Guatemala

RISK & COMPLIANCE REPORT

DATE: March 2018

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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 is categorised by the US State Department as a Country/Jurisdiction of Primary Concern in respect of Money Laundering and Financial Crimes.

OVERVIEW

Guatemala 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 arms trafficking is increasingly linked to the narcotics trade.

Guatemala continues to make incremental progress in its ability to investigate and prosecute money laundering and other financial crimes. However, vulnerabilities remain due to a lack of complete coordination by the Public Ministry (PM) prosecutors and the tendency of authorities not to conduct financial investigations that could lead to money laundering charges when investigating extortion, corruption, or trafficking offenses.

Guatemala needs to take additional steps to improve the effectiveness of its AML regime, including improving communications and coordination among the agencies with AML responsibilities, developing capacity and coordination within the PM, and instituting greater autonomy for the National Secretariat for Administration of Forfeited Property (SENABED), the entity in charge of administering seized assets.

To improve efficiencies and maximize the effectiveness of a solid legal framework to address AML issues, Guatemala should continue to use vetting and corruption investigations to weed out those elements that hinder trust within and among relevant agencies.

VULNERABILITIES AND EXPECTED TYPOLOGIES

Drug trafficking is a major source of illicit funds. Other sources include corruption, extortion, human trafficking, commerce of other illicit goods, and tax evasion. Money is laundered primarily through real estate, ranching, and the gaming industry. It is also laundered through a series of small transactions below the U.S. $10,000 reporting requirement, either in small banks along the Guatemala-Mexico border, or by travelers carrying cash to other countries. Guatemala does not currently prohibit structuring of deposits to avoid reporting requirements.

While authorities are increasingly effective in conducting investigations of financial crimes, Guatemalan investigations still face political headwinds with rampant corruption at all levels of government. Improved transparency, increased professionalism, and ongoing efforts to investigate and eliminate corruption are making a difference.

There is a category of "offshore" banks in Guatemala in which the customers' money is legally considered to be deposited in the foreign country where the bank is headquartered. These "offshore" banks are subject to the same AML regulations as local banks.

Guatemala has 14 active FTZs. FTZs are mainly used to import duty-free goods utilized in the manufacturing of products or provision of services for exportation, and there are no known cases or allegations that indicate FTZs are hubs of money laundering or drug trafficking activity.

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. As a result of this agreement, Guatemalan customs officials are not requiring travelers crossing their land border to report cash in amounts greater than U.S. $10,000, as required by law.

KEY AML LAWS AND REGULATIONS

Guatemala has a solid AML legal framework. However, the KYC and STR regulations are ineffective as they lack an emphasis on coordination and cooperation by relevant government agencies.

Guatemala and the United States do not have a MLAT. Other mechanisms such as multilateral treaties are used to seek and provide mutual legal assistance.

Guatemala is a member of GAFILAT, a FATF-style regional body.

AML DEFICIENCIES

While Guatemala does exercise enhanced due diligence for PEPs, there are other deficiencies, including a lack of regulatory coverage of DNFBPs, such as notaries, attorneys, casinos, and video lotteries. In particular, casinos are an area in which stronger legislation is necessary. Casinos are currently unregulated and a number of casinos and games of chance operate, both onshore and offshore.

Guatemala needs to deal with several coordination issues, including improving communications between the Special Verification Agency (IVE), Guatemala's FIU, and the PM; developing more internal capacity for financial crime investigations by the PM; increasing coordination among different financial supervision entities, including the IVE and other parts of the Superintendent of Banking; institutionalizing coordination between the PM and the SENABED; and increasing the autonomy of the SENABED. Additionally, chronic understaffing at relevant agencies must be addressed.

ENFORCEMENT/IMPLEMENTATION ISSUES AND COMMENTS

Although the strengths of the IVE and its ability to investigate money laundering are noted and the legal framework is generally adequate, certain procedural challenges limit the efficiency of the IVE and the PM, including a shortage of professional staff to adequately address the demand for investigation and analysis. There is also a lack of collaboration and cooperation among offices in the PM, at times even within offices, resulting from a lack of trust and rampant societal corruption. Because of this lack of cooperation, there is no effort to integrate prosecutions of related crimes for a single subject.

In the nine month period ending September 30, 2017, the PM office in charge of money laundering prosecutions received 234 accusations, filed charges in 133 cases, and obtained 72 convictions.

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

US State Dept Narcotics Report 2017 (introduction):

Introduction

Guatemala is a major transit country for illegal drugs. An estimated 1,000 metric tons (MT) of cocaine are smuggled through the country every year, the great majority of it destined for the U.S. market. Criminal organizations exploit Guatemala's porous borders and overburdened law enforcement agencies to traffic narcotics, cultivate marijuana and opium poppy, produce heroin and methamphetamine, and smuggle precursor chemicals. The virtual absence of a permanent law enforcement presence in many areas of the country enables other forms of transnational crime in addition to drug trafficking, including alien smuggling and trafficking in persons, weapons, counterfeit goods and other contraband.

