Doing Business in Nicaragua: A Country Commercial Guide for U.S. Companies

Chapter 6: Investment Climate

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Legal Framework
The Free Trade Agreement between the United States, Central America, and the Dominican Republic (CAFTA-DR) entered into force on April 1, 2006, for the United States and Nicaragua. The CAFTA-DR Investment Chapter establishes a secure, predictable legal framework for U.S. investors in Central America and the Dominican Republic. The agreement provides six basic protections: (1) nondiscriminatory treatment relative to domestic investors and investors from third countries; (2) limits on performance requirements; (3) the free transfer of funds related to an investment; (4) protection from expropriation other than in conformity with customary international law; (5) a minimum standard of treatment in conformity with customary international law; and (6) the ability to hire key managerial personnel without regard to nationality. USAID provides support for the implementation of CAFTA-DR, through PROCAFTA.

In addition to CAFTA-DR, Nicaragua's Foreign Investment Law defines the legal framework for foreign investment. The law allows for 100%

foreign ownership in most sectors (see *Right to Private Ownership and Establishment* for exceptions). It also establishes the principle of national treatment for investors, guarantees foreign exchange conversion and profit repatriation, clarifies foreigners' access to local financing, and reaffirms respect for private property.

Other major laws governing foreign investment include the Temporary Entry Law, which allows for the duty free import of machinery, equipment, raw materials, and supplies for companies exporting the majority of their production (see *Performance Requirements and Incentives*); the Export Processing Zone Law (see *Foreign-Trade Zones/Free Ports*); the Tax Equity Law (see *Performance Requirements and Incentives*); the Banking Law (see *Conversion and Transfer Policies* and *Performance Requirements and Incentives*); and a series of intellectual property laws (see *Protection of Property Rights*). In 2006, the Nicaraguan National Assembly approved a Competition Law, but the law has not yet been implemented (see *Transparency of the Regulatory System*). In 2005, the government amended the Tourism Incentive Law to strengthen incentives for investment in that sector (see *Performance Requirements and Incentives*). See www.asamblea.gob.ni/ for the Spanish-language text of Nicaraguan law.

Policy Environment

Since taking office again in January 2007, President Ortega has maintained the legal and regulatory underpinnings of the market-based economic model of his predecessors. Nicaragua has stayed current with its CAFTA-DR obligations. Under an IMF program signed in October 2007, the Government of Nicaragua agreed to implement free market policies linked to targets on fiscal discipline, spending on poverty, and energy regulation.

In practice, however, a number of factors contribute to an increasingly uncertain policy environment for foreign investors. Government often announces economic policies, programs, or decrees without formal consultation with the private sector. On more than a dozen occasions, the government has used its tax, customs, and property administrations to pressure individuals and companies into accepting noncommercial terms in concessions or contracts (see *Dispute Settlement, Transparency of the Regulatory System,* and *Expropriation and Compensation* for examples). High profile rulings by the courts and oversight agencies are unpredictable and widely believed to be politicized. President Ortega has repeatedly suggested that it was a mistake to privatize the telecommunications and energy industries, where a number of foreign firms have invested; he has not ruled out re-nationalization, although no formal plans exist. Local business associations have complained that President Ortega's harsh rhetoric against the United States, capitalism, and free trade has had a negative effect on foreign investor attitudes and perceptions of risk when they think of Nicaragua (for official copies of speeches in Spanish see www.presidencia.gob.ni).

After successive years of improvement, Nicaragua fell in the World Economic Forum's Competitive Index Rankings from 95th place in 2006 to 111th in 2007. Significant slippage occurred in the quality of Nicaraguan institutions and market efficiency components of the index. In 2008, the Heritage Foundation Index of Economic Freedom ranks Nicaragua 81st (at the 60.1 percentile) worldwide for economic freedom, down from 65th (at the 61.9 percentile) in 2007. However, the Heritage Foundation has maintained Nicaragua's placement at the 70th percentile on investment freedom, one of ten components comprising its Index of Economic Freedom (see www.heritage.org/research/features/index/).

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The Foreign Investment Law (2000/344) and the Banking, Nonbank Intermediary, and Financial Conglomerate Law (2005/561) allow investors to freely convert and transfer funds associated with an investment. Article 10.8 of CAFTA-DR ensures the free transfer of funds related to a covered investment. Local financial institutions freely exchange U.S. dollars and other foreign currencies. Foreigners may open bank accounts, but the process is cumbersome and time consuming. The Superintendent of Banks and other Financial Institutions monitors financial transactions for illicit activity.

