NICARAGUA[1]

I. Overview

Nicaragua is a presidential representative democratic republic, in which the President of Nicaragua is both head of state and head of government, and there is a multi-party system.

Executive power is exercised by the government. Legislative power is vested in both the government and the National Assembly. The judiciary is independent of the executive and the legislature.

Nicaragua's legal system follows the civil law tradition. The constitutionality of the laws is determined by the Constitutional Chamber of the highest court in the country, the Supreme Court.

Article 49 of the Constitution establishes the right to organize based on the free and participatory will of those who organize "…in order to ensure the realization of their aspirations, pursuant to their own interests, and to participate in the construction of a new society."

Nicaraguan law recognizes the following types of for-profit organizations ("FPOs"): joint stock companies (*sociedades anónimas*), partnerships (*sociedades en nombre colectivo*), limited partnerships (*sociedad comandita simple*), limited partnerships by shares (*sociedad comandita por acciones*) and cooperatives (*cooperativas*).

With regards to non-for-profit organizations ("NPOs"), Nicaraguan law does not define or explain the different types of NPOs (*personas jurídicas sin fines de lucro*), but merely states that these can be associations, foundations, federations or confederations[2].

II. Registration Procedures

A. For-Profit Organizations

a. Laws

In general terms, the registration procedure of most FPOs is found in the Nicaraguan Commercial Code[3] and the statute that governs the Nicaraguan system of Public Registries[4].

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[1] The following memorandum was prepared by pro bono counsel for the ABA Center for Human Rights. It is intended as background information only and should not be relied upon as legal advice on a particular case. The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association, and, accordingly, should not be construed as representing the policy of the American Bar Association.

[2] Ley 149, Ley General sobre Personas Jurídicas sin Fines de Lucro, March 19, 1992. http://www.bu.edu/bucflp/files/2012/01/General-Law-on-Non-Profit-Entities-Law-No.-147.pdf

[3] Nicaragua Commercial Code from March 22, 1869, http://www.poderjudicial.gob.ni/pjupload/registros/pdf/codigo_de_comercio_de_nicaragua.pdf

[4] Ley General de los Registros Públicos, Ley No. 698, Aprobada el 27 de Agosto del 2009, La Gaceta No. 239 del 17 de Diciembre del 2009.

One exception is the incorporation of cooperatives, which is mostly governed by the General Statue for Cooperatives from July 6, 1971[5].

i. Incorporation process

With regards to the incorporation process of joint stock companies[6], the most common form in Nicaragua, the following should be noted:

1. The company's founder must first sign the documents of incorporation before notary public (including the company's constitution agreement and the company's by-laws)[7].
2. The company's founders must then buy company accounting and corporate books.
3. The following step is filing the incorporation statutes[8]; register accounting books and register as a trader with the Commercial Section of Nicaragua's Public Registry at the one-stop shop. Inscriptions fees must also be paid.

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http://www.poderjudicial.gob.ni/pjupload/registros/pdf/decreto_13_2013_ley_general_registros_publicos.pdf

5 http://www.bu.edu/bucflp/files/2012/01/General-Cooperatives-Law-of-1971.pdf

6 A joint stock company is a commercial entity with legal personality (separate from that of its shareholders), in which the capital is divided into shares and in which the shareholders are liable for the debts only up to the value of their respective shares.

7 As a general rule, there is no minimum paid-in capital requirement. However, there are exceptions to this rule, such as financial corporations governed Law No. 15-L for Financial, Investment and Other Corporations (*Ley especial sobre sociedades financieras, de inversión y otras)*. http://www.bu.edu/bucflp/files/2012/01/Special-Law-on-Financial-Societies-Investment-Societies-and-Others-Decree-No.-15-L.pdf

8 According to Article 124 of the Commercial Code, the incorporation statutes must include:

1. The full name and address of the contracting parties;
2. The name and address of the company;
3. The purpose of the business and the operations intended capital ;
4. The way in which management or the board members will be elected; who will represent the company in judicial proceedings and outside of them; how long will their appointment last and how vacancies will be filled;
5. The way in which the of choosing the company inspectors (*vigilantes*) will be elected;
6. The terms and manner of convening and holding annual general meetings, and where and how to call and hold extraordinary meetings;
7. The capital, stating the value that was given to the assets transferred that are not money, or the manner and form in which the assessment should be made;
8. The number, quality and value of the shares, stating whether they are registered or bearer or both classes; if registered shares can be converted into bearer shares and vice versa;
9. The term and manner in which capital must be subscribed;
10. The particular advantages or rights reserved to founding shareholders;
11. The rules for preparing balances, calculation and distribution of benefits;
12. The amount of the reserve fund;
13. The time in which company must begin and end. Its duration may not be indefinite or longer than ninety-nine years;
14. Board quorum and majority voting rules;
15. The person or persons having the provisional representation of the company until the appointment of the Board of Directors by the General Meeting Shareholders.

4. Finally, the company must obtain: (a) a DUR (*Documento Unico de Registro*), a single document that allows registering at the same time for sales of taxes, social security, and the pre-municipal license (*pre-matrícula*) at the one-stop shop or at the DGI (*Dirección General de Ingresos*); and (b) a municipal license.

