against unregistered or informal companies and nearly 32% of companies identify the practices of competitors in the informal sector as a major business constraint. This is the reason why as many as two out of three Guatemalans are employed in the informal sector, as reported by the European Commission Country Strategy Paper 2007-2013.

According to the Bertelsmann Foundation 2012, political pressure and corruption within the judicial system remain a serious problem in Guatemala, although some progress has been made to secure the independence of this institution. The US Department of State 2012 reports that judicial decisions are inconsistent in Guatemala and that companies still struggle with time-consuming procedures in the enforcement of commercial contracts. The backlogged and allegedly corrupt judiciary is a major impediment for settling commercial disputes, especially in terms of property rights. Hence, many companies include provisions for third party arbitration in their contracts. Such services are provided by the Comisión de Resolución de Conflictos de la Cámara de Industria de Guatemala (CRECIG, in Spanish), operating within the Guatemalan Commission of the International Chamber of Commerce, and the Guatemala Chamber of Industry, which is one of the leading business organisations in Guatemala. Foreign investors should also visit the Invest in Guatemala website, where detailed information about the different business opportunities in Guatemala can be obtained as well as access to a broad network of contacts and experience in local business sectors. The Foreign Investment Law permits international arbitration or alternative resolution of commercial disputes when already agreed upon by the involved parties. Guatemala has ratified the New York Convention 1958 (UNICITRAL) as well as the Inter-American Convention on International Commercial Arbitration, and is a member of the International Centre for the Resolution of Investment Disputes (ICSID). The United States-Dominican Republic-Central America Free Trade Agreement (CAFTA) also includes a dispute resolution mechanism. Access the Lexadin World Law Guide for a collection of legislation in Guatemala.

Section 3 - Economy

Guatemala is the most populous country in Central America with a GDP per capita roughly one-half that of the average for Latin America and the Caribbean. The agricultural sector accounts for 13.5% of GDP and 30% of the labor force; key agricultural exports include coffee, sugar, bananas, and vegetables. The 1996 peace accords, which ended 36 years of civil war, removed a major obstacle to foreign investment, and since then Guatemala has pursued important reforms and macroeconomic stabilization. The Dominican Republic-Central America Free Trade Agreement (CAFTA-DR) entered into force in July 2006, spurring increased investment and diversification of exports, with the largest increases in ethanol and non-traditional agricultural exports. While CAFTA-DR has helped improve the investment climate, concerns over security, the lack of skilled workers, and poor infrastructure continue to hamper foreign direct investment. The distribution of income remains highly unequal with the richest 20% of the population accounting for more than 51% of Guatemala's overall consumption. More than half of the population is below the national poverty line, and 13% of the population lives in extreme poverty. Poverty among indigenous groups, which make up more than 40% of the population, averages 73%, with 22% of the indigenous population living in extreme poverty. Nearly one-half of Guatemala's children under age five are chronically malnourished, one of the highest malnutrition rates in the world. Guatemala is the top remittance recipient in Central America as a result of Guatemala's large expatriate community in the United States. These inflows are a primary source of foreign income, equivalent to one-half of the country's exports or one-tenth of its GDP.

Agriculture - products:

sugarcane, corn, bananas, coffee, beans, cardamom; cattle, sheep, pigs, chickens

Industries:

sugar, textiles and clothing, furniture, chemicals, petroleum, metals, rubber, tourism

Exports - commodities:

coffee, sugar, petroleum, apparel, bananas, fruits and vegetables, cardamom

Exports - partners:

US 39.2%, El Salvador 11.4%, Honduras 6.8%, Mexico 5.4%, Nicaragua 4% (2012)

Imports - commodities:

fuels, machinery and transport equipment, construction materials, grain, fertilizers, electricity, mineral products, chemical products, plastic materials and products

Imports - partners:

US 38.4%, Mexico 11.9%, China 8.3%, El Salvador 5.1%, Colombia 4.2% (2012)

Banking

Capital markets in Guatemala are weak and inefficient, though there has been some consolidation and restructuring as a result of financial reforms approved in 2002. The Guatemalan banking system is comprised of 18 commercial banks, which held an estimated USD 18.3 billion in assets in 2010. The five largest banks control about 79 percent of total assets. In addition, there are 15 non-bank financial institutions specializing in investment operations, two licensed exchange houses, 17 insurance companies, 11 financial guarantors, 7 credit card issuers, 15 bonded warehouses, and 8 offshore banks which, by law, are affiliated with domestic financial groups. The Superintendent of Banks is charged with regulating the financial services industry.

Financial regulations passed by the Guatemalan Congress in April 2002 have increased the scope of supervision and brought local practices more in line with international standards. The 2002 regulations included Banking and Financial Groups Law, a Financial Supervision Law and a Central Bank Law.

The Guatemalan Congress also passed strong anti-money laundering legislation inDecember 2001. The Financial Action Task Force removed Guatemala from the list of non-cooperating countries in July 2004. Terrorism finance legislation was passed in August 2005. For more information on the banking system please read the subsection Efficient Capital Markets and Portfolio Investment of the Investment Climate Chapter.

Stock Exchange

Guatemala's capital markets are weak and inefficient. There is no securities regulator, but rather only a registry that lacks regulatory authority. There is one principal commercial exchange (Bolsa Nacional de Valores) that deals almost exclusively in commercial paper, repos and government bonds. A new capital markets law is being drafted by the Guatemalan Central Bank (Banco de Guatemala) and the Superintendence of Banks with technical assistance from the U.S. Treasury and Securities Exchange Commission. Foreign investors are reported to be minority holders of Guatemalan government external debt. There is no market in publicly traded equities, the absence of which raises the cost of capital and complicates mergers and acquisitions. As of November 2010, borrowers faced a weighted average nominal interest rate of 16 percent, with some banks charging up to 92 percent. Foreigners rarely rely on the local credit market to finance investments.

Section 4 - Investment Climate

Executive Summary

President Otto Pérez Molina has continued programs initiated by prior administrations to promote foreign investment, enhance competitiveness and expand investment in the export, energy, and tourist sectors. In the World Bank's 2014 Doing Business Report, Guatemala improved 14 positions from 93 to 79 of 189 ranked economies and was listed as one of the top ten economies improving the most in 2012/2013. The Report also listed Guatemala as one of the top 50 improvers in the world and one of the top five improvers in the Latin American and Caribbean region since 2005. Hundreds of U.S. and other foreign firms have active investments in Guatemala.

However, mining has historically been a sensitive issue in Guatemala, and operations in Guatemala have been subject to protests. The United States has also raised concerns with the Government of Guatemala's adherence to its CAFTA-DR obligations with respect to the effective enforcement of both its labor laws and its environmental laws.

Complex and confusing laws and regulations, inconsistent judicial decisions, bureaucratic impediments and corruption continue to constitute practical barriers to investment.