On several occasions, most recently in October 2007, President Ortega has suggested that foreign investors should reinvest their profits locally rather than repatriate them. To date, the government has prepared no formal policy proposals on this topic.

The official exchange rate is adjusted daily according to a crawling peg that devaluates the córdoba against the U.S. dollar at an annual rate of 5%. The official exchange rate as of February 15, 2007, was 19.02 córdobas to one U.S. dollar. As a result of local food and international energy prices, inflation rose to 16.2% in 2007 (from 10.2% in 2006), placing stress on Nicaragua's crawling peg regime.

Expropriation and Compensation Return to top

During the 1980s, the Sandinista government confiscated 28,000 real properties. Since 1990, thousands of individuals have filed claims against the government to have their property returned or receive compensation.

Compensation is most often in the form of low-interest bonds issued by the government. As of December 2007, the Nicaraguan Government had settled more than 4,500 U.S. citizen claims. A total of 677 Embassy-registered U.S. claims remain. In December 2007, the Ortega administration established unrealistic standards of proof to demonstrate ownership and expropriation, and announced plans to dismiss claims accepted by previous administrations. The Ortega administration also sought to retroactively review already settled claims. The U.S. Embassy in Nicaragua is contacting claimants and working to ensure that the property rights of U.S. citizens are respected. A U.S. citizen with such a claim may contact managuapropoffice@state.gov.

The CAFTA-DR Investment Chapter prohibits expropriation unless for a public purpose. The government must pay prompt, adequate, and effective compensation.

In August 2007, the Nicaraguan Government seized, via judicial order, several petroleum storage tanks owned by a U.S. company on the pretext that the company had not paid value-added taxes associated with the import of crude oil, despite the fact that petroleum and petroleum products are not subject to this tax and no mechanism exists to collect it. The government then used the tanks to store petroleum products imported from Venezuela under the terms of a government-to-government financing agreement. In January 2008, the U.S. company sold the tanks in question to state-owned company Petronic and negotiated a purchase agreement with Petronic for crude oil imported from Venezuela.

See *Protection of Property Rights* for a description of other forms of land security problems affecting investors.

Dispute Settlement

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Difficulty in resolving commercial disputes, particularly the enforcement of contracts, remains one of the most serious drawbacks to investment in Nicaragua. The legal system is weak, cumbersome, and members of the judiciary, including those at senior levels, are widely believed to be corrupt or subject to political pressure. A commercial code and bankruptcy law exist, but both are outdated.

Enforcement of court orders is frequently subject to nonjudicial considerations. Courts routinely grant injunctions (“amparos”) to protect citizen rights by enjoining official investigatory and enforcement actions indefinitely. Foreign investors are not specifically targeted but are often at a disadvantage in disputes against nationals with political or personal connections. Misuse of the criminal justice system sometimes results in individuals being charged with crimes arising out of civil disputes, often to pressure the accused into accepting a civil settlement. The World Bank estimates that on average local courts issue a preliminary ruling on contract disputes in 540 days. Monetary judgments normally are rendered in Nicaraguan currency, but may be denominated in U.S. dollars.

Dispute resolution is even more difficult in the Northern and Southern Atlantic Autonomous Regions (RAAN and RAAS, respectively), where most of the country's fishery, timber, and mineral resources are located. These large regions, which share a Caribbean history and culture, comprise more than one-third of Nicaragua's land mass. The division of authority between the central government and regional authorities is complex and flexible. Local officials may act without effective central government oversight.

The Mediation and Arbitration Law (2005/540) establishes the legal framework for alternative dispute resolution. Nicaragua is a signatory of the New York Convention and the Inter-American Convention on International Commercial Arbitration. Arbitration clauses should be included in business contracts if one has doubts about the Nicaraguan judicial system. In January 2008, the Nicaraguan Chamber of Commerce and the American Chamber of Commerce of Nicaragua announced plans to merge their mediation and arbitration centers.

CAFTA-DR establishes an investor-state dispute settlement mechanism. An investor who believes the government has breached a substantive obligation under CAFTA-DR or that the government has breached an investment agreement may request binding international arbitration. Proceedings under this mechanism are generally open to the public and documents are made publicly available.