According to the World Bank Doing Business Report of 2015, the minimum time to complete all of these steps is 13 days[9].

ii. Citizenship requirements

As a general rule, there are no citizenship requirements to incorporate/register a business[10].

iii. Government involvement

In general terms, FPOs are not subject to government involvement in the governance. However, the following should be noted:

1. There are certain types of corporations that, due to their specific object, are subjected to government surveillance or control, such as financial institutions[11] or mutual guarantee companies[12].
2. Article 247 of the Commercial Code states that joint stock companies that hold public service concession awarded by the State or by any administrative body, may be controlled by government agents or the respective administrative body, even if the title of the incorporation does not expressly provide for such oversight.[13]

iv. De-registration and redress mechanisms

According to Article 269 of the Commercial Code, the following are causes for the dissolution of joint stock companies:

1. Absent any extension, once the time they were incorporated for lapses;
2. termination or cessation of its object;

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9 See http://www.doingbusiness.org/data/exploreeconomies/nicaragua/starting-a-business

10 However, (i) in order to obtain certain registration requirements (e.g. for tax purposes), the FPO will need to have a representative who is either a citizen or legal resident in Nicaragua; and (ii) there are certain types of entities in which a minimum of national capital is required (pending confirmation).

11 See Law No. 15-L for Financial, Investment and Other Corporations (*Ley especial sobre sociedades financieras, de inversión y otras)*. http://www.bu.edu/bucflp/files/2012/01/Special-Law-on-Financial-Societies-Investment-Societies-and-Others-Decree-No.-15-L.pdf

12 See Law N. 633 "*Ley del sistema de sociedades de garantía recíprocas para las micro, pequeña y mediana empresa*", 2008. http://www.mific.gob.ni/Portals/0/ASESORIA%20LEGAL/ley_no_663_sociedades_degarantiasrecipplas_pymes.pdf

13 However, according to Nicaraguan counsel, this article of the Commercial Code has never been applied. The control or supervision by the government is normally regulated and done in accordance with the terms of the concession contract.

3. When its object has been fulfilled or it has become impossible;
4. When the company is declared bankrupt;
5. When its capital is reduced by more than two thirds, if the partners failed to make new contributions to maintain at least a third of its capital;
6. When the partners so agree;
7. When the company merges with other companies and under the merger agreement it provides for the subsistence of only one of them.

Additionally, under article 270 of the Commercial Code, in the event that the number of shareholders is less than 3 for more than 6 months, any of the two remaining shareholders may request dissolution.

Finally, under article 271 of the Commercial Code, the creditors of the joint stock company may also request dissolution in the event that more than half of the corporation's capital is lost. However, in such case the corporation may object to the dissolution by providing the necessary guarantees to its creditors.

b. Case Law

We have not reviewed case law.

B. Not-For Profit Organizations[14]

a. Laws

The governing law for NPOs is Law No. 147: General Law of Non-profit Legal Entities (1992), which addresses "…the constitution, authorization, functioning and termination of the civil and religious non-profit legal entities that exist in the country." Additional legal provisions are found in the Civil Code (1904), for so-called "simple civil or commercial associations, pursuant to the purposes of each institute."

The implementation and enforcement of Law No. 147 is characterized by broad discretion. The law has many gaps and contradictions. Its provisions do not clearly regulate the procedures and requirements that non-profit entities must follow for their constitution, authorization, function and termination. Nor are there any implementing regulations to clarify procedures.

According to the provisions of Law No. 147, three types of civil or religious non-profit legal entities can be constituted: (1) associations, (2) foundations, or (3) federations and confederations. However, as mentioned above Nicaraguan law does not define each one of these types.

Pursuant to the Civil Code, there may also be organizations that lack legal status but are considered simple civil or commercial associations, depending on their aims or purposes[15].

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[14] This section contains extracts from the web site of the International Center for Nor-for-Profit Law, NGO Law Monitor, Nicaragua: http://www.icnl.org/research/monitor/nicaragua.html

i. Incorporation process

According to Law No. 147, a non-profit legal entity (association, foundation, federation or confederation) is constituted by means of a public deed, with the minimum involvement of five natural or legal persons who have the capacity to assume obligations and comply with bylaws implied in the entity's constitution[16].

However, the legal standing of the NPO is granted by decree of the National Assembly[17]. According to the Law No. 147, the interested parties will file a request before the National Assembly, which will contain an explanatory memorandum signed by at least one National Assembly representative, together with copy of the public deed and the entity's by-laws.

Articles 152 to 155 of Law of the National Assembly[18] govern the procedure before the National Assembly. The following is a summary of such procedure:

1. Presentation: The requests are presented before the plenary session of the National Assembly and subsequently sent to the National Assembly's Commission on Peace, Defense, Governance and Human Rights who will be in charge of the consultation and recommendation phase;
2. Consultation and recommendation phase: in this phase the Commission will analyze whether the NPO meets all of the necessary requirements and will hear the NPOs directors, however the law does not specify what "all the necessary requirements" are.
3. Debate and approval: Once the Commission issues its recommendation, it will be submitted and debated in the plenary session of the National Assembly. The approval will be done by decree, which will be published in La Gaceta.

