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440 North Bonita Avenue – Tucson, AZ 85745  
(520)622-1200 – fax: (520)622-0958  
<http://www.natlaw.com>

## WOMEN ENTREPRENEURS IN CENTRAL AMERICA

### Overview

The following is a brief review of the provisions governing the rights of women as entrepreneurs under the laws of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua.

#### 1. International Law

Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua have all signed and ratified the Convention on the Elimination of all Forms of Discrimination against Women, adopted and opened for signature, ratification and accession by the UN General Assembly resolution 34/180 of December 18, 1979 and entered into force September 3, 1981. Costa Rica, El Salvador and Guatemala are also parties to the Optional Protocol to the Convention on the Elimination of Discrimination against Women, adopted by General Assembly resolution A/54/4 on October 6, 1999, opened for signature on December 10, 1999, and entered into force December 22, 2000.

Under the provisions of the Convention, signatories agree to adopt all appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women, which discrimination includes any distinction, exclusion or restriction made on the basis of gender for the exercise of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Accordingly, any law of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua making it difficult for women to become entrepreneurs, invest in capital markets, incorporate companies or hold shares, and in general discriminating against women and disabling them to make any commercial transaction would constitute a breach of such country's international obligations.

#### 2. Domestic Law

##### a. Constitutional Rights

The Constitutions of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua specifically include provisions banning all forms of discrimination. In effect, article 33 of the Costa Rican Constitution provides that: “All men are equal before the law, and there shall be no discrimination contrary to human dignity.” Article 3 of the Constitution of El Salvador provides: “All persons are equal before the law. There shall be established no differences based on nationality, race, gender or religion for the exercise of civil rights.” Article 4 of the Guatemalan Constitution provides: “Freedom and Equality. In Guatemala all human beings are free and equal in dignity and rights. Men and women, regardless of their marital status, have equal opportunities and responsibilities.” Article 60 of the Honduras Constitution provides: “All men are born free and equal in their rights. In Honduras there are no privileged classes. All Hondurans are equal before the law. Any form of discrimination by reason of gender, race, class and any other against human dignity shall be punishable by law.” Finally, article 27 of the Nicaraguan Constitution provides: “All persons are equal before the law and have equal right to protection. There shall be no discrimination based on birth, nationality, political beliefs, race, gender, language, religion, opinion, origin, economic position or social condition.”

b. Civil Code and Commercial Code Provisions

In general, the commercial and civil codes of Central America do not discriminate against women to incorporate entities or perform commercial activities. Any requirement to obtain permission from the husband in the case of a married woman may derive from the existence of a community of assets in the marriage, in which case, for example, the stock that may be owned by a married woman in her corporation could also belong in half to her spouse if she incorporated the company after the marriage and with money derived from the community of assets. In this case, any transaction to dispose of the stock would need to be authorized by the husband, not because of discrimination, but because the stock would belong to the community of assets of the spouses. This, of course, also applies to the shares owned by the husband, in which case the signature of the wife would be needed to dispose of the shares.

In many cases, the spouse that administers the assets of the community may empower the other spouse to dispose of the community’s assets or his/her personal assets. Some legislation, such as article 13(e) of the Nicaraguan Civil Code, requires that the document by which the non-merchant spouse confers upon the merchant spouse under the law the right to administer his/her assets be registered in the Commercial Registry. Again, the law does not designate who is the merchant spouse; it might be the husband or the wife.

The commercial codes of Central America do not distinguish between the genders when determining who can perform commercial acts, including incorporating companies or performing any commercial transactions. In effect, the definition of merchant is always broad and refers to “persons.” In this sense, article 5(a) of the Costa Rican Commercial Code provides that merchants are “all the persons who have legal capacity to act, that perform acts of commerce in their own name, and make this their usual occupation.” Article 2 of the Commercial Code of El Salvador provides: “Merchants are: (I) natural persons who are owners of a commercial enterprise; they are called individual

merchants.” Very similar wording is used in the Honduras Commercial Code. Article 2 of the Commercial Code of Guatemala provides that merchants are those who in their own name and with purposes to obtain benefits perform the following activities: (1) industry directed to production or transformation of goods, and the performance of services; (2) brokers in the circulation of goods and performance of services; (3) bank, insurance and finances; and (4) auxiliaries of the previously mentioned merchants. Finally, article 6 of the Commercial Code of Nicaragua provides that merchants are those that ordinarily and professionally perform one or more of the occupations that correspond to an industry and commercial societies or industries.

Some commercial codes have specified that the married woman does not need any special permit to perform commercial acts. Such is the case of article 157 of the Commercial Code of Nicaragua which provides: “The celebration of contracts between spouses is permitted and the woman does not need authorization from the husband or the Judge to celebrate contracts nor to appear in court.” This same wording is contained in article 173 of the Civil Code of Honduras.

## **Conclusions**

The basic legal provisions governing commercial transactions and the capacity of women to become entrepreneurs in Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua do not provide for any special requirements for women to participate in commerce. According to the reviewed provisions, there are no legal differences in the provisions allowing men and women to participate in commerce, form corporations or perform investments. This review is centered solely on the letter of the law, and although there might be some discrimination issues in the practical application of these laws, such as the access of women to economic resources to become entrepreneurs, there are no apparent legal obstacles in the Constitutions and main codes of the studied countries for women to become entrepreneurs in Central America.