Several U.S. companies and the U.S. Chamber of Commerce in Washington have voiced their concern that Nicaraguan Law 364, enacted in 2000 and implemented in 2001, presumes guilt without due process and retroactively imposes arbitrary liabilities on foreign companies that manufactured or allegedly used or distributed the chemical pesticide DBCP in Nicaragua. DBCP was banned in the United States after the Environmental Protection Agency cancelled its certificate for use (with exceptions) in 1979.

In January 2007, employees who own 40% of a local pharmaceutical company forcefully took possession of the company's manufacturing facilities as the result of a dispute with management. Several U.S. citizens own shares in the company. The majority owners of the company have been unsuccessful in their attempts to regain control of the facilities through action in the courts and are participating in negotiations with employees brokered by the Nicaraguan Government.

Performance Requirements and Incentives Return to top

Performance Requirements

Nicaragua's labor code states that 75% of employees, not including management posts, must be Nicaraguan. The Law on Promotion of National Artistic Expression and Protection of Nicaraguan Artists (1996/215) requires that foreign production companies contribute 5% of total production costs to a national cultural fund. In addition, the law requires that 10% of the technical, creative, and/or artistic staff be locally hired. Under CAFTA-DR, Nicaragua does not require U.S. film productions to contribute to the cultural fund or hire locally.

Investment Incentives

The Tax Equity Law (amended 2005/528) allows firms to claim an income tax credit of 1.5% of the FOB value of the exports. The Law of Temporary Admission for Export Promotion (2001/382) allows for businesses to purchase machinery, equipment, raw materials, and supplies duty and VAT free if used in export processing. Businesses must export 25% of their production to take advantage of these tax benefits. See *Foreign Trade Zones/Free Ports* for a description of incentives for investments in free trade zones.

The Fishing and Fish Farming Law (2004/489) exempts gasoline used in fishing and fish farming from taxes. Investors in the sector must register with the Directorate General for Natural Resources in the Ministry of Trade, Industry, and Development and with the Nicaraguan Fishing and Aquaculture Institute (INPESCA). Environmental regulations also apply (see *Transparency of the Regulatory System*).

The Forestry Conservation and Sustainable Development Law (2003/462) establishes preferential property tax rates and income tax exemptions in addition to duty and tax exemptions for inputs and capital goods used in forestry projects. In September 2007, the Nicaraguan Government implemented a temporary ban on commercial logging and compelled operators to supply all timber felled by Hurricane Felix to the government for reconstruction of the RAAN after the hurricane. Enforcement of this law appears spotty.

The Hydroelectric Promotion Law (amended 2005/531) and the Law to Promote Renewable Resource Electricity Generation (2005/532) provide incentives to invest in electricity generation, including duty free imports of capital goods and income and property tax exemptions. Regulatory concerns limit investment despite these incentives (see *Transparency of the Regulatory System).* Private investment in hydroelectric dams is banned from the Asturias, Apanás, and Río Viejo Rivers and is limited to 30 megawatts on all other rivers.

The Special Law on Mining Prospecting and Exploitation (2001/387) exempts mining concessionaires from import duties on capital inputs (see *Transparency of the Regulatory System* for additional information on the mining sector).

The Tourism Incentive Law (amended 2005/575) includes the following basic incentives for investments of $30,000 or more outside Managua and $100,000 or more within Managua: income tax exemption of 80% to 100%; property tax exemption; exoneration from import duties on vehicles; and value added tax exemption on the purchase of equipment and construction materials.

Immigration Issues
Those wishing to permanently reside in Nicaragua must request a resident visa from the Office of Immigration in Managua. Investors who live in Nicaragua but fail to obtain a residency permit have encountered immigration problems, including deportation. The Nicaraguan private sector has encouraged the government to establish a short-term business visa category to mitigate the problem. Investors should consult with Nicaraguan immigration authorities to ensure that they have an appropriate visa or resident status while engaging in business.

Right to Private Ownership and Establishment Return to top

In 1992, the Nicaraguan Government began to privatize small state-owned companies that the first Ortega government had nationalized or established in the 1980s. Subsequent privatization programs managed by the World Bank and Inter-American Development Bank sold state-owned telecommunications and electricity generation and distribution companies. Over the past 15 years, Nicaragua has privatized more than 350 state enterprises.

