AMCHAM
GUATEMALA
AMERICAN CHAMBER OF COMMERCE

AmCham In Action

AmCham participates actively to be a source of opinions and proactive solutions to the problems that affect the social and economic development of the country, with a significant advocacy in the bilateral agenda between the United States of America and Guatemala.

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RULE OF LAW

a. INSTITUTIONAL STRENGTHENING AND RULE OF LAW

The Guatemalan-American Chamber of Commerce -AmCham- firmly believes that upholding and respecting the Rule of Law of the country through the fight against impunity and corruption is essential.

It is important to continually strengthen the institutions, democracy and the independence of the Jurisdictional Bodies that play an important role in the transformation of the country.
Discretionary court rulings and weakness in the judicial institutions have created an environment of uncertainty that is resulting in private sector distrust for the judicial system. The weakness of the Rule of Law is materialized through concrete situations that affect businesses such as judicial and administrative proceedings in which the principles of presumption of innocence are not respected; judicial institutions that fail to comply with the terms of the law; and arbitrary interpretations of the law.

In the other hand, lack of response from the institutions to questions and requirements that the companies make in the framework of administrative or judicial processes.
It is important for Guatemalan society to live in a climate of political and social harmony and stability, respecting the private property and contributing to the economic growth of Guatemala by prioritizing legal certainty, transparency and common good. These are all essential principles to ensure economic development and growth to promote new investment and the creation of jobs, to avoid the internal and external displacement of the population, by improving their quality of life.

AmCham believes that the main focus for Guatemala's public and private sectors and civil society should be institutional building aimed at maintaining the stability and harmony of the country. We firmly believe in

the fight against corruption through strong institutions and their presence throughout the country, while providing legal certainty to investors and entrepreneurs.

b. GOVERNMENT PROCUREMENT LAW

For the sake of the country's competitiveness and attraction of foreign direct investment, it is necessary to have an efficient and transparent public procurement system. Currently, public sector contracting is governed by the State Procurement Law, decree 52-87 and its regulations. However, to this end, said regulation has been modified on several occasions, causing contradictions and inconsistencies within the same text. Which does not respond to current needs.

For this, it is necessary to develop a new regulatory framework that guarantees an adequate balance between checks and balances and the necessary freedom to contract efficiently and competitively, without neglecting the need to strengthen transparency.

Therefore, following the recommendations of the Public Governance Committee of the Organization for Economic Cooperation and Development, and the Agreement on Government Procurement of the World Trade Organization, it is considered necessary that any proposed regulatory framework on this issue must include the following pillars:

- **Institutional strengthening**

The Public Procurement System must be endowed with a solid institutional infrastructure that promotes efficiency and mitigates arbitrary decision making. Therefore, it is necessary for any new regulation to strengthen the Ministry of Finance, as the coordinating entity of the central government's contracting and procurement system and its decentralized and autonomous entities, in which the necessary resources and clearly established institutional coverage are available. for proper

administration. Likewise, there are guidelines and guidelines for all entities in charge of contracting, they must comply with to avoid the proliferation of dispersed regulations subject to the different criteria of each government entity.

- **Professionalization**

The efficiency of the System goes hand in hand with the professionalization of public officials. Thus, the tools should be designed so that all officials in charge of public procurement have a high level of integrity and technical training. For him

- **Public Budget and Planning**

For the contracting processes to be more efficient and to optimize public spending, public procurement must be integrated into the management of public finances, in this way, the regulation must reflect coordination between procurement and budget management, establishing the obligations and the procedure for budgeting and multi-year financing to optimize the design and planning of the procurement cycle.

- **Anti-corruption and Accountability System**

The Public Procurement System must have internal controls, measures to guarantee compliance with contracts and anti-corruption programs, aimed at contracting entities and suppliers. For this, it is necessary that public contracts include guarantees of exemption from corruption and adopt measures to verify the veracity of declarations and guarantees of exemption from corruption.

- **Conflict resolution**

The efficiency of the contracting system will also depend on the functioning of the conflict resolution mechanisms established by law. The

law must contemplate efficient conflict resolution mechanisms in the administrative part.

- **Regulatory Concentration**

The Public Procurement System must be endowed with a wide margin of certainty to foster the confidence of applicants and avoid arbitrariness by the entities in charge of contracting. Therefore, the law must contain reasonable and solid provisions so that the bidding and contracting terms are as clear and simple as possible, avoiding the introduction of conditions that reduce or contradict those of other laws or regulations.