1. Openness To, and Restrictions Upon, Foreign Investment

Although all firms are subject to certain basic requirements, foreign firms are subject to additional, time-consuming requirements. Domestic and foreign firms must publish their intent to conduct business, agree to Guatemalan legal jurisdiction and register with the Ministry of Economy in order to incorporate formally in Guatemala. Foreign firms are subject to additional requirements, including: demonstrating solvency, depositing operating capital in a local bank, supplying financial statements, contractually agreeing to fulfill all legal obligations before leaving the country and appointing a Guatemalan citizen or foreign resident (who must have a Guatemalan work permit) as legal representative. The requirements are not used specifically to screen or discriminate against foreign companies, but the procedures can serve as a disincentive to investment.

Mining has historically been a sensitive issue in Guatemala, and operations in Guatemala have been subject to protests. Subsurface minerals and petroleum are the property of the state. The Ministry of Energy and Mines is in charge of approving mining licenses. For mining, an initial exploration license is issued for three years, which can be extended for two additional two-year periods if needed. After completing the exploration phase, a company may then apply for a separate exploitation license. Mining exploitation licenses are granted for twenty-five years and can be extended for an additional twenty-five years. In January 2012, the extractive industries association signed a voluntary agreement with the Government of Guatemala to pay higher royalties than those established in the mining law. In October 2012, the Ministry of Energy and Mines submitted to Congress a draft law to reform the mining law, which includes among other changes, a provision to increase royalties to percentages similar to those included in the voluntary agreement and is still pending in Congress. Allegations in 2010 that the Government of Guatemala attempted to cancel and resell a long-standing nickel concession in Izabal raised concerns among investors; the Canadian holders of that concession sold their interest to a Russian firm in 2011.

Petroleum contracts are granted through a public tender process. One contract is awarded covering both exploration and exploitation. This contract is granted for a period of twenty-five years and can be extended for an additional fifteen years. Contracts for petroleum extraction are typically granted through production-sharing agreements.

Over the past two years, a number of U.S. companies have had significant at-risk investments in the mining and petroleum sectors that required the approval of contracts or exploitation licenses by Guatemalan government regulatory bodies, particularly the Ministry of Energy and Mines, in order to realize any return on their investments. One such company received its approved license in April 2013, but after more than a year of delays by the MEM. The contract for another company was approved in August 2013, after about two years of delays, despite having satisfied all legal requirements to move forward. In addition, another U.S. mining investment, which received an exploitation license in 2011, has been significantly delayed by pending social conflicts and an inability on the part of the Government of Guatemala to enforce the company's rights under the license. The government has made some efforts to provide security for the projects and accurate information to project opponents, but those efforts have not yet been sufficient to permit the projects to go forward. The future of these sunk investments is not guaranteed. A more active presence by the Ministry of Energy and Mines, the Ministry of Environment, and other government authorities in the project areas, and government dialogue with local communities, likely will be crucial for the success of these investments.

Attitude Toward FDI

Inaugurated in January 2012, President Otto Pérez Molina continued programs initiated by prior administrations to promote foreign investment, enhance competitiveness and expand investment in the export, energy, and tourist sectors. President Pérez Molina and his key economic staff have frequently called attracting greater investment, including foreign direct investment, a high priority for his administration.

In the World Bank's 2014 Doing Business Report, Guatemala improved 14 positions and was listed as one of the top ten economies improving the most in 2012/2013. The Report also listed Guatemala as one of the top 50 improvers in the world and one of the top five improvers in the Latin American and Caribbean region since 2005. The three areas where the country improved the most were starting a business (moved from 176 to 145), dealing with construction permits (moved from 94 to 61), and paying taxes (moved from 129 to 85). Areas with no reforms as measured by the Doing Business Report during the last six years and where reforms are most needed as reflected by the rankings are: protecting investors (ranked 157), resolving insolvency (ranked 109), trading across borders (ranked 116), and enforcing contracts (ranked 109).

Laws/Regulations of FDI

Hundreds of U.S. and other foreign firms have active investments in Guatemala. Guatemala passed a foreign investment law in 1998 to streamline and facilitate foreign investment. The Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR) entered into force in Guatemala on July 1, 2006. CAFTA-DR established a more secure and predictable legal framework for U.S. investors operating in Guatemala. Under CAFTA-DR, all forms of investment are protected, including enterprises, debt, concessions, contracts and intellectual property. U.S. investors enjoy, in almost all circumstances, the right to establish, acquire and operate investments in Guatemala on an equal footing with local investors. The

U.S. Embassy in Guatemala places a high priority on improving the investment climate for U.S. investors.

As part of the CAFTA-DR implementation process, the Guatemalan Congress approved a law that strengthened existing legislation on intellectual property rights (IPR) protection, government procurement, trade, insurance, arbitration, and telecommunications, as well as the penal code, to ensure compliance with CAFTA-DR. An e-commerce law was approved by Congress in August 2008, which provides legal recognition to communications and contracts that are executed electronically; permits electronic communications to be accepted as evidence in all administrative, legal and private actions; and allows for the use of electronic signatures.

The United States raised concerns with the Government of Guatemala's adherence to its CAFTA-DR obligations with respect to the effective enforcement of both its labor laws and its environmental laws. Regarding the labor law case, an arbitral panel was established, pursuant to CAFTA-DR procedures, to consider whether Guatemala is conforming to its obligations to effectively enforce its labor laws. In April 2013, after lengthy negotiations, the United States and Guatemala agreed to an ambitious and comprehensive labor Enforcement Plan that includes significant, concrete actions that the Government of Guatemala agreed to implement within specified time frames to improve enforcement of labor laws. The arbitral panel was suspended during the Enforcement Plan's implementation period. As of April 2014, the United States and Guatemala agreed to extend for four months the Enforcement Plan's deadline for Guatemala to permit full implementation. The U.S. Government retains the right to reactivate the arbitral panel at any point during these four months. Regarding the environmental case, following a 2011 request by the U.S. Government, the CAFTA-DR Secretariat for Environmental Matters sought to conduct a fact-finding investigation on the extension of an oil exploitation concession in the Maya Biosphere Reserve in northern Peten department. However, the Secretariat was required to suspend its investigation in 2012 when the Government of Guatemala provided evidence that the relevant facts of the case were under consideration by Guatemala's Constitutional Court.

The court dismissed the case on procedural grounds in 2013, and the original authors of the submission are still weighing the possibility of seeking to reactivate it with the Secretariat.

Complex and confusing laws and regulations, inconsistent judicial decisions, bureaucratic impediments and corruption continue to constitute practical barriers to investment. Complicated tax regulations meant to reduce tax evasion result in foreign and domestic companies incurring high costs to comply with tax laws.