The government owns and operates the water and sewage company (ENACAL), the port authority (EPN), and the power transmission company (ENTRESA). Private sector investment is not permitted in these sectors. In addition, the government owns operates the country's largest insurance company (INISER), the largest electricity generating company (ENEL), one free trade zone (Parque Industrial Las Mercedes) and a basic food commodity storage and distribution company (ENABAS). The government enjoys exclusive rights to manage public social security pension funds (see *Efficient Capital Markets and Portfolio Investment*). In 2000, Spanish company Union Fenosa bought both the north and the south electricity distribution companies from ENEL (see *Transparency of the Regulatory System*). However, operation of the concession has suffered greatly from weak regulatory oversight and the lack of a supportive legal regime.

The military and its officers' pension fund have investments in many sectors, especially retail. These companies compete on equal terms with privately owned businesses and do not constitute an impediment to foreign investment.

Protection of Property Rights Return to top

Real Property

Many foreign investors experience difficulties defending their property rights in Nicaragua. Property registries suffer from years of poor recordkeeping. Establishing a title history is often difficult. The wrongful expropriation of 28,000 properties in the 1980s has greatly complicated the process. Attracted by escalating property values, unscrupulous individuals have engaged in protracted confrontations with U.S. investors to wrest control of tourist properties along the Pacific coast in the Departments of Rivas and Chinandega. Judges and municipal authorities have been known to collude with such individuals, and a cottage industry supplies false titles and other documents to those who scheme to steal land. Property invasions usually go unchallenged by local law enforcement officials and in some cases turn violent. Although the Ortega administration claims to be committed to protecting individual property rights, the situation substantially worsened during 2007. As of March 1, 2008, the Embassy is working with 294 U.S. citizens to recover 667 properties confiscated by the Ortega administration in the 1980s.

The Capital Markets Law (2006/587) provides a legal framework for securitization of movable and real property. The banking system is widening its loan programs for property purchases, but there is no secondary market for mortgages. See *Efficient Capital Markets and Portfolio Investment* for more information on the financial sector.

Intellectual Property

CAFTA-DR made Nicaraguan standards for the protection and enforcement of IPR consistent with U.S. and emerging international intellectual property standards. To implement the agreement, Nicaragua has strengthened its legal framework to 1) provide state-of-the-art protections for digital products such as software, music, text and videos; 2) afford stronger protection for patents, trademarks, and test data, including an electronic system for the registration and maintenance of trademarks; and 3) deter piracy and counterfeiting. The Nicaraguan Government has not yet implemented an effective system for test data protection and patent linkage for pharmaceutical products, as required by CAFTA-DR.

The legal regime for protection of intellectual property rights (IPR) in Nicaragua is adequate but to date enforcement of intellectual property law has been limited. Pirated optical media, including music, videos, and software are sold openly, although in relatively small numbers compared to other countries. In 2006, the government successfully prosecuted a case against a vendor selling pirated DVDs, only to have the conviction overturned months later. In July 2007, the Nicaraguan Government again successfully prosecuted a case in a local court against a Nicaraguan citizen selling pirated music CDs. The offender was sentenced to two years in prison—later reduced to parole—and fined 5,000 córdobas ($267). The Prosecutor General and National Police are currently investigating 28 intellectual property cases. With Department of Justice assistance in November 2007, Nicaraguan law enforcement and judicial officials collaborated to create a Nicaraguan manual for best practices in investigating and prosecuting intellectual property crimes.

Major IPR laws include:

- Patent, Utility Model, and Industrial Design Law (amended 2007/634)
- Copyright and Related Rights Law (amended 2006/577)
- Satellite Signal Programming Protection Law (amended 2006/578)
- Trademark and Other Distinctive Signs Law (amended 2006/580)
- Plant Variety Protection Law (1999/318)

Nicaragua is a signatory to the following international conventions and agreements on intellectual property:

- Mexico Convention on Literary and Artistic Copyrights (1902)
- Buenos Aires Convention on Literary and Artistic Copyrights (1910)
- Inter-American Copyright Convention (1946)
- Universal Copyright Convention (Geneva 1952 and Paris 1971)
- Bern Convention for the Protection of Literary and Artistic Works (1971)
- Geneva Convention for the Protection of Producers of Phonograms (1971)
- Brussels Satellite Convention (1974)
- International Convention for the Protection of New Plant Varieties (1978)
- Agreement on Trade-Related Aspects of Intellectual Property Rights (1994)

- Paris Convention for the Protection of Industrial Property (1996)
- The World Intellectual Property Organization (WIPO) Copyright Treaty and Performances and Phonograms Treaty (2002)

Transparency of the Regulatory System Return to top

A 2006 World Bank Survey placed Nicaragua in the 32nd percentile (100, best) worldwide for Regulatory Effectiveness (see http://info.worldbank.org/governance/). Investors regularly complain that regulatory authorities are arbitrary, negligent, or slow to apply existing laws, at times in an apparent effort to favor one competitor over another. Lack of a reliable means to quickly resolve disputes with government administrative authorities or business associates has resulted in some disputes becoming intractable (see *Dispute Resolution*).