The publication and regulations and agreements of the Bidding Boards should be regulated in such a way that all the relevant information for the application of the law is found and derived from a single regulatory body. This becomes easier to inspect for each government entity because there is no need to adapt to the regulations of each independent entity.

- **Minimal Exceptions**

The abuse of exceptions has resulted in an unpredictable, ungovernable, difficult to control and inefficient system, with high risks of corruption. Therefore, the exceptions should be limited, as well as contracting with a single supplier. Similarly, the hiring process should be regulated in cases of emergency and public calamity.

The exceptions must be minimal, in addition, the process must be established so that there are always requirements to comply with an efficient and transparent mechanism.

- **Specific regulation for to contracting goods and services**

A specific regulation must be created for the contracting of goods and services, in accordance with their characteristics and specific characteristics.

- Information Accessibility and Contracting System

It is essential that the regulatory framework encourages the transparent and effective participation of all stakeholders, seeking to increase efficiency throughout the public procurement cycle. The implementation of information and communication technologies is an important aspect to achieve this objective, because it represents a means to guarantee transparency and access to public tenders, promote competitiveness, simplify the procedures for awarding contracts and their management.

c. CONSULTATION WITH INDIGENOUS PEOPLE – ILO CONVENTION 169

The Government of Guatemala ratified ILO's Convention 169 in June 1996, whereby it assumed the responsibility of implementing non-binding consultation processes prior to authorizing administrative measures that may affect the rights of indigenous peoples concerning their culture, forms of life, institutions, traditions, collective rights and the right to participate effectively in decisions that impact their forms of development. At the moment there is no document that provides the Executive branch with an appropriate procedure to hold consultation processes which respect the criteria of prior, informed consultation made in good faith.

The Court system has ordered consultation for mining, hydroelectric and electric transmission projects in different stages: preparation, construction and operation. The operation of two hydroelectric projects were cancelled for 105 days and two mining projects were temporarily suspended.

In most rulings, the Constitutional Court has instructed the Ministry of Energy and Mines to implement consultation processes using ILO's Convention 169 as a sufficient guideline. The Ministry of Energy and Mines developed a methodology to implement these procedures to fulfill its instructions, and took advantage of the experiences of other countries such as Peru, Colombia and Chile. This methodology was shared with the representatives of communities in each case.

The Ministry of Labor and Social Welfare is the agency in charge of handling International Labor Organization matters and through it, the Government of Guatemala took the initiative to work on an Operations Guide for the implementation of Consultations with Indigenous Peoples.

This Operations Guide was created with the help of AmCham as a tool to guide the Executive branch in the implementation of consultation processes through a framework to guide the relationship with Indigenous Peoples. It provides a detailed process with specific activities to be met and assess as part of the process, it includes a participatory process that is respectful of Indigenous Peoples' customs, and allows the joint construction of a mechanism of permanent dialogue to accomplish agreements, monitoring and compliance.

To fulfill the ruling issued by the Constitutional Court in the case of the Oxec I and Oxec II hydroelectric projects, the President of Guatemala, acting in his capacity as the representative of the Executive Branch, presented to the Speaker of Congress the Operations Guide for the Implementation of Consultation Processes with Indigenous Peoples within the framework of ILO's Convention 169, as a guide for the drafting of the law by Congress to meet the consultation process obligation.

Through the Ministry of Labor and Social Welfare, the Government of Guatemala engaged in important efforts with representatives of various sectors, particularly Indigenous Peoples' leaders, to build consensus for the immediate practical enforcement of this Operations Guide. Support

was received from the ILO, UNDP, the Legislative Branch, Embassies and Indigenous Leaders. Despite efforts by the Executive Branch to create a mechanism for the implementation of Consultation Processes under ILO's Convention 169, clarity about Indigenous Leaders' representation, and understanding of the spirit and scope of the Convention by Indigenous Peoples is necessary.

Nevertheless, the process of consultation with Indigenous Peoples within the framework of ILO's Convention 169 still needs a robust and articulated institutional framework, with presence in rural areas and the capacity to cover basic needs in Indigenous Peoples territories. It is therefore necessary to take into account the conditions that must be in place to implement these processes and that the operations guide is just a tool to give certainty, but this guide should be followed by the creation of the complete framework.

The cancellation or suspension of mining and hydroelectric projects needs to be stopped. These rulings sabotage the objectives of the Alliance for Prosperity Plan for the Northern Triangle with the United States, which seeks to reduce the high costs of electric power, enhance the low levels of investment, create employment and much more.