Limits on Foreign Control

There are no impediments to the formation of joint ventures or the purchase of local companies by foreign investors. The absence of a developed, liquid and efficient capital market, in which shares of publicly-owned firms are traded, makes equity acquisitions in the open market difficult. Most foreign firms, therefore, operate through locally incorporated subsidiaries.

There are no restrictions on foreign investment in the telecommunications, electrical power generation, airline, or ground-transportation sectors. The Government of Guatemala privatized a number of state-owned assets in industries and utilities in the late 1990s including: power distribution, telephone services, and grain storage. The Foreign Investment Law removed limitations to foreign ownership in domestic airlines and ground-transport companies in January 2004.

Foreign banks may open branches or subsidiaries in Guatemala subject to Guatemalan financial controls and regulations. These include a rule requiring local subsidiaries of foreign banks and financial institutions operating in Guatemala to meet Guatemalan capital and lending requirements as if they were stand-alone operations.

Some professional services may only be supplied by professionals with locally-recognized academic credentials. Public notaries must be Guatemalan nationals. Foreign enterprises may provide licensed, professional services in Guatemala through a contract or other relationship with a Guatemalan company. In July 2010, the Guatemalan Congress approved a new insurance law, which allows foreign insurance companies to open branches in Guatemala, a requirement under CAFTA-DR. This law requires foreign insurance companies to fully capitalize in Guatemala.

Competition Law

There is no law regulating monopolistic or anti-competitive practices, but the Government of Guatemala agreed to approve a competition law by November 2016 as part of its commitments under the Association Agreement with the European Union.

Investment Trends

According to preliminary data from the Guatemalan Central Bank (Banguat), the stock of foreign direct investment totaled USD 10.2 billion in 2013, a 14.9% increase in relation to 2012. Banguat data also show that the flow of foreign direct investment (FDI) in 2013 was USD 1.3 billion, a 5.2% increase compared with 2012. Some of the activities that attracted most of the FDI flows in 2013 were agriculture, mining, commerce, energy, and banking.

TABLE 1: The following chart summarizes several well-regarded indices and rankings.

Measure	**Year**	**Rank or value**	**Website Address**
TI Corruption Perceptions index	2013	123 of 177	http://cpi.transparency.org/cpi2013/results/
Heritage Foundation's Economic Freedom index	2014	83 of 178	http://www.heritage.org/index/ranking
World Bank's Doing Business Report "Ease	2014	79 of 189	http//doingbusiness.org/rankings

of Doing Business"			
Global Innovation Index	2013	87 of 142	http://www.globalinnovationindex.org/content.aspx?page=gii-full-report-2013#pdfopener
World Bank GNI per capita	2012	USD 3,120	http://data.worldbank.org/indicator/NY.GNP.PCAP.CD

TABLE 1B - Scorecards: The Millennium Challenge Corporation, a U.S. Government entity charged with delivering development grants to countries that have demonstrated a commitment to reform, produced scorecards for countries with a 2012 per capita gross national income (GNI) or USD 4,085 or less. A list of countries/economies with MCC scorecards and links to those scorecards is available here: http://www.mcc.gov/pages/selection/scorecards Details on each of the MCC's indicators and a guide to reading the scorecards are available here: http://www.mcc.gov/documents/reports/reference-2013001142401-fy14-guide-to-the-indicators.pdf.

2. Conversion and Transfer Policies

The right to hold private property and to engage in business activities is specifically recognized by the Guatemalan Constitution. Foreign private entities can establish, acquire and dispose freely of virtually any type of business interest, with the exception of some professional services as noted above in Section 1.5.

Foreign Exchange

Guatemala's Foreign Investment Law and CAFTA-DR commitments protect the investor's right to remit profits and repatriate capital. There are no restrictions on converting or transferring funds associated with an investment into a freely usable currency at a market-clearing rate. U.S. dollars are freely available and easy to obtain within the Guatemalan banking system. In October 2010, monetary authorities approved a regulation to establish limits for cash transactions of foreign currency to reduce the risks of money laundering and terrorism financing. This regulation establishes that monthly deposits over USD 3,000 will be subject to additional requirements, including a sworn statement by the depositor stating that the money comes from legitimate activities. There are no legal constraints on the quantity of remittances or any other capital flows, and there have been no reports of unusual delays in the remittance of investment returns.

The Law of Free Negotiation of Currencies allows Guatemalan banks to offer different types of foreign-currency-denominated accounts. In practice, the U.S. dollar is used most frequently. Some banks offer "pay through" dollar-denominated accounts in which depositors make deposits and withdrawals at a local bank while the actual account is maintained on behalf of depositors in an offshore bank.

Capital can be transferred from Guatemala to any other jurisdiction without restriction. The exchange rate moves in response to market conditions. The government sets one reference rate which it applies only to its own transactions and which is based on the commercial rate. The Central Bank intervenes in the foreign exchange market only to prevent sharp movements.

3. Expropriation and Compensation

The Constitution prohibits expropriation, except in cases of eminent domain, national interest or social benefit. The Foreign Investment Law requires advance compensation in cases of expropriation. Investor rights are protected under CAFTA-DR by an impartial procedure for dispute settlement that is fully transparent and open to the public. Submissions to dispute panels and dispute panel hearings are open to the public, and interested parties have the opportunity to submit their views.

The Government of Guatemala has the right to negate a contract with a private company at any time during the life of the contract if it determines the contract is damaging to the public good. It has done so only rarely and has this right only after completing a specific legal process, though the threat of such action dampens U.S. firms' desire to do business with the state. In one such case, in June 2007, a U.S. company operating in Guatemala filed a claim under the investment chapter of CAFTA-DR against the Government of Guatemala with the International Centre for Settlement of Investment Disputes (ICSID). The claimant alleged the Government of Guatemala indirectly expropriated the company's assets by negating a contract, and requested USD 65 million in compensation and damages from the Government of Guatemala. The ICSID court issued its ruling on this case in June 2012 and stated that the Government of Guatemala had breached the minimum standard of treatment under Article 10.5 of CAFTA and required the Government of Guatemala to pay USD 14.6 million to the company, which it did in November 2013.

4. Dispute Settlement

Bankruptcy

Guatemala has a written and consistently-applied commercial law (Codigo de Comercio). Guatemala does not have an independent bankruptcy law, but the Code on Civil and Mercantile Legal Proceedings (Codigo Procesal Civil y Mercantil) contains a specific chapter on bankruptcy proceedings. Under the code, creditors can request to be included in the list of creditors, request an insolvency proceeding when a debtor has suspended payments of liabilities to creditors and constitute a general board of creditors to be informed of the proceedings against the debtor.