See Chapter 3: Selling U.S. Products and Services, for information on regulatory issues related to establishing an office

The Competition Promotion Law (2006/601) creates a Superintendency for Competition to investigate and discipline businesses engaged in anticompetitive business practices, including price fixing, dividing territories, exclusive dealing, and product tying. To date, the National Assembly has not funded the superintendency and the competition law remains unenforced.

The Consumer Defense Law (1994/182) includes a consumer bill of rights that establishes minimum standards for product safety and quality as well as for truth in marketing. Under this law, MIFIC's Consumer Defense Directorate may investigate business and levy fines. The Ministry of Public Health, Directorate General of Sanitary Regulation, regulates the sale of food and drugs (including cosmetics), while the Ministry of Agriculture and Forestry is responsible for plant and animal health issues (see Chapter 5: Trade Regulations, Customs, and Standards, for further information on food, drug, and consumer product regulation). Government resources to enforce these public health and safety regulations are limited, especially in informal markets.

The Directorate General of Taxation in the Ministry of Finance and Public Credit collects income and value-added taxes, as set forth in the most recent version of the Tax Code (2006/598). The Directorate General of Customs in the Ministry of Finance and Public Credit collects customs duties (see Chapter 5: Trade Regulations, Customs, and Standards for further information on customs procedures). Investors cite arbitrariness in taxation and customs procedures, as well as a lack of delegation of decision-making authority. Tax audits of foreign investors have increased in frequency and duration, to the point where they may hinder normal business operations. Investors also complain that customs authorities wrongly classify goods to boost tariff revenue.

The Environment and Natural Resources Law (1996/217) authorizes the Directorate General for Environmental Compliance, Ministry of Natural Resources and the Environment (MARENA), to evaluate investment plans and monitor ongoing operations to verify compliance with environmental standards. The Law on Crimes against the Environment and Natural Resources (2005/559) includes additional environmental standards. Some investors complain that MARENA takes political considerations into account in determining whether to issue an environmental permit. Budgetary constraints limit MARENA's ability to enforce environmental standards.

In addition to environmental regulation, mining investments are regulated under the Special Law on Mining Prospecting and Exploitation (2001/387), which is now administered by the newly created Ministry of Energy and Mining. The Ministry of Energy and Mining also retains the authority to grant oil and gas exploration concessions. In 2007, the Supreme Court ruled that several oil exploration concessions had been granted without proper consultation with the governments of the autonomous regions on the Atlantic coast, though the concessions were situated outside recognized regional waters. The central government used the ruling as leverage to re-negotiate more favorable terms.

The telecommunications sector is fully privatized and open to competition. Under CAFTA-DR, Nicaragua opened its telecommunications sector to U.S. investors, service providers, and suppliers. U.S. exports of telecommunications equipment receive duty-free treatment. CAFTA-DR establishes rules promoting competition in telecommunications services and addresses key regulatory concerns that may create barriers to trade and investment in telecommunications services. Enitel, the former state telephone company, is now 99% owned by a Mexican company. The mobile telephone industry in Nicaragua is served by two nationwide operators. Enitel controls switching for all cellular service. The Nicaraguan Institute for Telecommunications and Postal Service (TELCOR) regulates the sector and has generally encouraged competition (see www.telcor.gob.ni). CAFTA-DR requires the establishment of a fair and transparent pricing regime.

The Electricity Sector Law (amended 2004/465) and the Energy Stability Law (amended 2007/627) establish the legal framework for the electric power sector. The Ministry of Energy and Mines Law sets policy for the sector and grants licenses and concessions to investors, while the Nicaraguan Energy Institute sets prices and regulates the industry (see www.ine.gob.ne). Investment in transmission and distribution is limited by law (see *Right to Private Ownership and Establishment*). Investment in this sector has been constrained by regulatory and political uncertainty and by a complex tariff system that does not provide clear incentives to generators. Growing demand and the lack of maintenance has resulted in extensive, rolling blackouts throughout the country during much of 2007.