The corruption scandals that led to the resignations, and subsequent incarcerations, of former President Otto Perez Molina and former Vice President Roxanna Baldetti in 2015 continue to reverberate. Related investigations led to leadership changes within most law enforcement agencies and government ministries in 2016. Key Guatemalan officials are now more established and have demonstrated political will to counter drug trafficking, corruption, and violence. Guatemala achieved some notable successes in 2016, including record drug seizures, the capture of high-profile criminals, improved interagency coordination, and enhanced regional cooperation. However, Guatemala's fight against criminal organizations continues to be hindered by endemic corruption, weak public institutions, and inadequate budget resources.

Guatemala is becoming increasingly aware of domestic drug consumption problems, especially among adolescents. Authorities are attempting to respond to this emerging trend through expanded drug prevention and treatment programs, but are impeded by a lack of budget support, personnel, and technical expertise.

Conclusion

The United States works closely with Guatemalan authorities to improve the government's capacity to provide security and justice to its citizens. In 2016, Guatemala made notable progress in the fight against criminal organizations to include enhanced institutional capacity, improved interagency and regional cooperation, and record interdiction and enforcement gains. However, significant challenges remain. Corruption is rampant, public confidence in government institutions remains low, violent crime persists, and limited budget resources hinder the government's ability to address the challenges associated with drug trafficking. Despite the country's many successes in 2016, the Guatemalan government will not succeed in building sustainable counternarcotics mechanisms until it fully implements its laws, reforms law enforcement and judicial institutions, accelerates judicial processes, improves interagency cooperation, and provides adequate financial support to relevant agencies and government ministries.

US State Dept Trafficking in Persons Report 2016 (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 and in Mexico, the United States, Belize, and other foreign countries. Foreign child sex tourists—predominantly from Canada, the United States, and Western Europe—and Guatemalan men exploit child sex trafficking victims. Women and children from other Latin American countries and the United States 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, and in the garment industry, small businesses, and similar sectors in Mexico, the United States, and other countries. Domestic servitude in Guatemala sometimes occurs through forced marriages. 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 with Mexico. Child victims' family members often facilitate their exploitation. Criminal organizations, including gangs, exploit girls in sex trafficking and coerce young males in urban areas to sell or transport drugs or commit extortion. Some Latin American migrants transiting Guatemala en route to Mexico and the United States are subjected to sex trafficking or forced labor in Mexico, the United States, or Guatemala.

The Government of Guatemala does not fully meet the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. The government increased trafficking-related investigations, prosecutions, and convictions, and obtained one conviction for labor trafficking, compared with four in 2014. The Secretariat against Sexual Violence, Exploitation, and Trafficking in Persons (SVET) sustained government coordination on anti-trafficking initiatives, including supporting department-level networks and concrete action plans to address prevention and emergency funding for shelters, in spite of government-wide funding cuts, but the government did not allocate a dedicated budget to protect or provide specialized services for trafficking victims. Although the government slightly increased overall funding for services to child sex trafficking victims and assisted a greater overall number of victims of trafficking compared to 2014, officials reduced funding for three shelters and most identified victims did not have access to specialized services. Adult shelters restricted victims' freedom of movement, and specialized services for male victims and labor trafficking victims remained limited. Officials advanced a high-profile trafficking in persons case involving the son of a former magistrate, which has remained in the pre-trial stage for several years; an appeals court overturned the acquittal of a former city councilman complicit in trafficking by purchasing sex acts from a child; and the government expedited the case of two judges who were accused of wrongfully absolving an influential official accused of sex trafficking. The government, however, did not criminally convict any officials for complicity in trafficking.

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

Corruption represents a major obstacle for businesses operating or planning to invest in Guatemala. Businesses must contend with high risks in almost all sectors. The Penal Code (in Spanish) criminalizes passive and active bribery, the bribery of foreign officials, embezzlement and extortion. The government generally implements the relevant laws effectively. However, government officials engage in corruption with impunity, and recent years have witnessed several corruption cases, the biggest of which ended in the impeachment and imprisonment of former President Otto Pérez Molina. Facilitation payments are prohibited by law. Bribery and gifts are a widespread practice in Guatemala. **Information provided by GAN Integrity.**

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 half the average for Latin America and the Caribbean. The agricultural sector accounts for 13.6% of GDP and 31% of the labour force; key agricultural exports include sugar, coffee, bananas, and vegetables. Guatemala is the top remittance recipient in Central America as a result of Guatemala's large expatriate community in the US. These inflows are a primary source of foreign income, equivalent to over one-half of the country's exports or one-tenth of its GDP.

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 23% of the population lives in extreme poverty. Poverty among indigenous groups, which make up more than 40% of the population, averages 79%, with 39.8% 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 facing growing fiscal pressures exacerbated by multiple corruption scandals in 2015 that led to the resignation of the president, vice president, and numerous high-level economic officials.

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:

sugar, coffee, petroleum, apparel, bananas, fruits and vegetables, cardamom, manufacturing products, precious stones and metals, electricity

Exports - partners:

US 34.9%, El Salvador 8.4%, Honduras 7.3%, Nicaragua 5%, Canada 4.6%, Mexico 4.3%, Costa Rica 4.1% (2015)

Imports - commodities:

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

Imports - partners:

US 38.3%, China 13.4%, Mexico 11.8%, El Salvador 4.9% (2015)

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

Guatemala has the largest economy in Central America, with a USD 63.9 billion gross domestic product (GDP) in 2015, and an estimated 4.1 percent growth rate in 2015. Remittances, mostly from the United States, increased by 13.4 percent in 2015 and were equivalent to 9.8 percent of GDP. The United States is Guatemala's most important economic partner. The Guatemalan government (GoG) continues to enhance competitiveness, promote investment opportunities, and work on legislative reforms aimed at supporting economic growth. More than 200 U.S. and other foreign firms have active investments in Guatemala, benefitting from the U.S. Dominican Republic-Central America Free Trade Agreement (CAFTA-DR). Foreign direct investment (FDI) stock was USD 13.184 billion in 2015, a 10 percent increase in relation to 2014. Some of the activities that attracted most of the FDI flows in the last three years were electricity, agriculture, mining, commerce, and manufacturing.