Subsequently, the entity must be registered at the Registry and Control of Associations of the Ministry of Governance, which has established the following list of registration requirements:

1. Letter requesting registration and the assignment of a perpetual entity number, addressed to the Office Director and listing the entity's address, telephone and fax numbers and email address
2. Copy of La Gaceta in which the decree of legal standing granted by the National Assembly was published
3. The entity's deed of constitution
4. Bylaws (if not included in the deed of constitution)
5. Photocopy of the entity's purpose statement or brief historical summary

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15 Código Civil de la República de Nicaragua, Article 77. http://www.biblioteca.jus.gov.ar/CodigoNicaragua.PDF

16 Article 8 of the Law No. 147 states the information that must be included in the public deed.

17 Article 6 of the Law No. 147.

18 Fundamental Law No. 606 of the Legislative Power (*Ley Orgánica del Poder Legislativo*). http://www.ripalc.org/estudos-es/regimentos-internos/nicaragua-ley-organica-del-poder-legislativo/view?set_language=es

6. List of members of the Board of Directors, including their names, positions, addresses, telephone numbers, identification card (*cédula*) numbers and original signatures
7. List of all members of the entity with the right to speak and vote in the General Assembly, including their names and identification card (*cédula*) numbers
8. Four legal required institutional records: two of minutes, one daily ledger and one general ledger
9. Payment of a fee of one thousand and fifty Córdobas (about US$50.00)
10. In the case of a foundation, federation or chamber, an initial balance sheet must be submitted in addition to the requirements above

When the above-mentioned requirements are met, the Department of Registry and Control of Associations will proceed with review and registration, a process that takes an average of ten days (although the period is not stipulated by law).

If registration is denied by the Department of Registry and Control of Associations, an appeal for review (*Recurso de Revisión*) may be filed before the same authority that issued the administrative denial. A subsequent appeal (*Recurso de Apelación*) may be filed with the higher authority, in this case the Minister of Governance. This would exhaust the administrative alternatives for appeal, leaving open the alternative of filing for judicial protection (*Recurso de Amparo*).

Once registered by the Department of Registry and Control of Associations, it is necessary to proceed with the registration of the company with the Tax Authority (DGI) and the Municipality.

Nicaraguan law does not establish clear time frames for the incorporation and registration procedures of NPOs. Additionally, if the request of legal standing before the National Assembly is rejected, the interested parties must wait until the next legislative year to resubmit its request[19].

ii. Citizenship Requirements

The law does not restrict foreign individuals from taking part in these types of organizations.

In order to carry out activities in Nicaragua, organizations with legal status abroad must also be authorized by the Department of Registry and Control of Associations. These organizations are registered after verification that their nature and objectives correspond with the nature of Law No. 147. If they operate by virtue of international instruments, then they shall be governed according to said instruments. The Ministry of Foreign Relations has established an information system on non-governmental cooperation (SysONG).

iii. Government involvement

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[19] Source: http://www.vrijmetselaarsgilde.eu/Maconnieke%20Encyclopedie/FMAP~1/REFORM/reform3/cap73.htm. Pending confirmation

As mentioned before, the legal standing of the NPO is granted by decree of the National Assembly.

Additionally, as an administrative sanction, Law No. 147 authorizes the Ministry of Governance to impose intervention for the period strictly necessary to resolve any irregularities caused by violations of Article 13 (which establishes the obligations of Non-profit Legal Entities) or previous offenses.

iv. De-registration and redress mechanisms

Cancellation of the legal status of organizations governed by Law No. 147 is also done by the National Assembly and is implemented by means of the same procedures for the granting of legal status, after prior consultation with the Ministry of Governance. The causes for cancellation are established in Article 24 of the law.

According of the referred provision, a NPO may lose its legal status:

1. when used in the commission of unlawful acts;
2. when used to violate public order;
3. membership of the NPO declines to under the minimum number fixed by this Law;
4. Its activities do not correspond to the purposes for which it was formed;
5. It obstructs the control and supervision of the Department of Registration and Control Office, and has previously been subject to Article 22 sanctions;
6. At the request of its highest governing body in accordance with its bylaws.

b. Case Law

We have not reviewed case law.

C. Analytical comparison of the legal process of registration

The legal regime applied to the incorporation and registration for FPOs is very different from NOPs, the main difference being that NPOs only acquire legal standing when the National Assembly so approves by decree.

As mentioned above, the statute that governs NPOs has many gaps and contradictions. Its provisions do not clearly regulate the procedures and requirements that non-profit entities must follow for their constitution, authorization, function and termination. Nor are there any implementing regulations to clarify procedures.

As a result, the enforcement and implementation of the statute gives much broader discretion to the executive and legislative power in the incorporation and registration process of NPOs than FPOs and the procedure is substantively lengthier for NPOs than FPOs.

III. Tax Laws

A. For-Profit Organizations

a. Laws

For-profit organizations and not-for profit organizations in Nicaragua are subject to taxes that are levied both at a national and municipal level. These taxes are, in general terms, income taxes, value-added taxes, real property taxes, custom duties and stamp taxes.

