

GUATEMALA LEGAL COUNTRY PROFILE

LEGAL SYSTEM OVERVIEW

Guatemala has a civil law system. There is a clear legal hierarchy, with constitutional law forming the supreme law of Guatemala, followed by statutory law. The Political Constitution of the Republic of Guatemala's supremacy is affirmed in Article 175, which states that no law may contradict the Constitution and those that violate it are void in terms of the law. Its three sections protect fundamental rights and liberties, establish the basic structure and power of the government and set out safeguards to protect the rights and liberties recognised in the Constitution. The president has limited legislative and legal powers and always acts in conjunctions with at least one minister, although they may be temporarily empowered during national emergencies. The Congress of the Republic, the legislative branch, also serves as a check on executive power.¹

Judicial independence is enshrined in Article 203 of the Political Constitution.² The judicial branch is formed from the Supreme Court, the Appellate Court of Accounts, Administrative Tribunals, the Court of Appeals, First Instance Courts as well as minor and child courts. The Supreme Court acts as the highest court for civil, criminal and constitutional matters. The autonomy of the judiciary, however, is questionable. Attacks on judges and lawyers involved in high profile court cases are not uncommon and private sector groups have been able to delay such cases on multiple occasions. Cases are also hampered by a number of mechanisms provided by national legislation. As such, the judiciary is only moderately independent as it is subjected to interference by political, criminal and private-sector actors.³

Corruption represents a major threat to the independence of the judiciary and is also endemic within the business and political environments. Bribes and irregular payments are often exchanged in return for favourable or delayed court rulings which contribute to the inconsistency in judicial decisions and long ruling times. As such, impunity is widespread amongst government officials, although major corruption cases have occurred in recent years. Notably *La Línea* scandal saw the resignation of and charges brought against former President Otto Pérez Molina and his vice-president. Current President Jimmy Morales is also embroiled in scandal after failing to expel the head of the UN International Commission against Impunity in Guatemala from the country. Furthermore, the attorney general is also attempting to remove Morales political immunity in order to press corruption charges, linked to the 2015 election, against him. Strong anti-corruption legislation exists, but interference with the judiciary by third parties often stops effective implementation.⁴

Guatemalan civil law is based off French influences and legislation is considered the primary source of law. Custom may only be invoked in the complete absence of applicable legislation. The Civil Code of 1963 governs a broad range of topics including contracts, obligations and personal law. The Commercial Code of 1970 regulates commercial activity and covers corporate law, commercial entities and law on commercial agreements; the Labour Code, meanwhile, governs employer-employee relations. Furthermore, corruption offences, both passive and active, are criminalised under Guatemala's Penal Code. Guatemala's courts are also empowered to seize goods and assets connected to illicit activities, through the Asset Recovery Law.⁵

¹ <https://web.archive.org/web/20121121143038/http://www.nyulawglobal.org:80/Globalex/Guatemala1.htm>;
https://www.constituteproject.org/constitution/Guatemala_1993.pdf?lang=en.

² https://www.constituteproject.org/constitution/Guatemala_1993.pdf?lang=en.

³ <https://www.bti-project.org/en/reports/country-reports/detail/itc/gtm/>.

⁴ <http://www.business-anti-corruption.com/country-profiles/guatemala>.

⁵ <http://www.business-anti-corruption.com/country-profiles/guatemala>.

Guatemala has signed a number of international treaties and conventions including the Geneva Conventions, United Nations Convention Against Corruption, the New York Convention and the Framework Convention on Climate Change as well as the Kyoto Protocol. Guatemala is also a member of a number of international organisations. These include the Central American Common Market, Dominican Republic-Central America Free Trade Agreement, World Trade Organisation and the International Centre for Settle of Investment Disputes. National legislation is preeminent over international law, except for treaties and agreements ratified concerning human rights.⁶