Investment Disputes

CAFTA-DR added an additional dispute resolution mechanism for investors. The first claim under that system was filed in June 2007, as described in the expropriation and compensation section, and the Government of Guatemala followed all procedures required of it under the process. In October 2010, a U.S. company operating in Guatemala filed the second U.S. claim under the investment chapter of CAFTA-DR against the Government of Guatemala with the ICSID (a Spanish firm filed a claim with the ICSID on the same case in 2009). Through this claim, the U.S. company sought to resolve a dispute with the Government of Guatemala regarding the regulation of electricity rates. An ICSID tribunal issued its ruling on this second case in December 2013 and awarded the U.S. company over USD 21 million in damages and USD 7.5 million to cover 75 percent of its ICSID legal expenses. On April 22, the

Government of Guatemala filed an application at the ICSID for annulment of the ICSID award issued in December 2013. On the same day, the U.S company filed an application for partial annulment of the award, which, if successful, would allow the company to seek additional damages from Guatemala in a new arbitration proceeding.

International Arbitration

ICSID Convention and New York Convention

The Government of Guatemala has signed the United Nations Convention on the Recognition and Enforcement of Arbitral Awards (New York Convention), the Inter-American Convention on International Commercial Arbitration (Panama Convention) and the Convention on the Settlement of Investment Disputes between States and Nationals of other States (ICSID Convention). Guatemala's foreign investment law also permits international arbitration or alternative resolution of disputes, if agreed to by the parties.

Guatemalan procedures for enforcing agreements are similar to those of the United States. Guatemala's Arbitration Law of 1995 is based on the U.N. Commission on International Trade Law (UNCITRAL) Model Law for International Commercial Arbitration and regulations are in line with the New York Convention. Default awards and arbitral agreements are fully enforceable in Guatemala. In addition, CAFTA-DR added an additional dispute resolution mechanism for investors.

Duration of Dispute Resolution

Resolution of business and investment disputes through Guatemala's judicial system is time-consuming, and civil cases can take years to resolve. Corruption, intimidation and ineffectiveness in the judiciary have led to confusing, even contradictory, decisions and frequent delays. U.S. companies, however, face the same conditions as local companies and are not subject to any pattern of discrimination in the legal system.

5. Performance Requirements and Investment Incentives

WTO/TRIMS

Guatemala's 1998 Foreign Investment Law eliminated trade-related investment restrictions and ensured Guatemala was compliant with World Trade Organization (WTO) obligations under the Agreement on Trade Related Investment Measures (TRIMS). In 1999, Guatemala notified the WTO that it was TRIMS compliant.

Investment Incentives

Investment incentives are specified in law and are available, with few exceptions, to both foreign and Guatemalan investors without discrimination. There are three main programs, two focused on exports and the other on reforestation.

The major Guatemalan incentive program, the Law for the Promotion and Development of Export Activities and Drawback, is aimed mainly at "maquiladoras" – mostly garment manufacturing and assembly operations – in which over half of production inputs/components are imported and the completed products are exported. Investors in this sector are granted a 10-year exemption from both income taxes and the Solidarity Tax, Guatemala's temporary alternative minimum tax. Additional incentives include an exemption from duties and value-added taxes on imported machinery and a one-year suspension (extendable to a second year) of the same duties and taxes on imports of production inputs and packing material. Taxes are waived when the goods are re-exported. The Free Trade Zone Law provides similar incentives to those provided by the incentive program described above. Some of the tax incentives granted under the two major Guatemalan incentive programs fall under the WTO's definition of prohibited subsidies, which were scheduled to expire on December 31, 2007, with a phase out period of two years. However, in July 2007, the WTO adopted a decision that allowed the WTO Subsidies Committee to continue to grant annual extensions of the transition period of export subsidies to Guatemala and other countries until the end of 2013, with a final phase out period of two years. In order to comply with WTO commitments to dismantle prohibited subsidies, the Government of Guatemala submitted the Promotion of Investment and Employment draft law to Congress in January 2013 to replace the prohibited incentives provided through the Law for the Promotion and Development of Export Activities and Drawback and the Free Trade Zones Law. This proposed law is pending congressional approval.

Property owners who engage in reforestation activities may qualify for government incentives through the National Institute of Forests (INAB). This incentive program (PINFOR) is scheduled to run through 2016.

Performance Requirements

Guatemala does not impose performance, purchase or export requirements other than those normally associated with free trade zones and duty drawback programs. Companies are not required to locate operations in specific geographic areas or include local content in production.

6. Right to Private Ownership and Establishment

The right to hold private property and to engage in business activity is recognized in the Guatemalan Constitution. The foreign investment law specifically notes that foreign investors enjoy the same rights of use, benefit and ownership of property as afforded Guatemalans. Foreigners are prohibited, however, from owning land immediately adjacent to rivers, oceans and international borders.

CAFTA-DR established a more secure and predictable legal framework for U.S. investors operating in Guatemala. Under CAFTA-DR, all forms of investment are protected, including enterprises, debt, concessions, contracts and intellectual property. U.S. investors enjoy, in almost all circumstances, the right to establish, acquire and operate investments in Guatemala on an equal footing with local investors.

There are no impediments to the formation of joint ventures or the purchase of local companies by foreign investors. The absence of developed, liquid and efficient capital markets, in which shares of publicly-owned firms are traded, makes equity acquisitions in the open market difficult. Most foreign firms therefore operate through locally-incorporated subsidiaries.

7. Protection of Property Rights

Real Property

Guatemala has registries for both movable and real estate property. Inadequately documented titles and gaps in the public record can lead to conflicting claims of land ownership. The government has stepped up its efforts to enforce property rights where title is clear or where title disputes have been resolved; however, it can be difficult to obtain and enforce eviction notices.

Mortgages are available to finance homes and businesses, and about half of the banks offer mortgage loans with terms as long as 15-20 years for residential real estate.

The legal system is accessible to foreigners and does not systemically discriminate against foreign firms. However, in practice, it favors local attorneys accustomed to maneuvering a case through the process. Foreign investors are advised to seek reliable local counsel early in the investment process.

Intellectual Property Rights

Guatemala belongs to the WTO and the World Intellectual Property Organization (WIPO). It is also a signatory to the Paris Convention, Bern Convention, Rome Convention, Phonograms Convention and the Nairobi Treaty. Guatemala has ratified the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). In June 2006, as part of CAFTA-DR implementation, Guatemala ratified the Patent Cooperation Treaty and the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure. Also in June 2006, the Guatemalan Congress approved the International Convention for the Protection of New Varieties of Plants (UPOV Convention); however, implementing legislation that would allow Guatemala to become a party to the convention remains pending.

Guatemala has a registry for intellectual property. Trademarks, copyrights, patents rights, industrial designs, and other forms of intellectual property must be registered in Guatemala to obtain protection in the country.

