



GUIDE TO GOING GLOBAL CORPORATE

Puerto Rico



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INTRODUCTION

Welcome to the 2023 edition of DLA Piper's *Guide to Going Global – Corporate*.

GUIDE TO GOING GLOBAL SERIES

To compete and be successful today, companies need to develop and scale their businesses globally. Each country presents its own set of unique laws, rules and regulations and business practices that companies must understand to be successful. In order to help clients meet the opportunities and challenges of expanding internationally, we have created a handy set of global guides that cover the basics companies need to know when going into and doing business in new countries. The *Guide to Going Global* series reviews business-relevant corporate, employment, intellectual property and technology, executive compensation, and tax laws in key jurisdictions around the world.

CORPORATE

The *Guide to Going Global – Corporate* has been created based on our research, our experience and feedback we have received from clients in both established and emerging businesses that have expanded internationally. We hope it will be a helpful resource for you.

The *Guide to Going Global – Corporate* covers corporate basics in 54 key jurisdictions across the Americas, Asia Pacific, Europe and the Middle East. We touch on a wide range of corporate issues for companies expanding internationally, including establishing a corporate presence and choice of entity, liability considerations, tax presence and tax filings, capital requirements, the formation process, director, officer and shareholder requirements, registration processes, office lease processes and possible exit strategies.

With more than 600 lawyers, DLA Piper's global Corporate group is one of the largest in the world, with one of the widest geographical footprints of any global law firm and experience across the legal areas companies need as they expand internationally. With both global experience and local knowledge, we partner with our clients wherever they do business to find solutions and manage their risk in relation to their challenges and objectives.

While this guide provides high-level guidance, it is not a substitute for legal advice, and we encourage you to seek advice regarding the specific matters that concern you. If you wish to speak to any of our contributors, you may find their contact details at the end of the guide.

We hope you find this guide valuable, and we welcome your feedback.

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This is a general reference document and should not be relied upon as legal advice. The application and effect of any law or regulation upon a particular situation can vary depending upon the specific facts and circumstances, and so you should consult with a lawyer regarding the impact of any of these regimes in any particular instance.

DLA Piper and any contributing law firms accept no liability for errors or omissions appearing in this publication and, in addition, DLA Piper accepts no liability at all for the content provided by the other contributing law firms. Please note that corporate law is dynamic, and the legal regime in the countries surveyed could change.

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PUERTO RICO



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FORM OF ENTITY

Corporations

Corporations are entities whose liability is separate and distinct from that of their shareholders, directors and officers. Corporations may be established for any lawful business purposes, with limited exceptions. They may be organized by individual(s) and/or legal entities by filing a certificate of incorporation at the Puerto Rico State Department. A corporation has the power to enter into contracts, hold property and sue and be sued in its own name; it also has continuity of existence and free transferability of ownership interests. Generally, the certificate of incorporation grants the corporation legal existence as soon as it is filed with the Puerto Rico Secretary of State.

Puerto Rico corporations must maintain a designated principal office and registered agent for service of process in Puerto Rico.

Limited Liability Companies

Limited liability companies (LLCs) are becoming the preferred method of doing business in Puerto Rico. LLCs may be organized by any natural or legal person by filing articles of organization (also referred to as the certificate of formation) in the Puerto Rico State Department. LLCs offer their owners the same limited liability protection granted by law to corporations and the flexibility to manage their internal affairs as a partnership, corporation or a combination of both in accordance with an LLC agreement (also referred to as an operating agreement), which typically governs the entity. LLCs are taxed by default as corporations and are subject to tax at both the business entity and shareholder levels. However, an LLC may elect to be treated as partnership for tax purposes, receiving pass-through treatment by making an election on Form SC 6045 on or before the due date, including extensions, of the LLC's Puerto Rico income tax return for the taxable year in which the election is to become effective. The Secretary of the Puerto Rico Treasury Department may issue further guidance as to the form and manner of making such election. Although a Puerto Rico LLC is automatically treated as a corporation for US federal tax purposes, it may elect to be treated as a partnership or disregarded entity, as applicable. This election is accomplished through the filing of Form 8832 with the IRS.