For example, by suspending operations of Minera San Rafael – Tahoe, more than 17,000 direct jobs have been put at risk, which are the livelihood of more than 85,000 Guatemalans. Furthermore, revenues of over 5 million dollars per day stop flowing into the country in the form of payments to suppliers, taxes and royalties, plus more than 120 million dollars in annual investment and payments to suppliers. The operations of the mining were suspended for more than 300 days, meanwhile in other cases of this matter the companies were able to continue their operations while the consultation is done.

After more than 1 year of suspension the Constitutional Court issued a ruling on the constitutional action for relief of the suspension, ordering the

Ministry of Energy and Mining to proceed with the consultation and the mining to renew operations after the consultation. This is a clear example of the lack of rule of law that the country is experiencing and we truly believe that if this kind of issues stays unsolved the competitiveness of Guatemala will be negatively affected.

There is a need for a clear regulation and processes for the consultation, considering that the convention 169 does not have a complete procedure on how to fulfill the requirements of an efficient consultation, and this as a result will bring more unsolved cases and lack of rule of law for the investors.

d. ILO CONVENTION 175 REGULATION

The ILO Convention No. 175 was approved in June 1994, and ratified by Guatemala in January 2017. By express provision of the text of the Convention, each signatory party undertook the obligation of regularizing its through internal national legislation.

On June 3, 2019, the Executive Branch approved the Regulation of Convention No. 175 by means of the Agreement 89-2019 of the Ministry of Labor and Social Security. On October 3, 2019, the Constitutional Court provisionally suspended some articles of the regulation, which rendered it inoperative.

Based on the foregoing and in compliance with the obligation to regularize the content of Convention No. 175, the Congress of the Republic resumed the discussion and approval of the initiative No. 5477 presented on July 12, 2018 that contains the bill that regularizes said Convention. Currently the initiative is pending to be discussed by the Congress in its first debate.

The initiative contains eleven articles intended to allow the application of the part-time work regime as provided in the Convention.

Firstly, the initiative defines relevant terms for the correct interpretation of its content. Among them, the concept of part-time worker stands out, referring to the worker who provides his personal services in a labor relationship for less hours than the established for the ordinary day of work in the Labor Code.

The initiative provides that part-time personnel can be hired complying with the provisions of the Labor Code and the Convention. For this purpose, it is established that workers under this regime enjoy all the rights established in ordinary laws and international conventions on labor and social security.

Under the terms of the initiative, part-time workers are entitled to receive a wage on an hourly basis, which cannot be less than the minimum hourly wage fixed for each year. All the labor benefits that apply for the regular workers are to be determined proportionally.
Lastly, it establishes that the transfer of a full-time worker to part-time or vice versa is allowed, as long as it is voluntary, so the worker's consent must be stated expressly and in writing.

The approval of the initiative will be positive as it would facilitate the hiring of personnel by increasing the flexibility of the country's labor regulatory framework in an unprecedented way. This, therefore, without further regulation, provides that the payment of the minimum wage may be proportional to the number of hours worked, and the rest of the benefits must be calculated in the same way. In addition, it solves aspects that were not regulated in the Agreement 89-2019 of the Ministry of Labor and Social Security that is currently suspended.

INFRASTRUCTURE IMPROVEMENTS

a. GENERAL LAW OF ROAD INFRASTRUCTURE

Regulations on road infrastructure are currently outdated. For which it is positive to have a single legal framework for greater legal certainty, such as the one that would be created through the General Law of Road Infrastructure. It is positive that the initiative establishes the obligation to have a long-term National Infrastructure Plan, since this would not only allow for a more effective inspection and monitoring of the development of infrastructure projects at the national level in relation to its execution and the detection of factors that could put this factor at risk, but would also reduce the margin of discretion for making decisions of a political nature, given the binding power of said plan.

The initiative of the General Law of Road Infrastructure, by having its own contracting process and allowing the submission of unsolicited offers, would incorporate a dynamic system that has been effective in other countries as it would boost the road infrastructure development procedure , resulting in an increase in coverage, quality and competitiveness. Additionally, these aspects would promote better coordination between the Highway Authority and developers, by eliminating unnecessary regulation that only bureaucratizes the infrastructure development process.

It is positive that the initiative establishes a deadline to expedite the granting of licenses of an environmental, forestry or other nature. If the term elapses, said licenses will be considered granted, which is why the incentives are aligned for the corresponding entities to carry out the respective procedures in the corresponding term. However, establishing “of another nature” can lead to misinterpretations, it is important to clearly determine which permits it refers to.

The diversification of the remuneration mechanisms in attention to the contracting modalities, among which are included the payment for construction, for maintenance, for availability, for contributions made by the road authority or third parties for the development of the project, payment for tolls, and any other determined by the Road Authority is positive since it promotes efficiency in the development of infrastructure projects. It also allows multi-year contracting, which will allow long-term projects.