BUSINESS OVERVIEW

Guatemala's economic growth has remained fairly consistent over the last five years, and real GDP growth is forecast between 3.4% and 4% annually over the next five years, totalling GDP growth of roughly US\$5 billion per year.⁷ Agricultural products, foodstuffs and textiles are the three largest sectors of the export economy, accounting for almost 60% of exports, whilst Guatemala's primary imports are machinery as well as chemical and mineral products.⁸

Foreign investors receive treatment comparable to domestic investors and there are few sector-specific restrictions on foreign investment. Guatemala is ranked 97 of 190 in the World Bank's Ease of Doing Business Index and 139 of 190 in the World Bank's Starting a Business Index.⁹ Major obstacles to doing business are corruption, transparency issues, violent crime and a weak judiciary.

Nevertheless, Guatemala has a number of free trade agreements, notably with the US and EU, as well as economic support from the US and multilateral lenders. Guatemala also has strong links to both Central and North America and a large number of business people are fluent in English. Opportunities for investment and business exist in a number of sectors. Given the large agricultural export economy demand for modern machinery remains high; Guatemala has potential for a strong mining sector; there is scope for the hydroelectric and geothermal energy infrastructure projects and a number of opportunities in the tourism sector, driven by Guatemala's cultural history.¹⁰

COUNTRY OVERVIEW

The Republic of Guatemala is a Central American nation, bordering Mexico, Belize, El Salvador and Honduras. Guatemala has a population of 15.46 million, the 70th most populous country in the world and roughly three million of these citizens residing within the capital, Guatemala City. Spanish is the official language but 23 indigenous languages, including 21 Maya languages, are also recognised. The population is religiously split between Roman Catholicism, Protestantism and traditional Mayan beliefs, although the state is officially secular.¹¹

Guatemala is viewed as a high-risk nation in terms of the political-economic situation as well as in relation to the business climate.¹² The most substantial security risk is that posed by violent crime. Guatemala's violent crime rate is one of the highest in Latin America, as well as one of the highest murder rates in the world.

Corruption is a major issue and Guatemala is ranked 136 of 176 in Transparency International's 2016 Corruption Index. Corruption pervades through politics, the economy and judiciary.¹³

⁶ https://www.constituteproject.org/constitution/Guatemala_1993.pdf?lang=en.

⁷ http://www.imf.org/external/datamapper/NGDP_RPCH@WEO/GTM; <http://www.imf.org/external/datamapper/NGDPD@WEO/GTM>.

⁸ <https://atlas.media.mit.edu/en/profile/country/gtm/>.

⁹ <http://www.doingbusiness.org/data/exploreeconomies/guatemala#starting-a-business>.

¹⁰ <https://globaleedge.msu.edu/countries/guatemala/risk>.

¹¹ <https://www.cia.gov/library/publications/resources/the-world-factbook/geos/gt.html>.

¹² <https://globaleedge.msu.edu/countries/guatemala/risk>.

¹³ <http://www.business-anti-corruption.com/country-profiles/guatemala>.

Guatemala's economy is fairly diverse, particularly its export economy, and dominated by the private and informal sectors. GDP currently stands at US\$70.81 billion and is forecast to steadily grow in the near future.¹⁴

Guatemala is a presidential republic which is democratic and pluralistic in nature. Executive power rests with the president, who is both chief of state and head of government. The incumbent is former comedian President Jimmy Morales, who won a landslide victory in the 2015 election. The president and vice president are elected by absolute majority vote, over two rounds, for a single four-year term: the next election is scheduled for September 2019. The legislative branch consists of the unicameral Congress of the Republic. 127 of the 158 members are elected through simple majority vote within multi-seat constituencies in the country's 22 departments, whilst the remaining 31 are elected on a nationwide constituency-based proportional representation vote. Members serve a four-year term, with the next elections to be held in September 2019.¹⁵



¹⁴ <http://www.imf.org/external/datamapper/NGDPD@WEO/GTM>; http://www.imf.org/external/datamapper/NGDP_RPCH@WEO/GTM.

¹⁵ <https://www.cia.gov/library/publications/resources/the-world-factbook/geos/gt.html>.