Efficient Capital Markets and Portfolio Investment Return to top

In the 1990s, the Nicaraguan Government privatized the banks that had been nationalized during the Ortega Administration in the 1980s. In 1999-2001, four banks collapsed as the result of fraud and mismanagement. Stability returned to the banking system after the government engineered the sale of assets from the failed banks and consolidated the sector. However, the debt incurred by the government was politicized when a former finance minister became a candidate for president and the leader of the largest opposition party. President Ortega suggested that the government impose a moratorium on the service of this debt and hinted that the same should apply to indemnification bonds issued to compensate those whose property had been confiscated in 1980s. In February, a circuit court judge ruled that the issue of the debt was defective and should not be repaid. As of April 2008, a court order had prevented the Central Bank from servicing some of this debt, leading to increased scrutiny of Nicaragua by international credit rating firms. It is widely expected that, at a minimum, the government will force a renegotiation of the debt, reflecting allegations that assets were improperly valued in the bank restructuring process.

Through the Heavily Indebted Poor Country Initiative, the Multilateral Debt Reduction Initiative, and the World Bank's Commercial Debt Buyback Program, the Nicaraguan Government has been able to significantly reduce external debt from more than $12 billion in 1990 to less than $3.5 billion (55% of GDP) in 2007.

Among other financial services, local financial institutions offer commercial and industrial loans, credit lines, factoring, leasing, and bonded warehousing. The Foreign Investment Law allows foreign investors to access local credit. However, many investors find lower cost financing and more product variety from offshore banks. Short-term government bonds dominate Nicaraguan capital markets, but the markets are still in their infancy. Several firms have issued corporate debt; only one has issued public stock.

U.S. and other foreign banks have acquired a presence in Nicaragua through the purchase of local banks. In 2006, Citigroup acquired Grupo

Financiero Uno, a Nicaraguan bank with a large consumer credit portfolio throughout Central America. Also in 2006, HSBC bought Banistmo, a Panamanian bank with operations in Nicaragua. In 2007, GE Money announced plans to increase its ownership of Nicaraguan-owned Bank of Central America from 49.99% to 100%. The presence of these large, international banks should result in the introduction of more sophisticated products and services.

As of December 2007, total deposits in the banking system had reached $2.4 billion, of which $1.6 billion was held in foreign currency (mostly U.S. dollars). Interest rates on savings accounts averaged 3% in December 2007 for accounts denominated in córdobas and 2.1% for accounts denominated in U.S. dollars. The banking system's loan portfolio totaled $2.2 billion as of December 2007. Interest rates on loans denominated in córdobas averaged 13%; loans denominated in U.S. dollars averaged 11%.

The Superintendency of Banks and other Financial Institutions Law (amended 2006/576) and the General Law on Banks, Financial Institutions, Nonbank Financial Intermediaries, and Financial Conglomerates (2005/561) establish the legal framework for financial sector regulation. The Superintendency of Banks and other Financial Institutions (SIBOIF) regulates banks, insurance companies, stock markets, and other financial intermediaries (see www.siboif.gob.ni). SIBOIF requires that supervised entities provide audited financial statements, prepared according to international accounting standards, on a regular schedule. These data are published at www.siboif.gob.ni. The Deposit Guarantee System Law (2005/551) established the Financial Institution Deposit Guarantee Fund (FOGADE) to guarantee bank deposits up to $20,000 per depositor, per institution (see www.fogade.gob.ni).

CAFTA-DR allows U.S. financial services companies to establish subsidiaries, joint ventures, or bank branches in Nicaragua. The agreement also allows cross-border trade in financial services. Nicaragua has ratified its commitments under the 1997 WTO Financial Services Agreement. These commitments cover most banking services, including the acceptance of deposits, lending, leasing, the issuing of guarantees, and foreign exchange transactions. However, they do not cover the management of assets or securities. Nicaragua allows foreign banks to operate as 100% owned subsidiaries or as branches.

The Nicaraguan Social Security Institute (INSS) manages a pension fund for private and public sector employees. The Law to Repeal "the Pension System Law" and the "Superintendency of Pensions Law" (2005/568) reversed pension reform begun in 2000 that would have privatized the management of this fund. The October 2007 Poverty Reduction Growth Facility with the IMF requires the Nicaraguan Government to evaluate shortcomings in the current system and prepare recommendations for reform as needed. Private pension funds invest almost exclusively in offshore instruments.