Puerto Rico limited liability companies, as is the case with corporations, must maintain a designated principal office and registered agent for service of process in Puerto Rico.

Note: Additional forms of entity structures also exist and could be useful in some instances but are not covered in this guide either because they are less commonly used types of entity structures or not as likely to be relevant to the reader.

ENTITY SET UP

Puerto Rico corporate matters are regulated by the Puerto Rico General Corporations Law and the Internal Revenue Code of 2011. Puerto Rico offers several attractive alternate vehicles for persons doing business in Puerto Rico. Corporations and limited liability companies are the most common entities by which investors enter the Puerto Rican marketplace.

Corporations

- Unlimited number of shareholders
- Generally no personal liability for shareholders
- Taxed on its earnings at a corporate level and shareholders are taxed on any distributed dividends
- Typical charter documents include articles of incorporation, bylaws, organizational board resolutions, stock certificates and stock ledger
- Board of directors has overall management responsibility; officers have day-to-day responsibility

Limited Liability Companies

- Unlimited number of members allowed
- Generally no personal liability for the members
- May elect to be treated as a corporation or partnership under Puerto Rico tax laws
- Under US tax laws, a Puerto Rico LLC is automatically treated as a foreign corporation. However, it may elect to be treated as a partnership or disregarded entity by filing Form 8832 with the IRS
- Typical charter documents include: certificate of formation; operating agreement
- Operating agreement sets forth how the business is to be managed; a member (owner) or manager can be designated to manage the business (please note that operating agreements are private documents and are not filed in the Puerto Rico State Department)
- Members typically contribute money or services to the LLC and receive an interest in profits and losses

MINIMUM CAPITAL REQUIREMENT

Corporations

No minimum capital requirement.

Limited Liability Companies

No minimum capital requirement.

LEGAL LIABILITY

Corporations

Shareholders of a corporation are generally not liable for the debts of a corporation aside from their financial contribution to the corporation.

Limited Liability Companies

Members are generally not liable for the debts of the LLC aside from their financial contribution to the LLC.

TAX PRESENCE

Corporations

A corporation is taxed at 2 levels (commonly referred to as double taxation). First, the corporation pays a corporate tax on its corporate income; then, when the corporation distributes profits to its shareholders, they pay income tax on those dividends.

Limited Liability Companies

LLCs are taxed by default as corporations and are subject to tax at both the business entity and member levels. However, an LLC may elect to be treated as partnership for tax purposes, receiving pass-through treatment by making an election on Form SC 6045, which must be filed on or before the due date, including extensions, of the LLC's Puerto Rico income tax return for the taxable year in which the election is to become effective. The Secretary of the Puerto Rico Treasury Department may issue further guidance as to the form and manner of making such election. Although a Puerto Rico LLC is automatically treated as a corporation for US federal income tax purposes, it may elect to be treated as a partnership or disregarded entity, as applicable. This election is accomplished through the filing of Form 8832 with the IRS.

INCORPORATION PROCESS

Corporations

- Online filing of the certificate of incorporation or articles of incorporation with the Secretary of State
- Filing fee of a for-profit corporation is USD150

- Filing fee of a non-profit corporation is USD5

Limited Liability Companies

- Online filing of the certificate of formation or certificate of organization with the Secretary of State
- Filing fee of USD250

BUSINESS RECOGNITION

Corporations

Well regarded and used.

Limited Liability Companies

Well regarded and used.

SHAREHOLDER MEETING REQUIREMENTS

Corporations

Required to hold annual meeting of shareholders to vote on certain items, such as election of directors.

Limited Liability Companies

Annual meetings of the members are not required. The provisions of the operating agreement will typically determine any meeting requirements.

BOARD OF DIRECTOR MEETING REQUIREMENTS

Corporations

Annual meeting of directors is required.

Limited Liability Companies

Annual meeting of the managers is not required. If the provisions of the operating agreement allow for the creation of a board of directors, said agreement will determine any meeting requirements.

ANNUAL COMPANY TAX RETURNS

Corporations

Must annually file tax returns with the Puerto Rico Treasury Department. In addition, corporations generally must also file municipal gross receipts tax declarations and personal property tax returns.