Despite positive steps to improve Guatemala's investment climate, international companies choosing to invest in Guatemala face significant challenges. Complex and confusing laws and regulations, inconsistent judicial decisions, bureaucratic impediments, and corruption continue to constitute practical barriers to investment. Under CAFTA-DR obligations, the United States has raised concerns with the GoG regarding its enforcement of both its labor and environmental laws.

Since 2006, the UN-sponsored International Commission against Impunity in Guatemala (CICIG) has undertaken numerous high-profile official corruption investigations, leading to significant indictments. CICIG has gained private sector praise and the endorsement of the private sector for a rash of high-profile investigations uncovering official corruption in 2015, particularly a case revealing a customs corruption scheme, which led to the resignations of the president and vice president.

Guatemala held national elections in 2015 amid 19 weeks of anti-corruption protests that culminated in the establishment of an interim government in September. President Jimmy Morales (National Convergence Front, FCN) took office January 14, 2016, along with a new Congress of mostly freshman members and locally elected officials. These newly elected officials enter a changed geopolitical landscape in Guatemala, with a lower tolerance for corruption and lingering citizen demands for widespread government reform and improved efficiency. The presidents of El Salvador, Guatemala, and Honduras, and the Vice President of the United States, Joe Biden agreed to specific commitments in a joint statement to the support of the Alliance for Prosperity on February 24, 2016, including measures to ensure more accountable, transparent, and effective public institutions.

Table 1

Measure	Year	Index or Rank	Website Address
TI Corruption Perceptions index	2015	123 of 168	http://www.transparency.org/cpi2015#results-table
World Bank's Doing Business Report "Ease of Doing Business"	2016	81 of 189	doingbusiness.org/rankings

Global Innovation Index	2015	101 of 141	globalinnovationindex.org/content/page/data-analysis
U.S. FDI in partner country ($M USD, stock positions)	2014	USD 1,158	http://bea.gov/international/direct_investment_multinational_companies_comprehensive_data.htm
World Bank GNI per capita	2014	USD 3,430	data.worldbank.org/indicator/NY.GNP.PCAP.CD

Millennium Challenge Corporation Country Scorecard

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 per capita gross national income (GNI) of $4,125 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/pages/docs/doc/report-guide-to-the-indicators-and-the-selection-process-fy-2015.

1. Openness To, and Restrictions Upon, Foreign Investment

Attitude toward Foreign Direct Investment

The GoG continues to promote investment opportunities and work on reforms to enhance competitiveness and the business environment. The 2016 Heritage Economic Freedom Index gave Guatemala a score of 61.8 out of 100, up 1.4 points from 2015, reflecting improvements in trade freedom, monetary freedom, and business freedom. Property rights, corruption, and labor freedom were noted as areas of concern in the 2016 Economic Freedom Index. Guatemala scored 28 points out of 100 on Transparency International's 2015 Corruption Perception Index, ranking it 123 out of 168 countries. The World Bank's Doing Business 2016 ranked Guatemala 81 out of 189 countries, same position observed in the 2015 report. The two areas where the country improved the most were: paying taxes and trading across borders. Areas where challenges remain and where reforms are most needed are protecting minority investors, enforcing contracts, and resolving insolvency. Guatemala remained in the same spot in the 2015-2016 World Economic Forum's Global Competitiveness Index (78 out of 140). Guatemala made the most improvements in financial market development, business sophistication, and goods market efficiency, but ranked 138 in organized crime and business costs associated with crime and violence.

Other Investment Policy Reviews

Guatemala has been a World Trade Organization (WTO) member since 1995. The GoG had their last WTO trade policy review (TRP) in 2009. In 2011, the United Nations Conference on Trade and Development (UNCTAD) conducted an investment policy review (IPR) on Guatemala. The WTO TPR noted that Guatemala lacked a general competition law and that increasing the level of competition was one of the most important pending tasks for the country's government policy. The UNCTAD IPR recommended to strengthen the public sector's institutional capacity and also highlighted that adopting a competition law and policy should be a priority of Guatemala's development agenda. Guatemala has not approved a competition law as of March 2016, but the GoG agreed to approve a competition law by November 2016 as part of its commitments under the Association Agreement with the European Union. Other important recommendations from the UNCTAD IPR were to further explore alternative dispute resolution mechanisms and the establishment of commercial and land courts.