Political Violence Return to top

Political violence has not been prevalent in Nicaragua in recent years. However, from time to time violent disputes over land rights and labor issues have erupted. Political demonstrations occasionally turn violent and can interrupt business operations

The Ortega administration is installing Citizen Power Councils (CPC) at neighborhood levels throughout Nicaragua. President Ortega has promised that CPC's will play an important role in government economic and social programs, help implement rural development projects, and exercise local regulatory authority, even though they are not formally part of government. Constitutional experts, human rights activists, and nongovernment organizations have criticized the imposition of CPCs for their unelected role in government and for displacing existing nongovernment organizations.

Corruption Return to top

Nicaragua is a signatory to the Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery, as well as the Inter-American Convention against Corruption (IACC). The Penal Code (amended 2007/641) and the Special Law on Bribery and Crimes Against International Trade and Foreign Investment (2006/581). Offering or accepting a bribe is a criminal act punishable by a fine and a minimum three years in prison. Bribery by a local company of a foreign official is a criminal act punishable by a minimum five years in prison. The Attorney General and the Controller General share responsibilities for investigating and prosecuting corruption cases. The anti-corruption provisions of CAFTA-DR require each participating government to ensure under its domestic law that bribery in matters affecting trade and investment is treated as a criminal offense or subject to comparable penalties.

Public opinion surveys indicate that many Nicaraguans believe corruption is endemic to government. In 2006, a World Bank study placed Nicaragua in the 23rd percentile (i.e., the bottom quartile) of all countries for control of corruption (see http://info.worldbank.org/governance/). Transparency International—which has links with local organization "Etica y

Transparencia"—ranked Nicaragua 123rd of 179 countries in its 2007 Corruption Perceptions Index (see www.transparency.org/policy_research/surveys_indices/cpi).

The legal environment is among the weakest in Latin America. Nicaraguans commonly believe that the judicial system is controlled by political interests and is corrupt. Influence peddling in the judicial branch puts foreign investors at a sharp disadvantage in any litigation or dispute. Therefore, seeking administrative decisions or legal recourse in the courts is not the preferred method to clarify rights and responsibilities or resolve a dispute. Political connections and nepotism also affect regulatory and procurement decisions. Regulators often maintain business interests within the very sectors they regulate. On occasion, government officials ask investors to cover costs associated with the supervision of a concession or business operation (for example, in the review of an engineering design or a legal contract).

During the Bolaños administration, the government successfully prosecuted former President Arnoldo Alemán for embezzlement, fraud, and money laundering. In December 2003, a Nicaraguan court sentenced Alemán to a 20-year jail term, which he has never served. The Ortega Administration has allowed Alemán to live under expanded house arrest and, since March 2007, travel freely throughout the country. This exceptional treatment is widely believed to be in exchange for Alemán's political support in the National Assembly, judiciary, and other government institutions.

Bilateral Investment Agreements Return to top

Nicaragua has signed and ratified bilateral investment agreements with Argentina, Chile, Czech Republic, Denmark, Ecuador, El Salvador, Finland, France, Germany, Italy, the Netherlands, South Korea, Spain, Switzerland, Sweden, Taiwan, and the United Kingdom. CAFTA-DR includes an Investment Chapter.

OPIC and Other Investment Insurance Programs Return to top

The U.S. Overseas Private Investment Corporation offers financing and insurance against political risk, expropriation, and inconvertibility to U.S. investments in Nicaragua. A 2004 Investment Incentive Agreement between Nicaragua and the United States expanded the range of OPIC programs available to U.S. investors in Nicaragua and streamlined investment application procedures (see www.opic.gov). Nicaragua is a member of the World Bank's Multilateral Investment Guarantee Agency.

Labor

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In 2006, the Nicaraguan Government estimated Nicaragua's labor force at 2.2 million, of which 2.09 million are reportedly employed. Of those employed, 29% work in agriculture, 19% in industry, and 52% in services. However, many of these jobs are informal, and underemployment is common. Unskilled labor is widely available and relatively inexpensive, but in rural areas outward migration has resulted in labor shortages during harvest season. The World Bank reports that 46% of Nicaraguans live below the poverty line and 15% in extreme poverty.