Limited Liability Companies

LLCs are taxed by default as corporations. However, LLCs may elect to be treated as partnerships for tax purposes, where profits "pass through" to its members who pay taxes annually at their individual tax rates. In addition, LLCs generally must also file municipal gross receipts tax returns and personal property tax returns.

BUSINESS REGISTRATION FILING REQUIREMENTS

Corporations

Initial registration, as well as annual filings, which include an annual report with a balance sheet. In the case of corporations with a business volume of USD3 million or more, the annual report must include financial statements audited by a Certified Public Accountant (CPA) with a valid license from the Government of Puerto Rico.

Limited Liability Companies

Initial registration, as well as payment of an annual fee.

BUSINESS EXPANSION

Corporations

No need to change as business expands.

Limited Liability Companies

No need to change as business expands.

EXIT STRATEGY

Corporations

File dissolution documents with the Secretary of State. Liquidation will entail filings and certain disclosures with the Puerto Rico Treasury Department.

Limited Liability Companies

File dissolution documents with the Secretary of State. Liquidation will entail filings and certain disclosures with the Puerto Rico Treasury Department.

ANNUAL CORPORATE MAINTENANCE REQUIREMENTS

Corporations

- Annual shareholder meeting

- Filing of an annual report on or before April 15. The filing fees for annual reports are USD 150 for a for-profit corporation and USD 5 for a non-profit corporation
- All annual reports must include a balance sheet that shows the financial condition of the corporation at the close of operations
- If the volume of business of a corporation exceeds USD 3 million, the balance sheet must be audited by a Certified Public Accountant (CPA) with a valid license from the Government of Puerto Rico

Limited Liability Companies

Annual fee of USD 150 on or before April 15 each year.

DIRECTOR / OFFICER REQUIREMENTS

Corporations

- A corporation must have at least 1 director. There is no maximum limit to the number of directors
- Generally, a corporation's certificate of incorporation or its bylaws state the number of directors on the board
- Every corporation must have officers with such titles and duties as are provided in the corporation's bylaws or in a resolution of the board of directors. One of the officers must be appointed president, chief executive officer or any other analogous title

Limited Liability Companies

- No director/officer requirement, unless otherwise established in the operating agreement

LOCAL CORPORATE SECRETARY REQUIREMENT

Corporations

One of the officers of the corporation is required to record the proceedings of the meetings of the shareholders and directors in a book to be kept for that purpose.

Limited Liability Companies

Not required, unless otherwise provided in the operating agreement.

LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

Corporations

Not applicable for this jurisdiction.

Limited Liability Companies

Not applicable for this jurisdiction.

LOCAL OFFICE LEASE REQUIREMENT

Corporations

Not required for incorporation. However, every corporation shall maintain a registered office and a resident agent for service of process in Puerto Rico. Note that office space may be required for certain tax registrations, such as the municipal license tax, that require a use permit which in turn requires office space in the corporation's name.

Limited Liability Companies

Not required for organization/formation. However, every corporation shall maintain a registered office and a resident agent for service of process in Puerto Rico. Note that office space may be required for certain tax registrations, such as the municipal license tax, which require a use permit, which in turn requires office space in the LLC's name.

OTHER PHYSICAL PRESENCE REQUIREMENTS

Corporations

To obtain certain tax registrations, physical presence is required. If, upon incorporation, the corporation does not have a physical address, then accountants, lawyers or the resident agent normally provide their respective address until the corporation secures its own physical address.

Limited Liability Companies

To obtain certain tax registrations physical presence is required. If, upon incorporation, the LLC does not have a physical address, then accountants, lawyers or the resident agent normally provide their respective address until the LLC secures its own physical address.

SUFFICIENCY OF VIRTUAL OFFICE

Corporations

A virtual office suffices for purposes of incorporation and tax registrations, provided that the corporation's business may be carried out virtually without a need for physical space.

Limited Liability Companies

A virtual office suffices for purposes of organization/formation and tax registrations, provided that the LLC's business may be carried out virtually without a need for physical space.

PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY

SERVICE PROVIDER

Corporations

Permitted and sufficient for tax registrations.

Limited Liability Companies

Permitted and sufficient for tax registrations.

PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Corporations

Permitted.

Limited Liability Companies

Permitted.

NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS

Corporations

Nonresidents of Puerto Rico and non-US citizens may own stock and serve as directors and officers of a Puerto Rico corporation.

Limited Liability Companies

Nonresidents of Puerto Rico and non-US citizens may own membership interests and serve as managers of a Puerto Rico LLC.

RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

Corporations

None. Nominee shareholders and directors are rarely seen, as Puerto Rico corporations are not required to disclose shareholders or directors, other than the initial officers, in public documents.

Limited Liability Companies

None. Nominee members and managers are uncommon, as Puerto Rico LLC's are not required to disclose members or directors, other than the initial managers, in public documents.

SUMMARY OF DIRECTOR'S, OFFICER'S AND SHAREHOLDER'S AUTHORITY AND LIMITATIONS THEREOF

Corporations

Directors

The board of directors (the board) controls the business of the corporation, in the manner and to the extent set forth in the articles of incorporation and bylaws. Some basic board functions include selecting officers, controlling executive compensation, delegating administrative authority to a committee, determining dividend payments and supervising the welfare of the whole enterprise. The board possesses this authority without consulting with or obtaining the consent of the shareholders. However, the board's powers extend only to the ordinary and regular course of business of the corporation. The board does not have unlimited power to deal with property and affairs of a corporation; instead, their powers are conferred so that the corporation's business can be transacted for the profit of the shareholders. Similarly, the directors' authority does not extend to changes of a fundamental character in the corporation.

Officers

Officers are responsible for the management and day-to-day operations of a corporation and are appointed by the board. Generally, the officers of a corporation are enumerated in its bylaws and include a president, vice-president, secretary, treasurer and sometimes others. The president is responsible for the overall day-to-day activities of the corporation (some of which are often delegated to other officers).

The president signs major contracts, stock certificates and other legal documents, as required. The president acts under the direction of the board.

The treasurer is responsible for the financial matters of the corporation. The treasurer is the only officer, absent express contrary provision in the bylaws or charter documents, to receive and keep funds of the corporation and is bound to disburse the funds only under the orders of the board or other officers in charge of the corporate business.

The secretary is charged with maintaining the corporate records of the corporation and preparing minutes of board and shareholder meetings. The secretary may also be required to provide certification for banks or other financial institutions and may also be required to provide requested copies of corporate documents.

Shareholders

As a general rule, shareholders are not permitted to act on behalf of the corporation. All the capacity of a corporation is vested in its board, and all its authority is supposed to be exercised by the board. It is the function of the board to manage and conduct the business of the corporation through the corporation's officers. The shareholders (*i.e.*, those who are not also directors or officers of the corporation) have no authority to act for the corporation. They are limited to acting in an advisory capacity only, to electing directors or to approving or disapproving such measures as are submitted to them by the board. The mere ownership of a majority of shares does not give a particular shareholder authority to act for the corporation.

The powers of management vesting in the shareholders as a body are few. They control the affairs of the corporation, while it exists and does business, through the directors appointed by them, which in turn manage the

corporation through officers appointed by them. Typically, they have the right and power to hold meetings, elect directors, remove directors and increase or decrease the capital stock.

Limited Liability Companies

Members, much like shareholders, have no authority to act for the LLC, unless the operating agreement so establishes. They control the affairs of the LLC, while it exists and does business, through the managers appointed by them. The powers and authority of the members are established in the operating agreement.

If the operating agreement allows for directors and officers, their authority and limitations are generally established in the LLC's operating agreement.

PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS

Corporations

None. Puerto Rico corporations are not required to list shareholders or directors in public documents. However, upon incorporation, disclosure of the corporation's officers is required.

Limited Liability Companies

None. Puerto Rico LLCs are not required to list members or directors in public documents. However, upon formation/organization, disclosure of the LLC's managers/administrators is required.

MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS

Corporations

Determined by governing law of the head office.