Laws/Regulations on Foreign Direct Investment

More than 200 U.S. and hundreds of other foreign firms have active investments in Guatemala. The U.S. Dominican Republic-Central America Free Trade Agreement (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. Guatemala passed a foreign investment law in 1998 to streamline and facilitate foreign investment. The GoG continues to work on legislative reforms aimed at supporting economic growth and closing regulatory loopholes that become barriers to investment. As part of the CAFTA-DR implementation process, the Guatemalan Congress approved in May 2006 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 GoG's adherence to its CAFTA-DR obligations with respect to the effective enforcement of both its labor and 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. A hearing was held in June 2015 and a decision is expected in July 2016. Regarding the environmental case, the CAFTA-DR Secretariat for Environmental Matters was required to suspend its investigation in 2012 when the GoG 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.

Complex and confusing laws and regulations, inconsistent judicial decisions, bureaucratic impediments and corruption continue to constitute practical barriers to investment. According to the World Bank's Doing Business Report for 2015 and 2016, Guatemala has made paying taxes easier and less costly by improving the electronic filing and paying system (Declaraguate) and by lowering the corporate income tax rate. The GoG has developed one website that is useful to help navigate the laws, procedures and registration requirements for foreign investors: http://asisehace.gt/, which provides detailed information on laws and regulations and administrative procedures applicable to investment.

Business Registration

The GoG has a business registration website https://minegocio.gt/, which facilitates on-line registration procedures for two types of new businesses. Foreign companies that are incorporated locally are able to use the online business registration, but the system is not yet available to other foreign companies. According to an assessment from the Global Enterprise Registration (GER) on the GoG's business registration website, more than 50% of the mandatory registrations can be requested online simultaneously and at least one fee can be paid online. A company is required to register at a minimum with the business registry, the tax administration authority, the social security institute, and the labor ministry.

Guatemala's investment promotion agency Invest in Guatemala provides support to potential foreign investors by offering information, assessment and personalized assistance, including coordination of country visits and contact referrals. Services are available to all investors without discrimination.

According to Guatemala's National Institute of Statistics, 260,800 companies from the micro, small and medium-size sector (MSME) were active in Guatemala as of January 2016. The GoG defines MSMEs based on number of employees and annual sales. Micro enterprises are defined as production units carrying out transformation, services, or commercial activities with a maximum of 10 employees and annual sales equivalent to a maximum of 190 monthly minimum salaries (about USD 62,016). Small enterprises are defined as those businesses with a maximum of 80 employees and annual sales equivalent to up to 3,700 monthly minimum wages (about USD 1.2 million) and medium sized-enterprises are those businesses with up to 200 employees and annual sales equivalent to up to 15,420 monthly minimum wages (approximately USD 5.03 million). The Vice ministry of Economy for the Development of MSMEs has programs to facilitate access to financing and entrepreneurial development services intended to increase productivity and competitiveness of the sector.

Industrial Promotion

Guatemala's main incentive programs are provided to the apparel and textile sector and to business process outsourcing (BPO) operations through the Law for the Development of Export Activities and Drawback and the Free Trade Zones Law, and their amendments approved through the Law for Conservation of Employment. Guatemala's investment promotion agency Invest in Guatemala promotes sectors such as BPO, light manufacturing, forestry, apparel and textile, food, infrastructure, mining, energy and petroleum, and tourism. Information for those programs is disseminated through business chambers, Guatemala's Foreign Ministry, and Guatemalan embassies abroad, which provide general information to potential investors and refer them to Invest in Guatemala for additional information and support.

Mining has historically been a sensitive social conflict issue in Guatemala, and operations in Guatemala have been subject to protests. Sub-surface minerals and petroleum are the property of the State, and the Ministry of Energy and Mines (MEM) is in charge of approving mining licenses. 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. 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 several years, a number of U.S. companies have had significant investments in the mining and petroleum sectors put at risk, which required the approval of contracts or exploitation licenses by GoG regulatory bodies, in order to begin operations or to realize a return on their investments. Examples include a contract for one petroleum company that was signed in November 2014 after 28 revisions and 17 months of delays. Another investor received its approved license in April 2013, after more than a year of delays by MEM. A contract for another such company was approved in August 2013, after about two years of delays, despite having satisfied all legal requirements to move forward. The future of these investments is not guaranteed.

Limits on Foreign Control and Right to Private Ownership and Establishment

The right to hold private property and to engage in business activity is recognized in 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 in this section. The Foreign Investment Law specifically notes that foreign investors enjoy the same rights of use, benefits, and ownership of property as afforded Guatemalans. Foreigners are prohibited, however, from owning land immediately adjacent to rivers, oceans, and international borders.

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 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.

Privatization Program

The GoG privatized a number of state-owned assets in industries and utilities in the late 1990s including power distribution, telephone services, and grain storage. Guatemala does not currently have a privatization program.

Screening of FDI

All firms are subject to certain basic requirements; foreign firms are subject to additional requirements. Domestic and foreign firms must publish their intent to conduct business, agree to Guatemalan legal jurisdiction and register with the Ministry of Economy (MINECO) in order to incorporate formally in Guatemala. In addition to this, foreign firms are required to demonstrate solvency, deposit operating capital of GTQ 5,000 (about USD 654) in a local bank, establish a bond in favor of third parties for an amount of not less than USD 50,000, provide legalized financial statements, appoint a local representative, and contractually agree to fulfill any pending legal obligation before permanently closing operations in Guatemala.

Competition Law

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

2. Conversion and Transfer Policies

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 exchange rate as reference, 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.

Remittance Policies

There are no time limitations on remitting different types of investment returns. Guatemala became a member of the Financial Action Task Force of Latin America (GAFILAT), in July 2013. It became a member of the Caribbean Financial Action Task Force (CFATF) in 2002.