In addition, the creation of the Superintendency of Infrastructure is important in terms of autonomy and decentralization of functions, however, in this situation, a regulatory modification should be considered to reduce the functions that by law correspond to the Ministry of Communications, Infrastructure and Housing. as this would continue to be the governing body of road infrastructure.

b. STRENGTHENING PUBLIC PRIVATE PARTNERSHIPS IN GUATEMALA

Currently, Guatemala faces major challenges in the country's infrastructure, which has impacted the quality of life of the inhabitants, as well as the productivity and competitiveness of the country, due to the various limitations of the traditional model in the development of infrastructure and provision of services, such as: fiscal and investment limitations, lack of planning and project execution capacity.

Other countries have overcome the problem by using the public private partnerships (PPP) contracting scheme, in which there is cooperation between the government and the private sector, allowing the efficient and high-quality development of infrastructure, achieving the development of large-scale projects, such as the expansion of the road network, ports, airports, among others.

Guatemala, through the Government Procurement Law, decree No. 57-92, contemplated the possibility of public-private participation in a broad sense, through the figure of public concession to individuals, which allows the State to grant individuals, for that at their own risk, build, improve and / or administer a work, good or public service, under the control of the granting public entity, in exchange for a renumbering that the individual charges users of the work, good or service.

However, said legal framework needed an update and modernization for the development of PPP projects, which is why, in 2010, a new legal and institutional framework for contracting is created through PPP modality, with the approval of Partnerships for the Development of Economic Infrastructure, approved in decree 16-2010 and its regulation approved by government agreement 360-2011, which allows the development of economic infrastructure projects through the creation, construction, development, use, exploitation, maintenance, modernization and expansion of infrastructure, highways, roads, ports, airports, generation projects, driving, and commercialization of electricity and railways, including the provision of necessary equipment.

This legal framework allows: a) long-term relationship between the public and private sectors; b) private sector participates in financing; c) private sector participates in the operation of the infrastructure; d) There is a distribution of risks between the public and private sectors.

The National Agency of Alliances for the Development of Economic Infrastructure (ANADIE), is the specialized entity of the State, which is responsible for the promotion, contracting and supervision of PPP contracts, whose maximum body is the National Council of Alliances for the Development of Economic Infrastructure, integrated by the public and private sector.

Currently, there is a significant portfolio of projects. However, despite the institutional and regulatory modernization that Guatemala has done

regarding the PPP modality, no project has been carried out under that modality.

That is why, it is considered that ANADIE should have a more significant role in promoting this type of project with state entities, as well as institutional and technical capacities of the institutions is necessary.

Likewise, the need to make legal reforms to the Law has also been identified. First, the development of social infrastructure projects must be allowed under the PPP scheme, such as education, health and water projects, which are currently being exclude In the second term, the approval of the Congress of the Republic of the project contracts must be modified, since currently, the approval is subsequent to the bidding process, and has caused bureaucratic delays that do not allow starting with the execution of the projects.

In sum, the development of PPPs in Guatemala is considered essential, which will increase the country's productivity and competitiveness, and thus boost economic growth and job creation through infrastructure investment, to meet the needs of the population.

TRADE FACILITATION

a. LAW FOR THE SIMPLIFICATION OF ADMINISTRATIVE PROCEDURES

Currently, in Guatemala, there is a high complexity in the administrative procedures, derived mainly by: excessive deadlines, lack of implementation of technology and electronic government, involvement of different actors in the processes, high management costs and unnecessary requirements. This has a negative impact on the country's economy, which is demonstrated in the Doing Business Index in which Guatemala has the number 96 out of 190 countries, according to the 2020 report. Said study is carried out by the World Bank in order to evaluate and compare the ease or difficulty of doing business in a country, analyzing the impact that legislation and institutions have on the creation, operation and expansion of companies in a country.

That is why the Initiative Law for the Simplification of Administrative Procedures and Requirements, number 5766, is considered to contribute to the competitiveness of the country, as it seeks to optimize, simplify and reduce the paperwork in public institutions, which improves efficiency and productivity. of the Executive Branch. Which would be ideal to apply to all public institutions that carry out administrative procedures.

This initiative has already been ruled by the Economy and Foreign Trade commission. This initiative was worked on by the National Competitiveness Program and was presented by deputies Gustavo Estuardo Rodriguez-Azpuru Ordoñez, Jorge Romeo Castro Delgado, Hellen Magaly Alexandra Ajcip Canel, Julio Enrique Montano Méndez, Aníbal Estuardo Samayoa Alvarado and Cándido Fernando Leal Gómez.