The Guatemalan Congress passed an industrial property law in August 2000, to bring the country's intellectual property rights laws into compliance with the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement. This legislation was modified in 2003 to provide pharmaceutical test data protection consistent with international practice, and, in 2005, the law was again amended to comply with intellectual property rights (IPR) protection requirements in CAFTA-DR. CAFTA-DR provides for improved standards for the protection and enforcement of a broad range of IPR, which are consistent with U.S. standards of protection and enforcement as well as emerging international standards. A law to prohibit the production and sale of counterfeit medicine was approved by Congress in November 2011. The Guatemalan Congress approved amendments to the industrial property law in June 2013 to allow the registration of geographical indications (GI) as required under the Association Agreement with the European Union. Administrative authorities in Guatemala recently issued rulings on applications to register geographical indications that appear sound and well-reasoned for compound GI names, but U.S. exporters are still concerned that rulings on single-name GIs will prohibit new marketing opportunities in Guatemala.

Enforcement of IPR laws, however, has been inconsistent. A number of raids, cases and prosecutions have been pursued; however, resource constraints and lack of coordinated government action impede efficient enforcement efforts. Piracy of works protected by copyright and infringement of other forms of intellectual property, such as trademarks including those of some major U.S. food and pharmaceutical brands, remains problematic in Guatemala.

Guatemala has been included on the Watch List in USTR's Special 301 Report for more than ten years. The 2013 Special 301 Report noted the severe lack of resources for IPR prosecution efforts, and highlighted trademark squatting and the Guatemalan government's use of unlicensed software as significant areas of concern.

Resources for Right Holders

- Contact at Mission:
- Jennifer Nehez Economic Officer
- (502) 2326-4632
- NehezJJ@state.gov

Country Resources:

Contact information for the American Chamber of Commerce in Guatemala can be found at: https://www.amchamguate.com/es/staff

For information about a public list of local lawyers please see the U.S. Embassy website at: http://guatemala.usembassy.gov/acs_legal_information.html .

For additional information about treaty obligations and points of contact at local IP offices, please see WIPO's country profiles at http://www.wipo.int/directory/en/.

8. Transparency of the Regulatory System

Tax, labor, environment, health and safety laws do not directly impede investment in Guatemala. Bureaucratic hurdles are common for both domestic and foreign companies, including lengthy processes to obtain permits and licenses and receive shipments. The legal and regulatory systems are confusing and not transparent. Regulations often contain few explicit criteria for government administrators, resulting in ambiguous requirements that are applied inconsistently by different government agencies and the courts. While there is no apparent systematic discrimination against foreign companies in these processes, these inconsistencies can favor local firms who are more familiar with these challenges.

Public participation in the promulgation of regulations is rare; companies and individuals are able to submit comments to the issuing government office, but with limited effect. There is no consistent legislative oversight of administrative rule-making.

Laws that are being debated in Congress are placed on the institution's public website; however, last-minute amendments often are not publicly disclosed before congressional decisions. Final versions of laws, once signed by the President, must be published in the official gazette before taking effect.

Guatemala is a member of UNCTAD's international network of transparent investment procedures. Foreign and national investors may be able to find detailed information on administrative procedures applicable to investment and income generating operations including the number of steps, name and contact details of the entities and persons in charge of procedures, required documents and conditions, costs, processing time, and legal bases justifying the procedures at http://asisehace.gt/.

9. Efficient Capital Markets and Portfolio Investment

Guatemala's capital markets are weak and inefficient. There is no securities regulator, but rather only a registry, which lacks regulatory authority. The one principal commercial exchange (Bolsa Nacional de Valores) deals almost exclusively in commercial paper, repurchase agreements (repos) and government bonds. A new capital markets law has been drafted by the Guatemalan Central Bank and the Superintendence of Banks with technical assistance from the U.S. Treasury and the Securities Exchange Commission and has been sent to the Monetary Board for approval before being submitted to Congress to become law. Notwithstanding the lack of a modern capital markets law, the government debt market has continued to develop; domestic treasury bonds now represent 47% of total public debt. Guatemala also made strides in the international bond market with the issuance of two benchmark Eurobonds in 2012 and 2013 for USD 700 million each, targeted mostly to foreign institutional investors.

There is no market in publicly-traded equities, the absence of which raises the cost of capital and complicates mergers and acquisitions. As of December 2013, borrowers faced a weighted average annual interest rate of 16.8 percent, with some banks charging over 50 percent on consumer or microcredit loans. Foreigners rarely rely on the local credit market to finance investments.

Money and Banking System, Hostile Takeovers

In April 2002, the Guatemalan Congress passed a package of financial sector regulatory reforms that increased the regulatory and supervisory authority of the Superintendence of Banks (SIB), which is responsible for regulating the financial services industry. These reforms brought local practices more in line with international standards and spurred a round of bank consolidation and restructuring. The 2002 reforms required that non-performing assets held offshore be included in loan-loss-provision and capital-adequacy ratios. This forced a number of smaller banks to seek new capital, buyers, or mergers with stronger banks. As a result, the number of banks was reduced from 27 in 2005 to 18 in 2013.

The Guatemalan Congress has been actively working on new laws in the business and finance sector. In July, 2010, the Guatemalan Congress approved a new insurance law, which strengthens supervision of the insurance sector and allows foreign insurance companies to open branches in Guatemala. In August 2012, the Guatemalan Congress approved reforms to the Banking and Financial Groups Law and to the Central Bank Organic Law that should strengthen supervision and prudential regulation of the financial sector and resolution mechanisms for failed or failing banks.

Groups of affiliated credit card, insurance, finance, commercial banking, leasing, and related companies must issue consolidated financial statements prepared in accordance with uniform, generally accepted accounting practices. The groups are audited and supervised on a consolidated basis.

According to information from the Superintendence of Banks (SIB), Guatemala's 18 commercial banks had an estimated USD 28 billion in assets among them in 2013. The five largest banks control about 81 percent of total assets. In addition, there are 14 non-bank financial institutions, which perform primarily investment banking and medium- and long-term lending and two exchange houses.

Overall, the banking system remains stable. Two bank failures, one in 2006 and one in 2007, were managed effectively and did not affect the financial system or broader economy. In October 2006, the SIB recommended that Guatemala's then-fourth-largest bank, Bancafe, be suspended due to financial problems arising from an off-shore investment of USD 204 million in the bankrupt U.S. commodities brokerage company Refco. As a result, the financial group headed by the suspended bank was dissolved and the license of its off-shore bank was cancelled. In January 2007, the license for Banco de Comercio was suspended after the bank requested intervention by the SIB due to its overextended loan portfolio.

As part of its effort to fortify the domestic financial system against global financial turmoil, monetary authorities issued a resolution in December 2008, which required financial groups to increase their reserve requirements to 100% for all non-performing loans as of June 30, 2011.