Nicaragua's legal-tax frame for legal entities is basically comprised by the following statutes and regulations:

1. Tax Code (*Código Tributario*);[20]
2. Law on Tax Coalition (*Ley de Concertación Tributaria*); [21]
3. Municipal tax laws (*Planes de Arbitrios*);[22]
4. Real Property Tax Law (*Impuesto sobre bienes inmuebles*)[23].

Nicaraguan law establishes multiple fiscal incentives for FPOs. A brief description of the most important ones follows:

i. Special Law on Exploration and Exploitation of Mines (Law 387)

1. Companies may apply to the Temporary Admission System and other schemes to promote exports as established by the legislation for purposes of exemption or suspension of customs taxes.
2. Exemption of import tariffs on machinery, materials, instruments, tools and other effects related to the mining activity.
3. Exemption from taxes imposed on company property, within the perimeter of the mining concession.
4. Exemption from taxes or tax burden directly or indirectly applied on the minerals before extraction, on the right to extract them, on the extracted mineral, cartage, benefits, transportation or storage of the minerals, as well as its sale or export (though payment of some royalties may apply).

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[20] Law No. 562, La Gaceta #227, 23 November 2005, and #177, 11 September 2006. http://www.dgi.gob.ni/documentos/codtributarioconreformas2012.pdf

[21] Law No. 822, La Gaceta #241, 17 December 2012, http://www.dgi.gob.ni/documentos/GACETA_241_Ley_822_Ley_de_Concert._Tributaria.pdf and its regulations, Decree No. 01-2013, La Gaceta #12, January 22, 2013 http://www.dgi.gob.ni/documentos/Reglamento_de_la_Ley_822.pdf .

[22] Decree 455, La Gaceta #144, 31 July 1989. http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&ved=0CB8QFjAA&url=http%3A%2F%2Flaconcepcion.gob.ni%2Fnormatividad%2Fnacional%2Fplan-de-arbitrios-municipal%2Fat_download%2Fadjunto&ei=rUEMVeXeGMuLObPQgfAE&usg=AFQjCNGbDrGHbozGhP7CxJNVrTNjFq1hQg&sig2=j8IpzAMDQT1PUs32jZr4-Q&bvm=bv.88528373,d.ZWU

[23] Decree No. 3-95, La Gaceta #21, 31 January 1995. https://www.transmuni.gob.ni/docs/Decreto3-95.htm

5. Zero percent (0%) for exports, applicable to exports in general.

ii. Free Zones Incentives Law (Decree 46-91)

Nicaragua offers tax incentives under the free zone regime for companies interested in establishing export-oriented operations of Textile and Apparel Industries, Manufacturing, Agribusiness and Contact Centers:

1. A permanent exemption from all import duties and taxes imposed on raw materials and other of materials required in the production process, machinery and equipment, spare parts and supplies; as well as taxes on equipment required for installation and operation of cafeterias, health services, medical care, leisure and any other good with the purpose of satisfying the needs of the company´s workers.
2. 100% exemption from payment of income tax (IR) generated by the company during the first ten years of operation and 60% from the eleventh year onwards;
3. Full exemption from excise, sales or selective consumption
4. A permanent exemption from all property transfer taxes in the event of shut- down;
5. Full exemption from export taxes on processed products within the regime
6. A permanent exemption from value added and consumption taxes;
7. Full exemption from municipal taxes;
8. A permanent exemption from all transportation taxes; and
9. A permanent exemption from all formation, merger, and transformation taxes, and the Stamp Tax.

iii. Tourism Industry Incentives Law (Law 306)

It provides incentives and rewards for investment in housing services, food and beverage, tour operators, tour transport, airlines, among others. The incentives include:

Qualified tourism projects can receive the following tax benefits:

1. 80% to 100% income tax exemption (IR) for a period of ten years.
2. Real Property tax (IBI) exemption for 10 years.
3. Import tax and value-added tax exemption on the purchase of accessories, furniture, or equipment.

Tax exemptions related to project implementation:

1. Value-added tax on design/engineering and construction services.
2. Exoneration of import duties and taxes and value-added tax for the local purchase of construction materials and fixed building accessories.
3. Tax incentives can be extended if project undergoes extensive expansions.

4. In case of reinvestment, if at the end of the ten years incentive regime the investor decides to reinvest at least 35 percent of the original investment value approved, he can receive all the benefits for ten additional years.

iv. Conservation, Promotion and Sustainable Development of the Forestry Sector Law (Law 462)

For the sector of Forestry, this law and its regulations allow to benefit from different tax incentives which were extended by the Tax Coalition Law until December 31, 2023.

1. 50% of municipal taxes on sale of land.
2. 50% of profits.
3. Real Property taxes in the case of forest plantations and areas under forest management.