The initiative contains 5 elements that are considered relevant to achieve the simplification of procedures:

- **Institutionality**

An entity in charge of promoting the simplification of administrative procedures is established, this being the Presidential Commission of Open and Electronic Government with support from the Ministry of Economy, for the adequate implementation of the law, for which specific functions of coordination, promotion are assigned. , supervision, periodic evaluation, training between the different entities of the public sector and institutions for the simplification of procedures.

The law is applicable to all the administrative procedures that are managed in the dependencies of the Executive Organism. To this end, all agencies must adjust their administrative procedures, plans and internal policies to the provisions of the law, which will be done through an institutional planning plan for administrative procedures and services.

To strengthen governance, a sanctioning regime is established in which infractions and sanctions to the regulations are carried out for employees, servants or public officials responsible for committing the infractions described.

Finally, it is important to highlight that the form of complaint and complaints by users derived from the completion of administrative procedures before the competent or designated authority in charge of said procedure is established.
User Support

The initiative contemplates a range of user rights in the management of administrative procedures, as well as regulations related to customer service. In this regard, it is positive that they consider facilitating access to procedures in physical or electronic form, establishing customer service offices or the interior of the country. In addition, to consider the implementation of mechanisms for users to evaluate the care received.

- **Regulatory and procedural quality**

It is considered important to regulate the quality that the provisions and regulations that generate administrative procedures must have in the quest to eliminate all unnecessary procedures, perform them in a simple way, use electronic elements to the maximum, as well as incorporate automated controls.

Another important element that the initiative takes into account in reference to quality, we can mention: the sole qualification of substance and form, avoiding partial review, the non-requirement of sworn statements, the prohibition of requiring documents and information of the agency, the non-existence of complaint for loss of documents, among others.

- **Digitize administrative procedures and use of electronic government**

The initiative contains norms that allow the implementation of mechanisms for the use of technology and electronic means for greater agility in the procedures. Among which we can mention:

- The signatures of the people in applications or forms that are presented can be physically or electronically to carry out administrative procedures, and said signature is presumed authentic and does not require the legalization of the signature before a notary public.
- The payment methods are extended to be able to do it by means of electronic payment, through virtual banking or applications of the banks that the entity works, or directly in any branch of the banks that the entity works or other electronic payment services.
- The entities must implement the technologies necessary for the use and progressive implementation of electronic media, which allow remote procedures to be carried out or the improvement of their

files, with the appropriate security conditions. For this, it establishes: (i) obligations to report on administrative procedures on the Internet with information on procedures, requirements, costs, procedures, time and applicable regulations; (ii) implementation of the technology necessary to carry out procedures remotely, seeking to automate them; (iii) place on the internet available to users the form or application for the management of administrative procedures and disposition to be able to carry out the procedures online; (iv) Any electronic or digitized document, signed with an advanced electronic signature and sent to the entities through the tools they have available to carry out online procedures, will be exempt from sending physical copies and the entities will keep it in digital form (v) Electronic file and file that will contain all the documentation related to the administrative procedure; (vi) access to information in the public registry; v) validity of documents and information transmitted electronically

- Within the framework of simplification, the entities will work in a coordinated manner and will create Interinstitutional Portals aimed at specific procedures or sectors. In them, all the administrative actions will be carried out to facilitate the services to the user.

In this sense, with the approval of the Initiative, it will achieve a reduction in procedures, costs, requirements and times in the procedures, which directly affects the competitiveness of the country, improving the international indexes, and as a consequence, it will bring greater direct foreign attraction.

b. REACTIVATION OF FREE TRADE ZONES

Decree No. 19-2016 of the Emerging Law for the Conservation of Employment was published in the Official Gazette on March 30, 2016. The purpose of the law is to promote, encourage and develop activities within the national customs territory able to operate under the customs regimes created through the law.

This Decree responds to the commitment made by the Government of Guatemala to the World Trade Organization (WTO) in 2010, which establishes the elimination of prohibited subsidies to exports.

Decree 19-2016 amended the Law on the Promotion and Development of Exports and Maquila, Decree 29-89, as well as the Free Zone Act, Decree 65-89. With the entry into force of this new legal framework, only companies engaged in the making of apparel-textiles and contact or call centers can qualify as Producers under the Temporary Entry or Service Provider Regime.

In this sense, Decree No. 19-2016 represented significant changes for the companies that were then operating under the aforementioned tax benefit laws, and established new requirements and conditions to be met by companies wanting to use such benefits.