Nicaragua has ratified all eight of the International Labor Organization's core labor conventions. The Nicaraguan Constitution, Labor Code (1996/185 and amendments), General Law on Labor Health and Safety (2007/618), and several other laws establish minimum standards for labor conditions and provide the legal framework for relations between employers and their employees. The Nicaraguan Constitution bans forced labor, slavery, and indentured servitude. The constitution also specifies no more than an eight-hour workday in a forty-eight-hour (six-day) work week, with an hour of rest each day. The minimum age for employment is fourteen. Labor unions complain that the Ministry of Labor lacks adequate staff and resources to fully enforce these provisions.

Business, government, and labor negotiate a statutory minimum wage that the National Assembly must subsequently confirm. Each sector of the economy (including Free Trade Zones) has a different minimum wage, which must be reviewed every six months. In general, enforcement of the minimum wage only takes place within the formal sector. While the law mandates premium pay for overtime and prohibits excessive compulsory overtime, the government does not always effectively enforce these requirements.

The labor code sets forth significant benefits that increase business costs. For example, at year-end, employers must pay the equivalent of an extra month's salary. Other benefits include maternity leave, medical care, death and survivor's benefits, pensions, and workers compensation for disability. Upon termination of an employee, the employer must pay a month's salary for each year worked, up to five months salary. Some business groups say that the five-month limit provides workers with an incentive to seek dismissal once they have completed five years with a firm.

Nicaraguan law grants public and private sector workers, except those in the military and police, the right to organize. Workers need not advise the employer or the Ministry of Labor of their intention to do so. In general, workers exercise the right to organize unhindered. Some labor activists allege that some businesses operating in free trade zones violate this right. Although employers are legally required to reinstate workers fired for union activity, formal reinstatement requires a judicial order which can be difficult to obtain because of a lengthy appeals process. In practice, employers often do not reinstate workers because the law is poorly enforced. Employers may dismiss any employee, including union organizers, by agreeing to pay double the legally mandated severance pay.

The law provides for the right to bargain collectively and for several unions, each with different membership, to coexist at any one enterprise. Employers may sign separate collective bargaining agreements with each union. Independent labor leaders complain that employers routinely violate collective bargaining agreements and Nicaraguan labor laws. They also complain that employers use company unions to disrupt the organization of independent unions. Although the law recognizes the right to strike, according to Ministry of Labor information, there were no legal strikes in 2006. Wildcat strikes are common, however. Division among labor unions along political lines complicates the resolution of these strikes and other labor issues.

Foreign Trade Zones/Free Trade Zones

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The Nicaraguan Government reports that 127 companies operate in free trade zones (FTZs) throughout Nicaragua, directly employing 89,000 workers. In 2007, however, several firms operating in free trade zones closed, citing rising costs of doing business associated with high energy costs, poor roads and port facilities, growing problems with the tax and customs administrations, rising labor costs, and increasing rigidities in labor law related to work schedules and compensation. In addition to export incentives and duty free capital imports granted by the Tax Equity Law and the Law of Temporary Admission for Export Promotion (see *Performance Requirements and Incentives*), the Free Trade Zones for Industrial Exports Decree (1991/46 and amendments) provides a 10-year income tax exemption for Nicaraguan and foreign investments in FTZs. The National Free Trade Zone Commission of Nicaragua (CNZF) administers the FTZ regime (see www.cnzf.gob.ni).

Foreign Direct Investment Statistics

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Foreign investment inflows totaled $335 million in 2007, according to the Ministry of Trade, Industry, and Development. Investment inflows included $145 million in telecommunications and $120 million in assembly operations located in free trade zones, and U.S. investment totaled $83.6 million. For 2008, ProNicaragua, the government investment promotion agency, is targeting tourism, textiles and apparel, light manufacturing and assembly, agribusiness and forestry, and business process outsourcing. ProNicaragua is also working with the Millennium Challenge Account in Nicaragua to stimulate investment in and economic development in the departments of Leon and Chinandega. See www.pronicaragua.com for more information.

Major U.S. Investors in Nicaragua include:

- Cargill (poultry and animal feed)
- ChevronTexaco (fuel distribution)
- Citigroup (banking)
- ExxonMobil (petroleum refining and fuel distribution)
- GE Money (banking)
- International Textile Group (textiles)
- PriceSmart (retail)
- Wal-Mart (grocery)