On the other hand, there are also the following incentives:

1. Companies investing in plantations may reduce 50% of the amount invested as costs.
2. Exemption from import duties for companies of secondary transformation and third transformation that import machinery, equipment and accessories excluding saw mills.
3. 100% percent deduction of income tax when land is destined to reforestation projects or forest plantations.

v. Renewable Energy Generation Law (Law 532)

1. Exemption of customs duties on the importation of machinery, equipment, material and raw material necessary for all construction of stations, including sub transmission lines necessary for energy transportation from the generation facility to the National Interconnected System.
2. Exemption of the Value Added Tax (VAT) levied on machinery, equipment, material and raw material utilized during pre-investment stage, construction of structures, including the construction of the sub transmission lines necessary to transport energy to the National Interconnected System. For “isolated systems” with their own generation facilities, this exoneration covers pre investment, construction and all the investment made in distribution grids associated with the project (i.e. panels and solar batteries for solar energy).
3. Exemption of income tax (IR) for a maximum period of seven years from the entry into business or commercial operation of the project, except for geothermal projects, for which the exemption is for ten years. During this same period, the income derived from the sale of carbon dioxide bonds will also be exempted.
4. Exemption of all the Municipal Taxes on real estate, sales and registrations during the construction of a project, for a period of ten years to be applied in the following manner: exoneration of 75% during the first three years; 50% the five following years and, 25% for the last two years. Fixed investment in machinery, equipment, and hydroelectric dams will be exempted from all taxes and duties for a period of ten years.

5. Exemption of taxes on the exploitation of natural resources for a maximum period of five years after the beginning of operations.
6. Exemption of Stamps Tax incurred by the construction or operation of the project or expansion of a project for a period of ten years.

vi. Temporary Admissions System (Law 382)

This system allows both the entry of merchandise into the national customs territory, and the local purchase of goods or raw material without paying any kind of taxes or duties. This merchandise must be re-exported after being subjected to a process of transformation, repair or alteration. The company must request a suspension of duties and tariffs to competent authorities.

To be eligible for this regime, companies must export directly or indirectly, at least 25% of its total sales and an export value can't be less than US$ 50,000.

b. Case Law

We have not reviewed case law.

B. Not-For Profit Organizations

a. Laws[24]

At the national level, the Law on Tax Coalition (Art. 32) establishes income tax exemptions on economic activities for churches, denominations, faiths and religious foundations with legal standing, with respect to income from all activities and assets employed toward their religious aims and purposes, as well as for artistic, scientific, educational and cultural institutions, labor unions, political parties, Nicaraguan Red Cross, Fire Corps; charity and social assistance institutions, indigenous communities, non-profit associations, foundations, federations and confederations with legal standing. Exceptions (Art. 33) include when exempt subjects usually make economic profit activities with third parties in the market for goods and services.

According to Article 111 of the Law On Tax Coalition, churches, denominations, and religious faiths with legal standing are exempt from the Value Added Tax (*Impuesto al Valor Agregado IVA*), in terms of goods intended exclusively for their religious purposes.

In terms of municipal taxes, exemptions from payment of the income tax and real property tax (*Impuesto sobre Bienes Inmuebles*) are given to:

1. churches and religious faiths, with respect to temples and offices used for religious purposes;
2. non-profit charity and social assistance institutions;
3. cultural, scientific, sports and artistic institutions;
4. unions and associations of workers and professionals;

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[24] This section contains

5. professional associations, as long as they are not for profit; and
6. non-for-profit civil associations, foundations, federations and confederations with recognized legal standing, with respect only to their assets and incomes related exclusively to the fulfillment of their own aims and purposes.

b. Case Law

We have not reviewed case law.

C. Analytical comparison

Given the exemptions in favor of NPOs described above, in general terms it can be said that NPOs enjoy of a more beneficial tax treatment than FPOs. However, it should be noted that FPOs benefit from economic free zones.

IV. Financial Transaction Laws

A. For-Profit Organizations

a. Laws

i. Foreign Investment/Foreign Funding Laws

The main statute that governs foreign investment in Nicaragua is Law No. 344 "Foreign Investment Promotion Law"[25]. This statute warrants equal treatment between foreign and local investments with the exception of national security and public healthcare matters[26].

Law No. 344 also offers foreign investors (a) full currency convertibility; (b) freedom to expatriate all capital and profits, dividends or earnings generated in Nicaraguan territory after paying applicable taxes; (c) no need of minimum of maximum amount of investment and (d) property protection and security

Article 9 of the Law No. 344 establishes that foreign investments interested in the benefits contained in such law must register at the Foreign Investments Statistics Registry attached to the Commerce, Industry and Promotion Ministry.

In addition to the Law No. 344 Nicaragua has signed up to 19 bilateral agreements for the reciprocal protection of investments and subscribed several treaties for alternative dispute resolution mechanism.

ii. Political Contribution Laws [27]

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[25] Ley N. 344 de Promoción de la Inversiones Extranjeras, La Gaceta #97, 24 May 2000, y su Reglamento, La Gaceta # 163, 29 August 2000.

http://www.tramitesnicaragua.gob.ni/media/ley%20y%20reglamento%20promoci%C3%B3n%20inversiones%20extranjeras.pdf

[26] Article 3 of the Foreign Investment Promotion Law No. 344.

Political contributions are regulated under Electoral Law No. 331 [28]. According to Article 103, "political parties or political alliances may receive contributions from Nicaraguan citizens or foreigners within the amounts and limits and in accordance with the requirements established by law.

However, the law does not establish which are the maximum amounts or the limits referred to in Article 103.