Since becoming effective, more than 60 companies have sought to meet the qualification to obtain the benefits of Decree 29-89, Law on the Promotion and Development of Exports and Maquila, of which 42% are new companies, and the rest are businesses aiming at being admitted again.

As of December 31, 2016, 1,394 companies classified under Decree 29-89, 477 (34%) carry out their productive activity in the apparel and textiles sector. They created 39,684 jobs in that year (25% of the total employment created by this sector). The remaining 66% are 917 companies that created 118,549 jobs in the same period of time.

Overall, the country's exports in 2016 amounted to US$10,449.6 million, of which US$3,329.1 million, equivalent to 31.9% of the total, were exported under Decree 29-89.

c. COMPETITION LAW

Background

Competition, as the guiding principle of any market economy, represents a substantial element in the economic organization model of our society and constitutes, at the level of individual freedoms, the first and most important way in which the exercise of freedom manifests itself.

The Political Constitution of the Republic of Guatemala stipulates that the State must discourage those practices that affect the nation. In this sense, the Antitrust Law is the vehicle by which the State can regulate and discourage those activities of economic agents –including the State– that make it difficult to have an open and free economy.

Legislation

Congress of the Republic must discuss and approve the Antitrust Law. Currently, no related legislation has been approved due to the high degree of technical and political complexity that this regulation entails. Given the potential approval of the initiative for the Antitrust Law in Guatemala by the Congress of the Republic, it must be taken into consideration that said initiative must have a regulatory framework that allows legal certainty and the strengthening of the country's economic development.

Scope and focus

The antitrust regulation must contain elements related to the scope of the law and others that are related to the country's institutional framework. The regulation that is approved must consider the aspects detailed below:

- The Guatemalan Antitrust Law should be aligned with the spirit of US Antitrust Law and not European law. In this way, the law should tend to prioritize private action in which it is the individuals who consider being suffering damage due to the anti-competitive practices of a third party who initiated the action, and not a centralized government entity to which it is assigned power of surveillance and economic intervention.

- The application of the law must be general and not include sectoral exceptions as this not only violates the constitutional principle of equality but also confers a discretionary and unlimited power to the Superintendency as an autonomous entity in charge of arbitrarily deciding regarding said exceptions.
- The initiative must respect due process of a civil and non-criminal nature since an anti-competitive practice is nothing more than a commercial conflict between legal persons or individuals, so the sanction must not be criminal but of a civil nature.
- The initiative must address anticompetitive practices and not establish market shares in the form of economic concentrations to be regulated in such a way that it is a law that does not violate the constitutional right to freedom of trade and industry.
- Due process must be respected, the burden of proof must fall on the entity or subject that sustains the existence of the anti-competitive practice, and not vice versa. Along these lines, commercial efficiency should not be considered an anti-competitive practice.
- Sanctions must be proportional to the damage caused and demonstrated against other competitors, or ultimately, consumers. For this reason, there must be a procedure and a series of specific grounds that empower the corresponding entities to initiate an action against the commercial subject.
- Antitrust regulations should not over-regulated in order not to affect local economic agents concerning international economic agents.
- The entity or authority in charge of antitrust must be technical and independent, that is, it must not respond to political interests. It is essential to strengthening the institutional framework, so that said entity is not politicized, and the existence of perverse incentives is avoided.
- The powers of the regulatory entity and its scope must be explicitly defined in such a way that its actions are always based on law. In this way, the sanctioning power must not only be clearly defined but also, said power must never be confiscatory and must be able to be exercised only if there is damage previously demonstrated by it.

- The confidentiality of the information must be protected. The antitrust entity must keep the information to which it will have access strictly confidential.

Conclusions

The Guatemalan context and the country's structure must be taken into account so that the regulations can be applied progressively as markets evolve. The points discussed above are considered necessary to be taken into account when regulating the Antitrust Law in Guatemala. Economic efficiency must be ensured, the institutions should be strengthened, and respect for the constitutional right to freedom, commerce and industry must be observed.

ECONOMIC RECOVERY

a. ATTRACTION OF FOREIGN DIRECT INVESTMENT

The Doing Business a mechanism to evaluate and compare the ease or difficulty of doing business in a country. This evaluation is carried out through the impact that legislation and institutions have on the creation, operation and expansion of companies in a country. The index analyzes ten indicators: time to open a business, obtaining electricity, obtaining credit, cross-border trade, paying taxes, managing construction permits, registering property, enforcing contracts, protecting minority investors and resolving insolvencies.