10. Competition from State-Owned Enterprises (SOEs)

With the exception of the National Electricity Institute (INDE), a SOE active in the energy and mines industry, Guatemala does not have active SOEs in other industries. The National Electricity Institute (INDE) is a state-owned electricity company responsible for expanding the provision of electricity to rural communities. INDE generates about 54% of the hydroelectric power produced in Guatemala, and it participates in the wholesale market under the same rules as its competitors. It also provides a subsidy for the first 100 kilowatt-hours (kWh) to consumers of less than 300 kWh per month. The board of directors comprises representatives from the government, municipalities, business associations, and labor unions. The general manager is appointed by the board of directors.

The Government of Guatemala owns 30% of the shares of the Bank of Rural Development (BanRural), the third largest bank in Guatemala, and it is allotted 3 out of 10 seats on the board of directors. Banrural is a mixed capital company and operates under the same laws and regulations as other commercial banks. The Government of Guatemala also appoints the manager of GUATEL, the former state-owned telephone company dedicated to providing rural and government services that were split off from the fixed-line telephone company during its privatization in 1998. GUATEL's operations are small, and it continuously fails to generate sufficient revenue to cover expenses. The GUATEL director reports to the Guatemalan President and to the board of directors. GUATEL is required by law to publish annual reports.

11. Corporate Social Responsibility

There is a general awareness of Corporate Social Responsibility (CSR) on the part of producers and service providers as well as Guatemalan business chambers. The American Chamber of Commerce in Guatemala (AmCham) and a local organization called the Center for Socially Responsible Corporate Action in Guatemala (CentraRSE) annually award companies for their CSR activities. U.S. companies such as McDonald's, Starbucks and Denimatrix have been recognized for their CSR programs that aim to foster a safe and productive workplace as well as provide health and education programs to aid workers, families and communities. Many international companies have found that CSR programs targeted to the local communities they serve help to build trust and are generally expected to be provided given the low level of government funds available for investment in health, education, and infrastructure. In January 2014, a U.S. based company was recognized as one of twelve finalists for the Secretary of State's 2013 Award for Corporate Excellence for its contributions to sustainable development in Guatemala.

12. Political Violence

In 1985, a new Constitution was approved, which transitioned Guatemala to a democratic country. In 1996, the Guatemalan government and the guerrillas of the Guatemalan National Revolutionary Unity (URNG) signed the Accord for a Firm and Lasting Peace that ended the 36-year internal armed conflict. In the years since becoming a democratic state and the signing of the peace accord, Guatemala has made significant achievements. However, inadequate legislation and weak institutions often lead to tension with indigenous groups over the use of indigenous or communal property and the development of mines and large infrastructure projects, such as hydroelectric plants.

Guatemala, however, has one of the highest violent crime rates in Latin America. According to Centro de Investigaciones Economicas Nacionales (CIEN), the murder rate in 2012 and 2013 was 34 per 100,000, making Guatemala one of the most dangerous countries in the world. Rule of law is lacking as the judicial system is weak, overworked, and inefficient, and the police understaffed and often corrupt. The impunity rate for homicides in Guatemala City declined from 97% in 2010 to 70% in 2012 according to a report issued by the Public Ministry.

Given the weak rule of law, violent common crime is a major problem in Guatemala. Gangs are a constant concern in urban areas and gang members are often well-armed, sometimes with military weapons. Widespread narcotics and alien smuggling activities make some remote areas dangerous, especially along Guatemala's border with Mexico. Security, therefore, remains a widespread concern; however, foreigners are not usually singled out as targets of crime.

Guatemala has an approximately 180-year-old border dispute with Belize and territorial sea disputes with Belize and Honduras. In 2008, Guatemala and Belize signed a Special Agreement to submit Guatemala's territorial claims to the International Court of Justice (ICJ), subject to the approval of the citizens in both countries. Each country was set to hold a referendum in October 2013 to approve the agreement; however, the referenda have been postponed and a new date has not been set.

13. Corruption

Bribery is illegal under the penal code; however, corruption remains a serious problem that companies may encounter at many levels. Guatemala's score on the Transparency International 2013 Corruption Perceptions Index was 29 points out of 100, ranking it 26th out of 32 countries in the region.

Guatemala enacted measures to reverse the perceived increase in government corruption that occurred under the Portillo administration (2000-2003). Various senior officials who served during the Portillo administration were investigated and sentenced for their role in corruption scandals including the former Superintendent of Tax Administration (SAT), Minister of Interior, Comptroller General, and Minister of Finance. However, six of these individuals were released from jail and placed under house arrest in 2008. Former President Alfonso Portillo was tried in

Guatemala for embezzlement and was acquitted by a first instance court. After fighting for over three years, Portillo was extradited to the United States on May 24, 2013, and pleaded guilty in a U.S. court on March 18, 2014. One former president of Congress was sentenced to three years in prison for his involvement in a 2008 embezzlement scandal and a second former president of Congress will face trial on the same case. In September 2012, Mayor of Antigua Guatemala Adolfo Vivar was arrested, along with 10 others, and charged with embezzling 20 million quetzales (USD 2.5 million) of municipal funds. At year's end, Vivar was detained and his trial is pending. On June 3, former mayor of San Miguel Petapa Rafael Eduardo Gonzalez Rosales and five others were arrested for fraud and money laundering of approximately 34 million quetzales (USD 4.3 million) of municipal funds.

In December 2012, the Government of Guatemala created a Presidential Commission for Transparency and Electronic Government (COPRET by its Spanish acronym) to coordinate Executive Branch efforts on transparency, anti-corruption, electronic government, and open government issues. This Commission replaced the Transparency and Control Secretariat created by the Guatemalan Government in February 2012, but which subsequently was declared invalid by the Constitutional Court in November 2012.

The Comptroller General's Office and the Public Ministry are responsible for combating corruption. The comptroller general's mandate is to monitor public spending, and the attorney general's mandate is to prosecute crimes. Both agencies actively collaborated with civil society and were relatively independent; however, they lacked resources, which affected their capabilities. Under the leadership of Attorney General Claudia Paz y Paz, the Public Ministry worked with CICIG to improve the ministry's effectiveness and reported a significant drop in the impunity rate for homicide in Guatemala City, from more than 95 percent in 2010 to 70 percent in 2012. There was no similar improvement in the prosecution of official corruption cases.

Investors have historically found corruption especially pervasive in customs transactions, particularly at ports and borders away from the capital. Guatemala became a full party to the WTO Customs Valuation Agreement on August 10, 2004. The Superintendence of Tax Administration (SAT) launched a customs modernization program in November 2006, which implemented an advanced electronic manifest system and removed many corrupt customs officials. However, reports of corruption at major customs locations such as ports and border points remain prevalent.