Additionally, the Law No. 331 does not even mention any amount limits to contributions from legal entities. Yet, two limitations must be noted:

First, fully or partially state-owned institutions are not allowed to contribute, whether domestic or foreign. Donations from foreigners are explicitly allowed. However, funding from foreign institutions must be used for technical assistance or training.[29]

Second, there is a ban on anonymous contributions. However, this ban does not apply to funds raised in public rallies, previously notified to the competent authorities.[30]

b. Case Law

We have not reviewed case law.

B. Not-For Profit Organizations

a. Laws

i. Foreign Investment/Foreign Funding Laws

NPOs are subject to the same rules as FPOs.

ii. Political Contribution Laws

NPOs are subject to the same rules as FPOs.

b. Case Law

We have not reviewed case law.

C. Analytical Comparison

There are no differences between the two.

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27 For more information on this issue, see web page of the International Institute for Democracy and Electoral Assistance, Political Finance data from Nicaragua: http://www.idea.int/political-finance/country.cfm?id=169

28 Electoral Law No. 331, including 2012 amendments, La Gaceta #168, 4 September 2012, http://aceproject.org/ero-en/regions/americas/NI/nicaragua-ley-no.-331-ley-electoral-2012/view

29 Article 103 of the Electoral Law No. 331.

30 Article 104 of the Electoral Law No. 331.

V. Auditing/Reporting Requirements

A. For-Profit Organizations[31]

a. Laws

Article 248 of the Commercial Code requires all joint stock companies to prepare annually a balance sheet and an inventory and publish it in the official Gazette. Join stock companies are also required to hold annual general meetings of shareholders, at which the balance sheet is reviewed and approved.[32]

Every joint stock company must appoint at least one "inspector" (*vigilante*), or a "*consejo de vigilancia*," which performs an internal control function similar to, but more limited than, an internal auditor. The inspector, who may or may not be a shareholder, and who is elected by the shareholders at the annual general meeting of shareholders, reviews the balance sheet and inventory for any discrepancies or irregularities. Inspectors can only be held liable for failure to execute their duties, not necessarily for failure to detect discrepancies or irregularities.[33]

No provision of company or tax law requires non-listed enterprises that control a group of enterprises to prepare consolidated financial statements. Nor do the laws make any distinction between consolidated and legal entity financial statements.

Beginning 2009, the Superintendency of Banks and Other Financial Institutions (SIBOIF) requires banks to collect audited financial statements from all companies that borrow more than US$750,000 (or its equivalent in Córdobas). All companies borrowing between US$300,000 and US$750,000 must submit "certified" financial statements to their lending institution.[34] The SIBOIF resolution does not specify a particular auditing standard, although it does require the auditor to be an Authorized Public Accountant.[35] Also, the Fiscal Equity Law on taxation requires taxpayers to submit the same financial statements to banks for the purposes of obtaining credit that they submit to tax authorities.[36]

Additionally, there are rules that apply to companies in specific sectors:

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31 This section contains extracts from the World Bank's Report No.: AAA63-NI, "Nicaragua - A review of the Accounting and Auditing Practices," March 2011. Available at: https://openknowledge.worldbank.org/bitstream/handle/10986/2828/AAA630ESW0P1180C0disclosed020280120.pdf?sequence=1

32 Articles 251 and 257 of the Commercial Code.

33 Articles 246, 293, and 295 of the Commercial Code.

34 The law does not define "certified" financial statements, but Nicaraguan audit firms clarify that a certification, as they have interpreted it, is a type of review that essentially verifies that the financial statements agree with the books of accounts. This review does not rise to the level of an audit.

35 SIBOIF standard on Credit Risk Management, Resolution No. CD-SIBOIF-547-1-AGOST20-2008, Annex 1, August 20, 2008.

36 Fiscal Equity Law (Law No. 453 of 2003, as amended by Law No. 528 of 2005), Article 137.

i. Banking Sector

Banking-sector accounting standards are codified in SIBOIF's Unified Accounting Manual (MUC) for banks. Banks are required to submit audited financial statements to SIBOIF's Banks department within 90 days following the close of the fiscal year.[37] The annual financial statements must include a balance sheet, an income statement, a statement of changes in equity, a cash flow statement and notes that include the most important accounting policies and other explanatory notes.[38] Financial groups must also present quarterly unaudited consolidated financial statements to SIBOIF within 30 days after the end of each quarter, and audited consolidated financial statements within 90 days of the close of the fiscal year.[39] All banks must present monthly reports containing assets, liabilities, earnings and prudential information. SIBOIF may also request financial information from any other entity that is part of the same economic group as a regulated bank.

Within 120 days after the end of the fiscal year, banks are required to publish their audited annual balance sheet, income statement and the auditor's report in a national circulation newspaper and the Gazette.[40] Banks must also publish their complete annual audited financial statements, with the accompanying notes, on their websites. When they are part of larger groups, banks should also include a note on their websites directing financial statement users to the consolidated group financial statements.[41] SIBOIF publishes the unaudited monthly balance sheets and income statements on its website.

Finally, banks must appoint external auditors who are registered with SIBOIF's external auditor registry and must rotate the entire external auditing team every three years.

ii. Insurance Companies

Nicaragua's insurance companies must comply with most of the same general requirements as banks.[42]

iii. Other Financial Entities

Bonded warehouses are subject to most of the same SIBOIF requirements as described for banks and insurance companies.