- A corporation must have at least 1 shareholder
- No minimum or maximum number of directors is required
- Generally, a corporation's certificate of incorporation or its bylaws state the number of shareholders and directors on the board

Limited Liability Companies

- An LLC must have at least 1 member
- No minimum or maximum number of directors is required
- The operating agreement will determine the number of directors and officers, if any

MINIMUM NUMBER OF SHAREHOLDERS REQUIRED

No text yet.

REMOVAL OF DIRECTORS OR OFFICERS

Corporations

Generally, any director or the entire board of directors may be removed, with or without just cause, by the majority of the shareholders entitled to vote to elect directors.

Limited Liability Companies

Generally, any director or the entire board of directors may be removed, with or without just cause, by the majority of the members entitled to vote to elect directors, or as otherwise provided in the LLC's operating agreement.

REQUIRED AND OPTIONAL OFFICERS

Corporations

President and secretary are required. All others are optional.

Limited Liability Companies

None, unless otherwise required in the LLC's operating agreement.

BOARD MEETING REQUIREMENTS

Corporations

The board of directors may hold meetings within or outside the Commonwealth of Puerto Rico, unless otherwise provided by the certificate of incorporation or the bylaws. The meetings of the board of directors shall be notified to the directors pursuant to the provisions of the corporation's bylaws.

Limited Liability Companies

None, unless otherwise provided in the LLC's operating agreement.

QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS

Corporations

- Board meetings: A majority of the total number of directors shall constitute a quorum for the transaction of business, unless the certificate of incorporation or bylaws require a greater number.

- Shareholder meetings: Unless otherwise provided in the certificate of incorporation or bylaws, a majority of the shares entitled to vote, whose holders are present in person or represented by proxy, shall constitute a quorum at a shareholders' meeting.

Limited Liability Companies

None, unless otherwise provided in the LLC's operating agreement.

MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?

Corporations

Not required for incorporation. When necessary, a bank account may be opened anywhere.

Limited Liability Companies

Not required for formation. When necessary, a bank account may be opened anywhere.

AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY'S BOOKS BE KEPT LOCALLY?

Corporations

Audited financial statements issued by a Puerto Rico licensed Certified Public Accountant (PR CPA) are required to be filed along with the corporation's Puerto Rico income tax returns if the corporation's volume of business equals or exceeds USD 10 million during the corporation's calendar or fiscal year. If the corporation's volume of business is at least USD 1 million but less than USD 10 million, such corporation may elect to file an Agreed Upon Procedures (AUP) report or compliance attestation (collectively, AUP Report) prepared by a PR CPA along with its Puerto Rico income tax return instead of the audited financial statements. If the corporation's volume of business is less than USD 1 million, such corporation may voluntarily file an AUP Report prepared by a PR CPA along with its Puerto Rico income tax return in order to be allowed to claim certain deductions for alternative minimum tax (AMT) purposes. Notwithstanding, the corporation may elect to file audited financial statements issued by a PR CPA in lieu of the AUP Report to claim such deductions for AMT purposes.

In addition, the municipal volume of business return and personal property tax returns should also be accompanied by audited financial statements issued by a PR CPA if the corporation's volume of business equals or exceeds USD 3 million during the corporation's calendar or fiscal year, provided, however, that an AUP Report prepared by a PR CPA may be provided in lieu of the audited financial statement for the municipal volume of business return. Generally, the corporate books should be kept in Puerto Rico. In addition, an audited balance sheet issued by a Puerto Rico certified public accountant must also be filed with the Puerto Rico State Department if the corporation's volume of business equals or exceeds USD 3 million during the corporation's calendar or fiscal year.

Limited Liability Companies

The same rules in respect of AUP Reports and audited financial statements applicable under Corporations, are also applicable to limited liability companies. Generally, the corporate books should be kept in Puerto Rico. However, unlike corporations, limited liability companies need not file financial information with the Puerto Rico State Department.

REQUIREMENT REGARDING PAR VALUE OF STOCK

Corporations

USD 0.01 or non-par value.

Limited Liability Companies

Not applicable for this jurisdiction.