Guatemala's Government Procurement Law requires most government purchases over 900,000 Quetzals (approximately USD 115,000) to be submitted for public competitive bidding. Since March 2004, Guatemalan government entities have been required to use Guatecompras, an Internet-based electronic procurement system, which has improved transparency in the government procurement process. Guatemalan government entities must also comply with Guatemalan government procurement commitments under CAFTA-DR. There has also been a growing number of complaints from U.S. stakeholders and companies regarding an increasing tendency by some government entities to undertake major procurements through unusual special-purpose mechanisms, such as on an emergency basis, enabling the procuring entity to make a direct purchase from a pre-selected supplier and avoid competitive bidding through the public tender process, or structuring the requirements of the tender in such a way so as to favor a particular foreign company. In August 2009, the Guatemalan Congress approved reforms to the Government Procurement Law, which simplified bidding procedures, eliminated the fee previously charged to receive bidding documents, and provided an additional opportunity for suppliers to raise objections over the bidding process. Despite these reforms, large government procurements are often subject to appeals and injunctions based on claims of faults in the bidding process (e.g., documentation issues and lack of transparency).

UN Anticorruption Convention, OECD Convention on Combatting Bribery

Guatemala ratified the U.N. Convention against Corruption in November 2006, and the Inter-American Convention against Corruption in July 2001, but had not implemented all of the latter document's provisions, such as criminalizing illicit enrichment. In October 2012, the Guatemalan Congress approved an anti-corruption law that increases penalties for existing crimes and adds new crimes such as illicit enrichment, trafficking in influence, and illegal charging of commissions. Guatemala is not a party to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

14. Bilateral Investment Agreements

In 2004, the United States, the Dominican Republic, Guatemala, Costa Rica, El Salvador, Honduras and Nicaragua signed the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR). The agreement entered into force in Guatemala on July 1, 2006. CAFTA-DR contains a chapter on investment similar to a Bilateral Investment Treaty with the United States.

Guatemala has bilateral investment agreements with Argentina, Austria, Belgium, Cuba, Chile, Finland, France, Germany, Israel, Italy, South Korea, Spain, Sweden, Switzerland, Taiwan, the Czech Republic and The Netherlands.

In addition to CAFTA-DR, Guatemala has signed bilateral or regional free trade agreements with Chile, the European Union, Peru, Mexico, Colombia, Taiwan and Panama, and is currently negotiating a free trade agreement with Canada and the European Free Trade Agreement (EFTA) countries. Guatemala has also signed partial-scope agreements with Belize, Cuba, Ecuador and Venezuela, which cover a reduced number of products and do not include chapters beyond trade. It is currently negotiating a partial scope agreement with Trinidad and Tobago.

Bilateral Taxation Treaties

The United States and Guatemala do not have a bilateral taxation agreement.

15. OPIC and Other Investment Insurance Programs

Guatemala ratified the Multilateral Investment Guarantee Agency (MIGA) Convention in 1996. The Overseas Private Investment Corporation (OPIC) is active in Guatemala, providing both insurance and investment financing. OPIC applicants have generally been able to quickly obtain Foreign Government Approval (FGA). For more information on OPIC programs,

U.S. investors should contact OPIC headquarters in Washington, D.C. at (202) 336-8799 or go to www.opic.gov.

According to the Central Bank of Guatemala, the reference exchange rate of Quetzals to the U.S. Dollar remained relatively stable during 2013 with a high of 7.99 and a low of 7.77.

16. Labor

An estimated 1.8 million individuals in the formal sector workforce are augmented by about 3.9 million more who work in the informal sector, including some who are too young for formal sector employment. In rural areas in particular, child labor remains a serious problem in certain industries, according to the 2013 Survey on Employment and Income. The availability of a large, unskilled and inexpensive labor force has led many employers, such as construction and agricultural firms, to use labor-intensive production methods. About 20% of the employed workforce is illiterate. In developed urban areas, however, education levels are much higher, and a workforce with the skills necessary to staff a growing service sector has emerged. Even so, highly capable technical and managerial workers remain in short supply, with secondary and tertiary education focused on social science careers.

No special laws or exemptions from regular labor laws are provided for the export processing zones. Managers of Guatemalan companies must be either Guatemalan citizens or resident aliens with work permits. Employer responsibilities regarding working conditions, especially health and safety standards, benefits, severance pay, premium pay for overtime work, minimum wages, and bonuses are specified in the labor code. Mandatory benefits, bonuses, and employer contributions to the Social Security system can add up to about 55 percent of an employee's base pay. Many workers, however, especially in agriculture, do not receive the full compensation package mandated in the labor law.

The Constitution guarantees the right of workers to unionize and to strike and commits the state to support and to protect collective bargaining, as well as to respect international labor conventions. A combination of inadequate allocation of budget resources to the Ministry of Labor and other relevant state institutions, and inefficient administrative and justice sector processes act as significant impediments for more effective enforcement of labor laws to protect these workers' rights. As a result, investigating, prosecuting, and punishing employers who violate these guarantees remain a challenge.

In 2010, a U.S. interagency delegation engaged in formal consultations under Chapter 16 of the CAFTA-DR Free Trade Agreement with the Government of Guatemala regarding its apparent systematic failure to investigate alleged labor law violations, to take enforcement action once labor law violations have been identified, and to enforce labor court orders in cases of labor violations. An arbitral panel was established to consider whether Guatemala is conforming to its CAFTA-DR obligations to effectively enforce its labor laws. In April 2013, after lengthy negotiations, the United States and Guatemala agreed to an ambitious and comprehensive labor Enforcement Plan that includes significant, concrete actions that the Guatemalan government agreed to implement within specified time frames to improve enforcement of labor laws. The arbitral panel was suspended during the Enforcement Plan's implementation period. As of April 2014, the United States and Guatemala agreed to extend for four months the Enforcement Plan's deadline for Guatemala to fully implement it. The rate of unionization in Guatemala is very low.

17. Foreign Trade Zones/Free Ports

Decree 65-89, Guatemala's Free Trade Zones Law, permits the establishment of free trade zones (FTZs) in any region of the country. Developers of private FTZs must obtain authorization from the Ministry of Economy to install and manage a FTZ. Businesses operating within authorized FTZs also require authorization from the Ministry of Economy. Investment incentives are specified in law and are available, to both foreign and Guatemalan investors without discrimination. As of December 2013, 16 of 23 authorized FTZs were operational. Commercial activities and apparel assembly operations are the main beneficiaries of Guatemala's free trade and "maquiladora" (in-bond assembly) laws.

18. Foreign Direct Investment and Foreign Portfolio Investment Statistics

Guatemala has the largest economy in the Central American region, and levels of investment have continued to increase during the last years. According to preliminary data from the Guatemalan Central Bank (Banguat), the stock of foreign direct investment (FDI) was USD 10.2 billion in 2013, a 14.9% increase in relation to 2012. Stock of foreign portfolio investment totaled USD 2.2 billion in 2013, with about 84% invested in government bonds.