According to the 2020 report, Guatemala rose 2 positions in relation to the previous year, ranking 96 out of 190 countries.

On the other hand, the Global Competitiveness Index is a tool developed by the World Economic Forum with the intention of being used to identify and compare the capacity to provide economic development opportunities to the citizens of the countries analyzed.

For the 2018-2019 edition of the Global Competitiveness Index, Guatemala obtained a score of 53.51, ranking 98 out of 141 countries evaluated. In the three categories that the index qualifies, Guatemala obtained the following scores:

- Enabling environment: 52.7, rank 106.
- Markets: 54.66, rank 84.
- Human capital: 62.67, rank 99.
- Innovation ecosystems (Business dynamism and innovation capacity): 43.68, rank 97.

The country obtained the highest scores in the financial efficiency pillar (74.81) related to the soundness of the banks, the stability of the financial

market and the low costs of financial services, which encourages commercial activity.

Although more indicators could be mentioned, the foregoing is just one manifestation of the imminent need to carry out the necessary reforms to promote competitiveness and economic development in the country for the attraction of foreign direct investment.

b. INSOLVENCY LAW

Background

COVID-19 has impacted not only people's health but also their economy. The market naturally adjusts faster than the legal framework. This pandemic anticipates a significant economic slowdown that will affect mostly small and medium-sized entrepreneurs. The first symptoms of this situation begin to be seen with an increase in the unemployment rate and it can be assumed that many of these companies will have an insolvency situation in the future. Legally, the Civil and Commercial Procedural Code regulates collective executions through voluntary and necessary competition;[1] It is within these legal figures that the insolvency of a debtor is dealt with. Despite the fact that the current regulations were enacted in 1963,[2] There are few collective execution processes that have been processed and are currently being processed in the Civil and Commercial Courts of Justice of the Republic of Guatemala.

The regulations currently in force, the Civil and Commercial Procedural Code, dates from 1963. Basically in 53 articles (from 347 to 400) the Guatemalan legal system develops the insolvency of natural and legal persons. Unlike other countries, this regulation, for its time, is very visionary since it includes both the possibility of insolvency of a natural person and a legal person.[3] The current regulations also have an order of priority for creditors and seek to establish precisely how each type of creditor should be treated,[4] providing a logical order and payment

structure. Perhaps, where this regulation presents a greater limitation is in the speed and practicality of the process, because even when there is an agreement between creditors and debtor, it has always been interpreted that this must be approved by a judge.[5] In practice, judicial insolvency or bankruptcy proceedings have rarely been concluded in an adequate time, either due to judicial delay, the number of processes assigned by the courts or due to the lack of technical knowledge on the part of the operators. of justice to process the process. In other words, the rule has a substantive foundation and support, but from a practical point of view, the insolvency process has not been able to be concluded in a fast and agile way. Legal regulations are an obstacle to the solution of the legal conflict.

Initiative No. 5446

In the case of the initiative No. 5446 of the Congress of the Republic, named "Insolvency Law", it is currently under discussion. It regulates certain principles that are already recognized at constitutional level, in the Judicial Organism Law and in the Civil and Commercial Procedural Code. This regulation is based on two pillars. First, it proposes a reorganization plan approved by the majority of creditors. However, to do so, it contemplates the creation of a bankruptcy judicial bulletin where the agreement will be published. At the same time, it proposes the creation of specialized bankruptcy courts and a National Insolvency Directorate in charge of the Ministry of Economy, whose purpose is to support insolvency proceedings by promoting conciliation in a technical way. This model, even though it provides solutions to many current questions such as the payment of taxes or the consideration of a loan as uncollectible, has exactly the same problem as the Civil and Commercial Procedural Code: the procedure, far from being a quick and practical solution, is it becomes an obstacle to solving the problem. This logically will only, as it happens now, that those who are in a state of insolvency simply do nothing. In a situation such as the economic slowdown caused by the COVID-19 pandemic, regulations such as this must seek a real and executable solution in the short term for the following reasons:

(1) It proposes the creation of specialized courts, that is, they are Courts that do not currently exist and that the Judicial Body must create and implement. If we take as a parameter the response that the Judicial Body has currently had to COVID-19, the reality is that these courts will not see the light until one or two years after the entry into force of the rule.

(2) The modification of the written process to the oral process. Although it is true that orality facilitates the agility with which a process can be processed, the Judicial Branch in civil matters is not ready for a radical change in the short term. In addition, that a simple reference to the Oral Trial of the Civil and Commercial Procedural Code is the equivalent of disregarding the practice in Courts in that these processes, with few exceptions, are still processed in writing.