3. Expropriation and Compensation

Guatemala's Constitution prohibits expropriation, except in cases of eminent domain, national interest, or social benefit. The Foreign Investment Law requires proper 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 GoG maintains the right to terminate a contract at any time during the life of the contract, if it determines the contract is contrary to the public welfare. It has rarely exercised this right and can only do so after providing the guarantees of due process.

In June 2007, a U.S. company operating in Guatemala filed a claim under the investment chapter of CAFTA-DR against the GoG with the International Centre for Settlement of Investment Disputes (ICSID Convention). The claimant alleged the GoG indirectly expropriated the company's assets through a breach of contract. The U.S. company requested USD 65 million in compensation and damages from the GoG. The ICSID court issued its ruling on this case in June 2012 and stated that the GoG had in fact breached the minimum standard of treatment under Article 10.5 of CAFTA-DR and required the GoG to pay an award of USD 14.6 million. The GoG paid this award in November 2013.

4. Dispute Settlement

Legal System, Specialized Courts, Judicial Independence, Judgments of Foreign Courts

Guatemala follows the civil law system. Codified Judicial Branch Law stipulates that jurisprudence or case law is also a source of law. The right to own private property is recognized within the Guatemalan Constitution. The law requires that all real property transactions must have their deeds registered in the local property registry to make them enforceable. Guatemala has a written and consistently applied Commercial Code. Contracts in Guatemala are legally enforced when the owner of a property right that has been infringed upon files a lawsuit to enforce recognition of the infringed right or to receive compensation for the damage caused. The civil law system, allows for civil cases to be brought before, after, or concurrently with criminal claims. Guatemala does not have specialized courts to hear intellectual property rights (IPR) claims, but it does have a dedicated IPR prosecutor and specialized courts to hear labor cases.

Bankruptcy

Guatemala does not have an independent bankruptcy law, but the Code on Civil and Mercantile Legal Proceedings 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. According to the World Bank's 2016 Doing Business Report, one of the areas where reforms are most needed is the area of resolving insolvency where Guatemala ranked 153 out of 189 countries.

Investment Disputes

Over the past nine years, two investment disputes in 2007 and 2010 involving U.S. businesses were filed under the investment chapter of CAFTA-DR against the GoG with the ICSID. The status of both cases is described under section 4.4 of this report (International Arbitration).

International Arbitration

CAFTA-DR incorporated dispute resolution mechanisms for investors. The first claim under the agreement was filed in June 2007. In October 2010, a U.S. company operating in Guatemala filed the second claim against the GoG with the ICSID. The second claim seeks to resolve a dispute against the GoG regarding the regulation of electricity rates. In 2013, ICSID's arbitral tribunal issued its judgment and awarded the U.S. company over USD 21 million in damages and USD 7.5 million to cover legal expenses. In 2014, the GoG filed an appeal to have the 2013 award annulled. On the same date, the U.S company also filed for a partial annulment of the award. The ICSID ad-hoc committee held a hearing on annulment in October 2015. The ruling from the ad-hoc committee on both annulment proceedings remains pending as of March 2016.

Guatemala's Foreign Investment Law also allows alternative dispute mechanisms, if agreed to by the parties. Guatemala's Arbitration Law of 1995 uses the U.N. Commission on International Trade Law (UNCITRAL) Model Law as the bases for their rules on international arbitration. The subsequent enforcement of arbitral awards is recognized under the convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958 New York Convention), of which Guatemala is a signatory.

ICSID Convention and New York Convention

Guatemala is a signatory to convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958 New York Convention), the Inter-American Convention on International Commercial Arbitration (Panama Convention), and a member state to the International Center for Settlement of Investment Disputes (ICSID Convention).

Duration of Dispute Resolution – Local Courts

Resolution of business and investment disputes through Guatemala's judicial system is time-consuming, and can take years to resolve. Alleged corruption, intimidation, and ineffectiveness in the judiciary have contributed to inefficiency 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 Maquilas, is aimed mainly at the apparel and textile sector and at exporters of services such as call centers and BPO companies. Investors in these two sectors are granted a 10-year exemption from both income taxes and the Solidarity Tax, Guatemala's alternative minimum tax. Additional incentives include an exemption from duties and value-added taxes (VAT) 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. The Guatemalan Congress approved the Law for Conservation of Employment (Decree 19-2016) in February 2016, amending Guatemala's two major incentive programs to replace tax incentives related to exports that Guatemala dismantled on December 31, 2015, per WTO requirements. The income tax exemption will apply exclusively to apparel and textile companies as well as to exporters of services, such as call centers and BPO companies.

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 and a new incentive program (Probosque) was approved by Congress to start activities in 2017.

Research and Development

Information not available.

Performance Requirements

Guatemala does not impose performance, purchase, or export requirements, other than those normally associated with free trade zones and duty drawback programs. The Labor Code requires that at least 90 percent of employees must be Guatemalan, but the requirement does not apply to high-level positions such as managers and directors. Companies are not required to include local content in production.

Data Storage

Guatemalan companies do not require foreign IT providers to turn over source code and/or provide access to surveillance. Some industries, such as the banking and financial sector, can request that their institution or a source code facilities management company has a copy of the source code in case of potential problems with the IT provider. This requirement is usually specified on the software license contract.