According to data from the Coordinated Investment Survey for 2011 published by the IMF, about one fourth of FDI in Guatemala comes from the United States. Other important sources of FDI are Mexico and Colombia (please see Table 3 on sources and destinations of FDI below). Preliminary data from Banguat also shows that the flow of FDI totaled USD 1.3 billion in 2013 (2.4% of GDP), a 5.2% increase compared to USD 1.2 billion (2.47% of GDP) received in 2012. There is no official data available on sources and destinations of the stock of FDI or foreign portfolio investment.

TABLE 2: Key Macroeconomic data, U.S. FDI in Guatemala

	Local Statistical source*		USG or international statistical source		USG or international Source of data
Economic Data	Year	Amount	Year	Amount	
Guatemala Gross Domestic Product (GDP) (*Millions U.S. Dollars)*	2013 2012	53,796 50,388	2013 2012	N/A 50,230	http://www.worldbank.org/en/country
GDP growth rate	2013	3.7%			
Inflation rate	2013	4.39%			
Foreign Direct Investment	Local Statistical source*		USG or international statistical source		USG or international Source of data
U.S. FDI in Guatemala(*Millions U.S. Dollars, stock positions)*	N/A	N/A	2012	1,078	(BEA) click selections to reach. Bureau of Economic Analysis Balance of Payments and Direct Investment Position Data

					U.S. Direct Investment Position Abroad on a Historical-Cost Basis By Country only (all countries) (Millions of Dollars)
Guatemala's FDI in the United States (*Millions U.S. Dollars, stock positions)*	N/A	N/A	2012	-28.0	(BEA) click selections to reach Balance of Payments and Direct Investment Position Data Foreign Direct Investment Position in the United States on a Historical-Cost Basis By Country only (all countries) (Millions of Dollars)
Total inbound stock of FDI as % Guatemala's GDP	2013	19%			

* Bank of Guatemala http://www.banguat.gob.gt

TABLE 3: Sources and Destination of FDI

Direct Investment from/in Counterpart Economy Data					
From Top Five Sources/To Top Five Destinations *(US Dollars, Millions)*					
Inward Direct Investment			**Outward Direct Investment**		
Total Inward	7,751	100%	Total Outward	399	100%
United States	1,998	26%	Panama	105	26%
Mexico	1,285	17%	Bahamas, The	104	26%
Colombia	686	9%	Barbados	101	25%
United Kingdom	533	7%	Puerto Rico	29	7%
Switzerland	439	6%			
"0" reflects amounts rounded to +/- USD 500,000.					

TABLE 4: Sources of Portfolio Investment

Guatemala is a non-reporting country. No data is available.

Section 5 - Government

Chiefs of State and Cabinet Members:

For the current list of Chief of State and Cabinet Members, please access the following - Central Intelligence Agency online directory of Chiefs of State and Cabinet Members of Foreign Governments

Legal system:

Civil law system; judicial review of legislative acts

International organization participation:

BCIE, CACM, CD, CELAC, EITI (candidate country), FAO, G-24, G-77, IADB, IAEA, IBRD, ICAO, ICC (national committees), ICRM, IDA, IFAD, IFC, IFRCS, IHO, ILO, IMF, IMO, Interpol, IOC, IOM, IPU, ISO (correspondent), ITSO, ITU, ITUC (NGOs), LAES, LAIA (observer), MIGA, MINUSTAH, MONUSCO, NAM, OAS, OPANAL, OPCW, PCA, Petrocaribe, SICA, UN, UNAMID, UNCTAD, UNESCO, UNIDO, UNIFIL, Union Latina, UNISFA, UNITAR, UNMISS, UNOCI, UNSC (temporary), UNWTO, UPU, WCO, WFTU (NGOs), WHO, WIPO, WMO, WTO

Section 6 - Tax

Exchange control

There are no exchange controls in Guatemala.

Treaty and non-treaty withholding tax rates

Guatemala has signed **12 agreements** (**0 DTC** and **12 TIEA** agreements) providing for the exchange of information.

Jurisdiction	Type of EOI Arrangement	Date Signed	Date entered into Force	Meets standard	Contains paras 4 and 5	
Australia	TIEA	26 Sep 2013	not yet in force	Unreviewed	Yes	
Costa Rica	TIEA	25 Apr 2006	11 Feb 2011	No	No	
Denmark	TIEA	15 May 2012	not yet in force	No	Yes	
El Salvador	TIEA	25 Apr 2006	not yet in force	No	No	
Faroe Islands	TIEA	15 May 2012	not yet in force	No	Yes	
Finland	TIEA	15 May 2012	not yet in force	No	Yes	
Greenland	TIEA	15 May 2012	not yet in force	No	Yes	
Honduras	TIEA	25 Apr 2006	20 Aug 2009	No	No	
Iceland	TIEA	15 May 2012	not yet in force	No	Yes	
Nicaragua	TIEA	25 Apr 2006	not yet in force	No	No	
Norway	TIEA	15 May 2012	not yet in force	No	Yes	
Sweden	TIEA	15 May 2012	not yet in force	No	Yes	

Methodology and Sources

Section 1 - General Background Report and Map

(Source: CIA World Factbook)

Section 2 - Anti – Money Laundering / Terrorist Financing

	Lower Risk	**Medium Risk**	**Higher Risk**
FATF List of Countries identified with strategic AML deficiencies	Not Listed	AML Deficient but Committed	High Risk
Compliance with FATF 40 + 9 recommendations	>69% Compliant or Fully Compliant	35 – 69% Compliant or Fully Compliant	<35% Compliant or Fully Compliant
US Dept of State Money Laundering assessment (INCSR)	Monitored	Concern	Primary Concern
INCSR - Weakness in Government Legislation	<2	2-4	5-20
US Sec of State supporter of / Safe Haven for International Terrorism	No	Safe Haven for Terrorism	State Supporter of Terrorism
EU White list equivalent jurisdictions	Yes		No
International Sanctions UN Sanctions / US Sanctions / EU Sanctions	None	Arab League / Other	UN , EU or US
Corruption Index (Transparency International) Control of corruption (WGI) Global Advice Network	>69%	35 – 69%	<35%
World government Indicators (Average)	>69%	35 – 69%	<35%
Failed States Index (Average)	>69%	35 – 69%	<35%
Offshore Finance Centre	No		Yes

Section 3 - Economy

General Information on the current economic climate in the country and information on imports, exports, main industries and trading partners.

(Source: CIA World Factbook)

Section 4 - Foreign Investment

Information on the openness of foreign investment into the country and the foreign investment markets.

(Source: US State Department)

Section 5 - Government

Names of Government Ministers and general information on political matters.

(Source: CIA World Factbook / https://www.cia.gov/library/publications/world-leaders-1/index.html)

Section 6 - Tax

Information on Tax Information Exchange Agreements entered into, Double Tax Agreements and Exchange Controls.

(Sources: OECD Global Forum on Transparency and Exchange of Information for Tax Purposes PKF International)

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