INCREASING OF CAPITALIZATION IF NEEDED

Corporations

Permitted. A corporation may amend its certificate of incorporation to increase its authorized capital stock.

Limited Liability Companies

Permitted. An LLC may amend its operating agreement to reflect an increase in capitalization.

SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)

Corporations

A corporation's funds may be repatriated from Puerto Rico through distributions or redemption, as applicable.

Limited Liability Companies

An LLC's funds may be repatriated from Puerto Rico through dividends or redemption, as applicable.

RESTRICTIONS ON TRANSFERABILITY OF SHARES

Corporations

Shares can generally be transferred between shareholders or 3rd parties via written agreements, except when (i) there is a "right of first refusal" provision in the shareholders agreement or bylaws or (ii) the corporation has issued "restricted transfer shares," which transfer requires the approval of the board of directors.

Limited Liability Companies

Membership interests can generally be transferred between members or 3rd parties via written agreements, except when (i) there is a provision otherwise in the operating agreement or (ii) the operating agreement requires the consent of some or all of the members for any transfer of membership interests.

If the operating agreement of the LLC so establishes, members may have right of first refusal when a sale is intended to be carried out in favor of a non-member. Similarly, the consent of a majority of the members may be required for any transfer of membership interests.

OBTAINING A NAME AND NAMING REQUIREMENTS

Corporations

The name of the corporation must include 1 of the following terms: (i) Corporation, (ii) Corporación, (iii) Incorporado (iv) Corp., (v) Incorporated, (vi) Inc. or (vii) words or abbreviations of similar importance in other languages, provided they are written in roman letters or characters.

Note that, whenever words or abbreviations of similar importance in other languages are used, Corporation, Corp., Incorporated or Inc. must be included at the end of the corporate name.

Limited Liability Companies

The name of every LLC must contain the terms: (i) Limited Liability Company, (ii) Compañía de Responsabilidad Limitada, (iii) L.L.C. (iv) C.R.L., (v) LLC or (vi) CRL.

SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS

Corporations

Not applicable for this jurisdiction.

Limited Liability Companies

Not applicable for this jurisdiction.

APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT

Corporations

If the corporation has capital stock, its board of directors shall adopt a resolution setting forth the proposed amendment, declaring its advisability and either calling a special meeting of the shareholders entitled to vote for the consideration of such amendment or directing the proposed amendment be considered at the next annual meeting of the shareholders.

If the corporation has no capital stock, the governing body shall adopt a resolution setting forth the proposed amendment and declaring its advisability. If a majority of all the members of the governing body votes in favor of such amendment, a certificate thereof shall be executed, acknowledged and filed.

Limited Liability Companies

Generally, any approval requirements are set forth in the LLC's operating agreement.

LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION

Corporations and Limited Liability Companies

Federal Employer Identification Number

Entities in Puerto Rico are identified through a taxpayer ID known as the Employer Identification Number (EIN), which is issued by the US Internal Revenue Service (IRS). Unlike other jurisdictions, the local Treasury does not issue a separate identification number. The EIN may be obtained by applying online through the IRS website or by mailing in or faxing Form SS-4 to the IRS. If requested online, the unique number is assigned immediately upon request.

SURI Platform

In October 2016, the Puerto Rico Treasury Department implemented an integrated online platform to facilitate matters related to the collection and payment of sales and use tax, excise taxes, and income tax, compliance and information reporting and withholding, among others. Registration with the SURI platform is mandatory for entities that are operating in Puerto Rico. Once the EIN is assigned, entities operating in Puerto Rico are required to register with SURI. Registration requires uploading a copy of the EIN confirmation letter.

Classification Election for Tax Treatment

Unlike other entities, LLCs may elect to be classified as corporations or partnerships under Puerto Rico tax laws. This election is accomplished through the filing of Form SC 6045, with the Puerto Rico Treasury Department on or before the due date, including extensions, of the Puerto Rico income tax return for the taxable year with respect to which the election is to become effective. Although a Puerto Rico LLC is automatically treated as a foreign corporation for US federal income tax purposes, it may elect to be treated as a partnership or disregarded entity for US federal income tax purposes, as applicable. This election is accomplished through the filing of Form 8832 with the IRS.