(3) It creates an additional entity, dependent on the Ministry of Economy to provide technical advice in this type of process, both to debtors and creditors. Waiting for an entity to be created and worse, for it to come into operation is the equivalent of not providing a short-term solution to the citizenry.

Conclusions

The discussion and approval of an insolvency law is positive. Reforms and modifications to the insolvency procedures in Guatemala are necessary. However, attention must be paid to the content of this initiative and that it does have a positive impact, that it does not fall into the same problem that exists today.

An adequate proposal should seek to generate a simple change that can allow people, who do have the proper knowledge of insolvencies and bankruptcy, to process legal processes. The proposal should include reform s to the Civil and Commercial Code to allow the debtor and

creditors handle the process of insolvency and bankruptcy before a notary. Currently there is experience with various legal processes in which a notary acts as a judge. Among these processes, it is especially important to highlight the succession processes, since they have very similar characteristics to insolvencies and are an example of agility in the face of the judicial apparatus. While a succession process in a notary office can take between 6 months and 1 year, in court the minimum term is 2 years. A proposal like this, which would involve reforming the Civil and Commercial Procedural Code establishing the possibility of processing the insolvency process in full before a Notary, has a real and plausible benefit. There are more notaries than judges in the legal market and this allows adaptation in the legal market to be much faster and more efficient than creating a series of specialized courts and a new Directorate of the Ministry of Economy.

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[1] *Vid.*, Articles 347 to 400 of the Civil and Commercial Procedural Code regulate collective execution. These standards regulate

[2] The Civil and Mercantile Procedural Code, Decree 107 was promulgated on September 14, 1963 by the then Head of Government Enrique Peralta Azurdia .

[3] Article 347 of the Code of Civil and Commercial Procedure establishes: *"Natural or legal persons, whether or not they are merchants, who have suspended or are about to suspend the current payment of their obligations, may propose to their creditors the celebration of a agreement. They may also do so, even when they have been declared bankrupt, provided that it has not been judicially classified as fraudulent or guilty. "*

[4] Article 392 of the Code of Civil and Commercial Procedure establishes *: "The classification and graduation of credits, except as provided in other*

laws, will follow the following order: 1. Acreedurías for food present and for personal work.
2. Creditors for last illness and funeral expenses, will, inventory and succession process. 3. Accreditations established in public deed, according to the order of their dates. 4. Common credentials , which includes all those not included in the previous numerals. As for the mortgage and pledge credits, once paid, if there is a surplus, it will be delivered to the depositary of the bankruptcy. Accepted the graduation of credits by the General Meeting or the cars that resolve the challenges that have been made, the trustee will formulate the liquidation of the bankruptcy, establishing the amount that corresponds to each creditor in the resulting balance, after deducting the legal expenses . The bankruptcy costs will be paid of all preference. "

[5] Article 367 of the Civil and Commercial Procedural Code establishes: *"If the agreement has not been judicially accepted and approved, the debtor will be declared insolvent and the necessary bankruptcy or bankruptcy will proceed, as the case may be. "*

MIGRATORY ISSUES

a. AGREEMENT BETWEEN GUATEMALA AND THE US CONCERNING A TEMPORARY AGRICULTURAL WORKERS PROGRAM -TAWP AGREEMENT –

The TAWP Agreement seeks to strengthen the U.S. H-2A visa program under which U.S. employers hire foreign temporary agricultural workers, facilitating the granting of visas with focus on the territories with the highest risk of irregular migration.

The emphasis of the Agreement lies in the implementation of protective measures for Guatemalan workers, so that they are not exploited by foreign labor recruiters. In this way, it is sought to prevent the creation of a framework that allows the operation of human trafficking structures using the H-2A visa program. Within the terms of the Agreement, companies dedicated to recruiting Guatemalan workers must be registered with both the Guatemalan Ministry of Labor and the United States Embassy in Guatemala. These companies will be the only legal link between U.S. companies that wish to hire Guatemalan workers.

The use of H-2A visas has increased over the last decade. In 2018, 196,409 visas of this type were granted, with an increase of 21 percent over those issued in 2017. In the case of Guatemala, in 2018, 7337 type H visas were issued, although the State Department's report does not make a breakdown by subcategory. With this new Agreement, a considerable part of the growth of H2-A visas that will take place next year could be filled with Guatemalans.
According to available statistics, the average salary for agricultural workers in the US. with an H-2A visa in 2017, ranged between USD 11.10 and USD 13.01 per hour, while the average salary in Guatemala for agricultural activities per hour is of USD 1.43.

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