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37 SIBOIF standard on External Audit, Resolution No. CD-SIBOIF-583-2-ABR29-2009 of April 29, 2009, Article 40.

38 SIBOIF standard on External Audit, Resolution No. CD-SIBOIF-583-2-ABR29-2009 of April 29, 2009, Article 23.

39 SIBOIF standard on Financial Groups, Resolution No. CD-SIBOIF-516-1-ENE9-2008 of January 9, 2008, Article 28b.

40 General Law on Banks, Non-banking Financial Institutions and Financial Groups, Law 561 of 2005, Articles 24, 116, and 128.

41 SIBOIF standard on External Audit, Resolution No. CD-SIBOIF-583-2-ABR29-2009 of April 29 2009, Article 41.

42 General Law on Insurance Institutions, Decree 1727 of August 4, 1970. Available at: http://www.superintendencia.gob.ni/documentos/marco_legal/generales/decretono1727.pdf

Microfinance institutions (MFIs) are subject to different levels of supervision depending upon their mode of incorporation. A few MFIs are “finance companies” that offer microfinance as well as consumer and small and medium enterprise lending. These larger MFIs, which comprise approximately 40 percent of the total microfinance loan portfolio, are supervised by the SIBOIF and are subject to the same requirements as banks. The remaining 60 percent of the sector (as measured by loan portfolio) consists of financial cooperatives and NGO MFIs and is essentially unregulated.

Financial cooperatives are loosely supervised by the government’s cooperative authority, the Nicaraguan Institute for Cooperative Development (INFOCOOP). MFIs Cooperatives are required to submit financial statements to INFOCOOP within 30 days after the end of each fiscal year.[43] The Cooperatives Law also explicitly grants “autonomy in the design and execution of operational policies” to financial cooperatives, which may impede or preclude prudential supervision of these entities.[44] Some NGO-type MFIs belong to the Nicaraguan Microfinance Association (ASOMIF), which requires its members to submit unaudited annual balance sheets and income statements for publication in ASOMIF’s annual report. These data are primarily for statistical purposes, however, and ASOMIF does not review its members’ financial statements or provide oversight.

iv. Securities Market Participants

Entities associated with Nicaragua’s stock exchange are supervised by SIBOIF and are subject to similar financial reporting and oversight requirements as other SIBOIF-regulated entities. Similarly, publication and audit requirements for listed companies are the same as other SIBOIF-regulated companies explained above.

SIBOIF also requires listed companies to set up an audit committee responsible for supervising the inspector or internal auditor and to propose an external auditor to the Board of Directors, among other duties. The corporate governance standard also requires clear internal controls policies and a code of ethical conduct.[45]

b. Case Law

We have not reviewed case law.

B. Not-For Profit Organizations

a. Laws

[43] General Law on Cooperatives, Law No. 499 of January 25, 2005, Article 108.

[44] General Law on Cooperatives, Law No. 499 of January 25, 2005, Article 14: “Las cooperativas de ahorro y crédito, en su actividad de brindar servicios financieros a sus asociados, gozarán de autonomía en la concepción y realización de su política de operaciones.”

[45] SIBOIF standard on Corporate Governance for Issuers of Publicly Traded Securities, Resolution CD- SIBOIF-559-2-NOV5-2008 of November 5, 2008.

NPO subject to Law No. 147 must submit general balance sheets upon conclusion of the fiscal year.[46]

As complementary information, some NPOs also submit activities reports, clarifying the relation between implemented actions and the fund amounts managed. However, the presentation of such activities reports is not required by law or by the Ministry of Governance[47].

b. Case law

We have not reviewed case law.

C. Analytical Comparison

Even though both types of entities are required to submit annual balance sheets, the overall treatment is much more stringent for FPOs than NPOs:

1. FPOs are subject to publication requirements that do not apply to NPOs;
2. In general, NPOs are not required to audit their accounts.

VI. Penalties for Non-Compliance

A. For-Profit Organizations

a. Laws

There are no fines specified for not maintaining books of accounting.

However, SIBOIF has the authority to impose sanctions of up to US$60,000 with regard to banks' financial reporting obligations.[48]

Under Nicaraguan law, legal entities are not subject to criminal responsibility. Only their administrators or representatives may be subject to it. Such administrators or representatives are subject to the general criminal statute, the Nicaraguan Penal Code,[49] and will be criminally responsible for any actions related to the Company's activities that constitute embezzlement, fraud, bribery, document forgery, etc.

b. Case law

We have not reviewed case law.

B. Not-For Profit Organizations

[46] Law No. 147, Article 13.

[47] See web site of the International Center for Nor-for-Profit Law, NGO Law Monitor, Nicaragua: http://www.icnl.org/research/monitor/nicaragua.html

[48] SIBOIF standard on Imposing Sanctions, Resolution No. CD-SIBOIF-410-1-MAR14-2006 of March 14, 2006.

[49] See Nicaraguan Penal Code: https://www.oas.org/juridico/mla/sp/nic/sp_nic-int-text-cp.html

a. Laws

Law No. 147 establishes fines as administrative sanctions if any obligations contained in Article 13 are violated or in the event that foreign organizations fail to comply with the law's requirements.