6. Protection of Property Rights

Real Property

Guatemala follows the real property registry system. Defects in the titles and ownership gaps in the public record can lead to conflicting claims of land ownership. The government has stepped up efforts to enforce property rights by helping to provide a clear property title. Nevertheless, when rightful ownership is in dispute, it can be difficult to obtain and subsequently 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. Mortgages and liens are recorded at the real estate property registry. According to the 2016 World Bank's Doing Business Report, registering property in Guatemala takes 24 days, and it costs 3.7

percent of the property value. In 2016, Guatemala ranked 75 out of 189 countries in the category of Registering Property.

The legal system is readily accessible to foreigners. Foreign investors are advised to seek reliable local counsel early in the investment process.

Intellectual Property Rights

Guatemala belongs to the WTO since 1995 and to the World Intellectual Property Organization (WIPO) since 1983. It is also a signatory to the Paris Convention, Berne 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. The Guatemalan Congress approved the Trademark Law Treaty in February 2016.

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.

Guatemala has a sound IPR legal framework. The Guatemalan Congress passed an industrial property law in August 2000, bringing 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 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. It 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. Guatemalan administrative authorities issued rulings on applications to register GIs that appear sound and well-reasoned for compound GI names, but U.S. exporters are concerned that 2014 rulings on single-name GIs will effectively prohibit new U.S. exporters to the Guatemalan market from using what appear to be generic or common names when identifying their goods in Guatemala’s market.

Enforcement of IPR laws 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 2015 Special 301 Report noted ineffective enforcement activities due to lack of resources for IPR prosecution, trademark squatting, and the GoG’s use of unlicensed software as significant areas of concern. The IPR prosecutor's office tracks seizures of counterfeit goods as part of its prosecution work and reports to the judge in charge of a case the type and amounts of goods that have been seized. Guatemalan customs officers do not have ex-officio authority to seize and destroy counterfeit goods. Right holders or their representatives are required to confirm the authenticity of goods before seizures and to draft a declaration. Counterfeit goods seized during working hours are sent to judicial storage spaces paid by the government, but counterfeit goods seized outside of working hours are sent to a private storage spaces paid by the right holders.

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/.

Resources for Rights Holders

Contact at Mission:

Natasha Basley Economic Officer
(502) 2326-4636
BasleyNM@state.gov

Country Resources:

Contact information for the American Chamber of Commerce in Guatemala can be found at: http://amchamguate.com/amcham-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.

7. 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 that are more familiar with these challenges.

Public participation in the promulgation of regulations is rare. In some cases, 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.

The Guatemalan Congress publishes all draft bills on its official website, but these are not made available for public comment. 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, http://asisehace.gt/. Foreign and national investors can 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 grounds justifying the procedures.

8. Efficient Capital Markets and Portfolio Investment

Guatemala's capital markets are weak and inefficient because they lack a securities regulator. The local stock 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 Banguat and the Superintendence of Banks (SIB). Notwithstanding the lack of a modern capital markets law, the government debt market has continued to develop. Domestic treasury bonds now represent 52.3 percent of total public debt.

Guatemala lacks a market for publicly-traded equities, the absence of which raises the cost of capital and complicates mergers and acquisitions. As of December 2015, borrowers faced a weighted average annual interest rate of 16 percent, with some banks charging over 30 percent on consumer or micro-credit loans. Foreigners rarely rely on the local credit market to finance investments.

Money and Banking System, Hostile Takeovers

Overall, the banking system remains stable. According to information from the SIB, Guatemala's 17 commercial banks had an estimated USD 34.6 billion in assets among them in 2015. The five largest banks control about 82 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 three exchange houses.

In April 2002, the Guatemalan Congress passed a package of financial sector regulatory reforms that increased the regulatory and supervisory authority of the 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 consolidations and restructurings. 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 17 in 2015.

Guatemalan banking and supervisory authorities and the Guatemalan Congress have been actively working on new laws in the business and financial sectors. In August 2012, the Guatemalan Congress approved reforms to the Banking and Financial Groups Law and to the Central Bank Organic Law that strengthen supervision and prudential regulation of the financial sector and resolution mechanisms for failed or failing banks. 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. Groups of affiliated credit card, insurance, financial, 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.

9. Competition from State-Owned Enterprises

With the exception of the National Electricity Institute (INDE) and two state-owned ports, Guatemala does not have significant SOEs in other industries. INDE is a state-owned electricity company responsible for expanding the provision of electricity to rural communities. INDE generates about 19 percent of total 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. Its 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 GoG currently owns 16 percent of the shares of Rural Development Bank (BanRural), the second largest bank in Guatemala, and it is allotted 3 out of 10 seats on its board of directors. BanRural is a mixed capital company and operates under the same laws and regulations as other commercial banks. The GoG 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. Guatemala is not a party to the WTO Agreement on Government Procurement.

OECD Guidelines on Corporate Governance of SOEs

Guatemala has signed on to the OECD guidelines, but they have not taken the necessary steps to adhere to the guidelines regarding Corporate Governance of State Owned Enterprises (SOEs). The Government does not have a centralized ownership entity that exercises ownership rights for each of the SOEs.