Virtual Collection Center

The Virtual Collection Center is an online platform established by the Puerto Rico Treasury Department which allows for the payment of service charges imposed by the Puerto Rico Treasury Department on taxpayers seeking administrative determinations (e.g., private letter rulings) and similar transactions. Registration with the Virtual Collection Office is not mandatory and the Virtual Collection Center is expected to be fully phased out by the SURI platform in the coming years.

Merchant's Registry Certificate

A business that intends to operate in Puerto Rico will be considered a "merchant" (subject to certain exceptions) and will be required to register with the Puerto Rico Treasury Department as a merchant through the SURI platform. Upon registration of a sales and use tax account, the Puerto Rico Treasury Department will issue a

Merchant's Registry Certificate which will designate the merchant as one required to withhold sales and use tax, or one exempt from making such withholding. The Merchant's Registry Certificate may also designate the business as an exhibitor, or temporary business, as applicable. When opening bank accounts and in the ordinary course of business, the Merchant's Registry Certificate will often be required. In fact, it should be visibly displayed at the premises in Puerto Rico and failure to do so could result in fines.

Sales and Use Tax

The sale of taxable items and services in Puerto Rico is subject to an 11.5 percent sales and use tax (SUT). In addition, since October 2015, most transactions between merchants (business-to-business transactions) ceased to be tax exempt and became subject to a 4 percent SUT. Moreover, there is a 10.5 percent use tax upon importation of taxable items in Puerto Rico, payable by the importer of record. Effective August 1, 2017, merchants that import tangible property into Puerto Rico are required to report and remit the 1 percent municipal SUT to the Puerto Rico Treasury Department. No additional import declaration will be required for purposes of the municipal SUT.

There are certain transactions which continue to be exempt from sales and use tax, the most common being sales to Puerto Rico government entities. However, all exempt transactions must be documented by a Certificate of Exempt Purchases, which is a form filled out by the seller and the purchaser of the taxable items, identifying the applicable exemption.

Waiver Certificate for Entities Rendering Services

Generally, payments made in the conduct of a trade or business or for the production of income in excess of USD 500 to another person (natural or judicial) for services performed within Puerto Rico are subject to a 10 percent withholding tax payable to the Puerto Rico Treasury Department, unless the service provider potentially subject to the withholding has a waiver in place. As a general rule, legal entities that have been in operation for less than 3 years may obtain a waiver from this withholding. The waiver is obtained through SUR1 and is generally issued immediately.

Municipal License Tax

Each of the 78 municipalities in Puerto Rico is entitled to levy and collect up to a 0.5 percent tax on the gross receipts of a company carrying business within the municipality. Financial businesses are instead subject up to a 1.5 percent tax on gross receipts. The tax is known as the municipal license tax (or *patente municipal* in Spanish). As a result, companies are required to register when commencing operations within the applicable municipality. Registration with the municipality usually requires occupying physical space and obtaining the Single Use Permit (described below), but this requirement can be waived in certain circumstances. As technology advances and allows companies to conduct business remotely, municipalities are still enforcing registration in order to collect the municipal license tax. There are various tax incentives which eliminate or significantly reduce the impact of the municipal license tax.

Single Use Permit

Businesses that will occupy physical space are required to obtain a Single Use Permit (*Permiso Único* in Spanish) with the Government Permits Office (OGPE) authorizing the occupancy of the premises. The Single Use Permit consolidates environmental, health and fire department authorizations, among others, depending on the nature of the business. The Single Use Permit requires inspection of the premises by an authorized government inspector.

Real and Personal Property Taxes

Both real and personal property in Puerto Rico are subject to taxation, unless there is an exception or special amnesty in place. Although registration with the Municipal Revenue Collection Center (CRIM, for its Spanish acronym) is not mandatory in order to commence operations, it will often be required when registering with the municipality in order to demonstrate that the company does not owe any personal or real property taxes.

PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY

Corporations

Not applicable for this jurisdiction.

Limited Liability Companies

Not applicable for this jurisdiction.

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