In particular, Article 22 of the Law No. 147 establishes the possibility of imposing fines amounting from 1,000 to 5,000 Córdobas. However, the parameters for determining the fine amounts are not specified.

Additionally, Article 22 of the Law No. 147 also regulates the possibility of intervention for the period of time strictly necessary to solve the irregularities or the violation of the Law.

Finally, under Nicaraguan law, legal entities are not subject to criminal responsibility. Only their administrators or representatives may be subject to it. Such administrators or representatives are subject to the general criminal statute, the Nicaraguan Penal Code,[50] and will be criminally responsible for any actions related to the Company's activities that constitute embezzlement, fraud, bribery, document forgery, etc.

b. Case law

We have not reviewed case law.

C. Analytical comparison

As opposed to NPOs, under Nicaraguan law not all FPOs may be subject to sanctions for violating their reporting obligations. However, the sanctions that may be imposed on banks, for instance, are much higher than those that may be imposed on NPOs.

There are no differences with respect to criminal responsibility between FPOs and NPOs.

D. Statistics on actual penalties for each group (if, available)

OVERVIEW CHART

Issue	For-Profit Organizations	Not-For Profit Organizations	Similarities
Registration Procedures	• Incorporation requires public deed and registration with the Commercial Section of the Public Registry. • Minimum time to complete	• The statute that governs NPOs does not clearly regulate the procedures, requirements and time frames for the incorporation of NPOs. • Incorporation also	• Even though both types required public deed, there is a substantial difference in their incorporation procedure, since NPOs require National Assembly

50 See Nicaraguan Penal Code: https://www.oas.org/juridico/mla/sp/nic/sp_nic-int-text-cp.html

	registration process is 13 days according to Doing Business. • In general terms, there is no government involvement in the governance. However, certain types of FPOs, such as financial institutions or mutual guarantee companies, are subject to government surveillance or control.	requires public deed but legal standing is granted by the National Assembly. • Once legal standing is granted by the National Assembly, the entity must register at the Registry and Control of Associations of the Ministry of Governance. • Cancellation of legal status is also done by the National Assembly. • As an administrative sanction, the Ministry of Governance may impose intervention for the period strictly necessary to resolve any irregularities caused by violation of the Law.	approval. • In general terms, there are no citizenship requirements in both FPOs and NPOs. • Much lengthier process for NPOs than FPOs. • Broader discretion in the incorporation and registration process of NPOs than FPOs.
Tax Laws	• FPOs are subject to income taxes, value-added taxes, real property taxes, custom duties and stamp taxes. • However, Nicaraguan law establishes multiple fiscal incentives to companies operating in specific economic or industrial sectors.	• At the national level, Nicaraguan law establishes income tax exemptions on economic activities for NPOs. • Churches, denominations, and religious faiths with legal standing are exempt from the Value Added Tax (*Impuesto al Valor Agregado IVA*), in terms of goods intended exclusively for their religious purposes. • In terms of	• Given the exemptions that apply in favor of most NPOs, in general terms, NPOs enjoy a more beneficial tax treatment than FPOs.

		municipal taxes, exemptions from payment of the income tax and real property tax are also given to most types of NPOs.	
Financial Transaction Laws	• Nicaraguan law offers foreign investors (a) treatment not less favorable than that accorded to its nationals; (b) full currency convertibility; (c) freedom to expatriate all capital and profits, dividends or earnings generated in Nicaraguan territory after paying applicable taxes; (d) no need of minimum of maximum amount of investment and (e) property protection and security. • In order to enjoy this benefits foreign investor must register in the Foreign Investments Statistics Registry. • Nicaraguan law does not establish any limit amount to political contributions. • Fully or partially state-owned institutions are not allowed to contribute, whether domestic or foreign. However, funding	• Same rules as FPOs.	• Both types are subject to the same rules.

	from foreign institutions must be used for technical assistance or training.		
Auditing/Reporting Requirements	• Nicaraguan law requires joint stock companies to prepare and publish annual balance sheets. • Joint stock companies that borrow more than USD 300,000 must submit certified financial statements to their lending institution and those who borrow more than USD 750,000 must submit audited financial statements. • Nicaraguan law establishes more rigorous reporting and auditing requirements to banks, other financial institutions, insurance companies and entities securities market participants.	• NPOs are required to submit general balance sheets upon conclusion of the fiscal year. • In general terms NPOs are not subject to auditing requirements.	• Even though both types of entities are required to submit annual balance sheets, the overall treatment is much more stringent for FPOs than NPOs.
Penalties	• There are no fines specified for not maintaining books of accounting. • However, SIBOIF has the authority to impose sanctions of up to US$60,000 with regard to banks' financial reporting obligations.	• Nicaraguan law establishes the possibility of imposing fines amounting from 1,000 to 5,000 Córdobas if NPOs violate their obligations. However, the parameters for determining the fine amounts are not specified.	• Under Nicaraguan law, legal entities (both NPOs or FPOs) are not subject to criminal responsibility. Only their administrators or representatives may be subject to it.

		• Nicaraguan law also regulates the possibility of intervention for the period of time strictly necessary to solve the irregularities or the violation of the law.	