Sovereign Wealth Funds

Information not available

10. Responsible Business Conduct

There is a general awareness of expectations of or standards for responsible business conduct (RBC) on the part of producers and service providers, as well as Guatemalan business chambers. A local organization called the Center for Socially Responsible Business Action (CentraRSE) promotes, advocates, and monitors RBC in Guatemala. They operate freely with multiple partner organizations, ranging from private sector to United Nations entities. CentraRSE currently has over 100 affiliated companies from 20 different sectors that represent about 30% of GDP and provide employment to over 150,000 families. CentraRSE defines RBC as a business culture based on ethical principles, strong law enforcement, and respect for individuals, families, communities, and the environment, which contributes to businesses competitiveness, general welfare, and sustainable development. The GoG does not have a definition of RBC at the moment, but is currently working with CentraRSE to develop a national RBC action plan. Guatemala submitted its formal request to join the Extractive Industries Transparency Initiative (EITI) in February 2011 and was designated EITI compliant in March 2014.

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. U.S. companies such as McDonald's, Starbucks, and Denimatrix have been recognized by the State Department 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. These practices are generally expected by communities with low levels of government funding to health, education, and infrastructure.

OECD Guidelines for Multinational Enterprises

Guatemala is a non-adhering country to the OECD Guidelines for Multinational Enterprises, but multinational enterprises from adhering countries operate in the country.

11. Political Violence

Guatemala has one of the highest violent crime rates in Latin America. According to the National Forensic Institute (INACIF), the murder rate in 2015 was 35 per 100,000, making Guatemala one of the most dangerous countries in the world. Rule of law is lacking and the judicial system is weak, overworked, and inefficient. The police are understaffed and sometimes corrupt.

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. 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.

There have been recent examples of violence that resulted in extrajudicial killings, illegal detentions, and property damage as a result of investment projects. The main source of tension among indigenous communities, Guatemalan authorities, and private companies had been the lack of prior consultation and alleged environmental damage. The UN's Office of the High Commissioner for Human Rights (OHCHR) reported an increase in conflicts over the exploitation of natural resources in indigenous areas between 2012 and 2014. In more than a dozen incidents between 2012 and 2014, the government's response has been the declaration of a state of emergency, limiting certain constitutional rights in the conflicted areas.

12. Corruption

Bribery is illegal under Guatemala's Penal Code; however, corruption remains a serious problem that companies may encounter at many levels. Guatemala scored 28 out of 100 points on Transparency International's 2015 Corruption Perception Index, ranking it 123 out of 168 countries, a decline from the 2014 score of 32 points, ranking it 22nd out of 26 countries in the region.

Investors have historically found corruption especially pervasive in customs transactions, particularly at ports and borders away from the capital. 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. Since 2006, the UN-sponsored International Commission against Impunity in Guatemala (CICIG) has undertaken numerous high-profile official corruption investigations, leading to significant indictments. CICIG has gained private sector praise and the endorsement of the private sector for a rash of high-profile investigations uncovering official corruption in 2015, particularly a case revealing a customs corruption scheme, which led to the resignations of the president and vice president. In that continuing case, a current and former SAT Superintendent and at least 19 others were arrested. In a separate SAT corruption case, two high ranking SAT officials, together with 11 other SAT employees and private sector representatives were arrested in February 2016 on bribery and illicit association charges linked to a tax audit and fraudulent value added tax refunds.

In 2015, the people of Guatemala mobilized peacefully for 19 straight weeks against corruption, spurring government reforms and making corruption the defining issue of the 2015 national elections. Riding a groundswell of anti-establishment sentiment, actor Jimmy Morales won Guatemala's October 25, 2015 presidential runoff election. Since his January 14 inauguration, Morales has reiterated anti-corruption and accountability themes, prioritizing health, education, and food security funding, improvements very much aligned with regional Alliance for Prosperity (A4P) and U.S. Strategy for Engagement in Central America. Public demands spurred the establishment of congressional working groups that drafted overdue reforms of the civil service, justice sector, government procurement, and electoral laws. Early in 2016, the new Congress passed legislation to strengthen the Attorney General's Office, create a customs union protocol with Honduras, and provide incentives to Guatemala's garment industry. Perhaps most significant to the public, Congress changed its own rules to become more transparent and restrict nepotism.

Guatemala's Government Procurement Law requires most government purchases over USD 117,570 to be submitted for public competitive bidding. Since March 2004, GoG entities are ostensibly required to use Guatecompras, an Internet-based electronic procurement system to track GoG procurement processes. GoG entities must also comply with GoG procurement commitments under CAFTA-DR. There has also been a growing number of complaints from U.S. stakeholders and companies over government entities undertaking 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 irregularities in the bidding process (e.g., documentation issues and lack of transparency). In November 2015, the Guatemalan Congress approved additional amendments to the Government Procurement Law, which will help to improve transparency of procurement processes by barring government contracts for financers of political campaigns/parties, members of Congress, other elected officials, government workers and their family members. It also will expand the scope of procurement oversight to include public trust funds and all institutions (including NGOs) executing public funds. The U.S. government continues to advocate for the use of open, fair, and transparent tenders in government procurement and in accordance with CAFTA-DR obligations, which would allow open participation by U.S. companies.

The presidents of El Salvador, Guatemala, and Honduras, and the Vice President of the United States, Joe Biden agreed to specific commitments in a joint statement to the support of the Alliance for Prosperity on February 24, 2016. The countries agreed to measures that will ensure more accountable, transparent, and effective public institutions; invest in human capital; provide greater opportunities to all citizens; and guarantee a safe and secure environment for their people, with a particular focus on the underlying conditions driving migration to the United States. The statement follows progress on commitments agreed to by the same countries in March, 2015 and the approval of the initial A4P plan by the governments of Guatemala, Honduras, and El Salvador in September 2014 to address the underlying drivers of migration.

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. 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.

Resources to Report Corruption

Public Ministry
Address: 23 Calle 0-22 Zona 1, Ciudad de Guatemala
Phone: (502) 2251-4105; (502) 2251-4219; (502) 2251-5327Email address:
fiscaliacontracorrupcion@mp.gob.gt

Comptroller General's Office
Address: 7a Avenida 7-32 Zona 13
Phone: (502) 2417-8700

Contact at "watchdog" organization

Name: Accion Ciudadana (Guatemalan Chapter of Transparency International) Address:
Avenida Reforma 12-01 Zona 10, Edificio Reforma Montufar, Nivel 17, Oficina 1701
Phone: (502) 2388- 3400
Toll free to submit corruption complaints: 1-801-8111-011
Email address: alac@accionciudadana.org.gt; accionciudadana@accionciudadana.org

13. Bilateral Investment Agreements

Bilateral Taxation Treaties

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

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. It has also signed bilateral investment agreements with Trinidad and Tobago, Turkey, and Russia, which are not in force as of March 2016..

In addition to CAFTA-DR, Guatemala has signed bilateral or regional free trade agreements with Chile, the European Union, Peru, Mexico, Colombia, Taiwan, Panama, and the European Free Trade Association (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.

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

14. Foreign Trade Zones/Free Ports/Trade Facilitation

Decree 65-89, Guatemala's Free Trade Zones Law and its amendments approved through Decree 19-2016, Law for Conservation of Employment, permits the establishment of free trade zones (FTZs) in any region of the country. Developers of private FTZs must obtain authorization from the MINECO to install and manage a FTZ. Businesses operating within authorized FTZs also require authorization from the MINECO. Investment incentives are specified in law and are available to both foreign and Guatemalan investors, without discrimination. As of December 2015, 17 of 25 authorized FTZs were operational. Commercial activities and apparel assembly operations are the main beneficiaries of Guatemala's Free Trade Zones Law.

15. Foreign Direct Investment and Foreign Portfolio Investment Statistics

Guatemala has the largest economy in Central America, reaching a USD 63.9 billion gross domestic product (GDP) in 2015, with an estimated 4.1 percent growth rate in 2015. Remittances, mostly from the United States, increased by 13.4 percent in 2015 and were equivalent to 9.8 percent of GDP. The United States is Guatemala's most important economic partner. According to preliminary Banguat data, FDI stock was USD 13.18 billion in 2015, a 10 percent increase in relation to 2014. Estimated foreign portfolio investment totaled USD 2.95 billion in 2015, with about 62 percent invested in government bonds. There is no official data available on sources of stock of FDI or foreign portfolio investment.

Table 2: Key Macroeconomic Data, U.S. FDI in Host Country/Economy

	Host Country Statistical source*		USG or international statistical source		USG or International Source of Data: BEA; IMF; Eurostat; UNCTAD, Other
Economic Data	Year	Amount	Year	Amount	
Host Country Gross Domestic Product (GDP) ($M USD)	2015	$63,963	2014	$58,827	www.worldbank.org/en/country
Foreign Direct Investment	Host Country Statistical source*		USG or international statistical source		USG or international Source of data: BEA; IMF; Eurostat; UNCTAD, Other
U.S. FDI in partner country ($M	N/A	N/A	2014	$1,158	http://bea.gov/international/direct_investment_multinational_companies_comprehensive_data.htm

USD, stock positions)					
Host country's FDI in the United States ($M USD, stock positions)	N/A	N/A	2014	-$41	http://bea.gov/international/direct_investment_multinational_companies_comprehensive_data.htm
Total inbound stock of FDI as % host GDP	2015	20.6	N/A	N/A	N/A

*Bank of Guatemala http://www.banguat.gob.gt. Estimated GDP yearend data was published in November 2015 and preliminary FDI yearend data was published in March 31.

Table 3: Sources and Destination of FDI

According to data from the Coordinated Investment Survey for 2014 published by the IMF, about one fifth of FDI in Guatemala comes from the United States. Other important sources of FDI are Mexico, Canada, 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 1.2 billion in 2015 (1.89 percent of GDP), a 12.9 percent decline compared to USD 1.38 billion (2.4 percent of GDP) received in 2014 Some of the activities that attracted most of the FDI flows in the last three years were electricity, agriculture, mining, commerce, and manufacturing.

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	12,102	100%	Total Outward	503	100%
United States	2,805	23%	Panama	122	24%
Mexico	1,469	12%	Bahamas, The	111	22%
Canada	1,269	10%	Barbados	108	22%
Colombia	1,195	10%	El Salvador	67	13%
United Kingdom	668	6%	Puerto Rico	31	6%
"0" reflects amounts rounded to +/- USD 500,000.					

Table 4: Sources of Portfolio Investment

Portfolio investment data are not available for Guatemala.

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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Gary Youinou

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