

Doing Business in Puerto Rico



About Puerto Rico

- Officially known as the Commonwealth of Puerto Rico (Estado Libre Asociado de Puerto Rico), is a self governing territory of the United States, located in the northeastern Caribbean.
- Puerto Rico (Spanish for "rich port") consists of an archipelago that includes the main island of Puerto Rico and several islands: Vieques, Culebra, Mona and numerous islets.
- It is the smallest island of the Greater Antilles with an area of 100 miles long by 35 miles wide.
- Bordered to the west by the Dominican Republic and Haiti (La Hispañola), separated by the Mona Passage ("Mona Canal"), to the east by the Virgin Islands, to the north by the Atlantic Ocean, and to the south by the Caribbean Sea.
- Puerto Rico is a self-governing commonwealth in association with the United States. The chief of state is the President of the United States of America. The head of government is an elected Governor.
- Government: Republican form government, with three branches of government: Executive, Legislative and Judicial.
- Population: Approx. 3,620,897
- Spanish and English are the official languages of Puerto Rico.
- Currency: U.S. Dollar (USD)
- Climate: Tropical, average temperatures year round between 90 °F (32.2 °C) and 70 °F (21.1 °C).

Business Presence

- The Puerto Rico General Corporations Act allows for the establishment of the following business types: domestic and foreign corporations and limited liability companies, limited liability partnerships, and civil partnerships. Not-for-profit, close and professional corporation types are also widely used. The Corporations Act is modeled after the State of Delaware's General Corporation Law, thus allowing ample reciprocity between US corporate entities and PR corporate entities. The most popular entity forms used are the corporation and LLC. Typically, investors either form domestic entities or qualify their existing entity to do business in Puerto Rico.
- The incorporation process is very similar to that available in the United States. To incorporate in Puerto Rico you must file the corresponding forms with the Department of State of the Commonwealth of Puerto Rico along with the payment of the filing fees. To maintain their "Good Standing" status, entities must annually file a report and/or renewal and pay an annual fee.

Foreign Investment

- Puerto Rico provides a positive legal framework to promote US and foreign investment. Some of the benefits of doing business in Puerto Rico includes:
- Puerto Rico is a territory of the United States and unless expressly excluded, federal US laws apply. As a result, the Commonwealth of Puerto Rico is:

- ⇒ Part of the US free trade zones and customs system.
 - ⇒ Protected under the US legal framework for intellectual property protection.
 - ⇒ Under the protection of the US Homeland Security Act
 - ⇒ Its banking system is regulated under US laws (Federal Deposit Insurance Corporation); and
 - ⇒ Has access to US federal programs and funds.
- There are no restrictions on foreign shareholders.
 - US federal government’s restrictions on doing business with certain countries apply in Puerto Rico.
 - Puerto Rico does not have any exchange control or currency regulations.

Determine Your Business Type

Any establishment conducting business in the Commonwealth of Puerto Rico must first determine the type of business they wish to create or maintain: whether a corporation, limited liability company, limited liability partnership, or a civil partnership. Some of the characteristics of these entities are:

Corporations

The Puerto Rico General Corporations Law provides for the creation and or adoption of for profit, non-profit, domestic, foreign, close and professional corporations. Corporations are available for any lawful business, with very limited exceptions. In general, corporations may be organized by one or more persons, and or juridical entities.

Domestic Corporations

Are defined as entities organized and created under the laws of the Commonwealth of Puerto Rico. Close corporations Are domestic corporations with less than 75 stockholders. Shareholders are afforded a direct participation in the management of the business, and the transfer of its stock may be restricted according to the law and the shareholders’ discretion.

Foreign Corporations

Are corporations organized under a state of the United States, or other country. Foreign corporations must request a certificate of authorization to do business in Puerto Rico prior to engaging in any business or activity.

Professional Corporations

Are corporations created solely for purposes of rendering professional services, which are defined as any type of service which requires the individual to obtain a license or other legal authorization from the Commonwealth of Puerto Rico, such as engineers, lawyers, doctors, CPAs, and the like.

Limited Liability Companies - LLC

Are entities with similar yet a less formal management structure than that of a corporation. LLCs have less filing requirements than its corporate counterparts. Both foreign and domestic LLCs may be registered.

Limited Liability Partnerships - LLP

Are available to professionals who engage in professional services, as defined above, who wish to avoid the formalities of a corporate entity. Annual renewal is indispensable to its existence.

Civil Partnerships

Predecessor to the LLP, this business engagement is executed by means of a written agreement or joint venture; document. Certain legal formalities apply. It is recommended for less sophisticated business enterprises. However, its members are not afforded limited liability protection like its above counterparts. If you decide to do business in Puerto Rico, all corporations, limited liability companies and/or limited liability partnerships must:

- Register with the Department of State of the Commonwealth of Puerto Rico and pay the corresponding fee (\$150 for corporations / \$250.00 for LLC).
- For corporations, the fee may increase, subject to the total number of authorized shares.
- Expedited registrations are available for LLCs, also with increased fee payment.
- Once registered, corporations must file annual reports and financial statements, along with the payment of the corresponding fee (\$150).
- Once registered, LLCs and LLPs must file annual renewal forms and pay the required fee. (\$150 for LLCs and \$110 for LLPs).

General Filing Requirements for Puerto Rico

Business

- For all businesses: All business must register with the local Department of the Treasury to obtain a Merchants Registration and/or Exemption Certificate for payment of the local sales and use tax, if applicable. Companies are also required to file monthly sales tax returns and an annual informative return.
- For all businesses: All businesses are required to register with the municipality where the business is located to obtain the Municipal License (known as “Patente”). Business may be subject to additional filing requirements by the municipality (volume of business return) and payment of property taxes and the municipal license tax.
- For all businesses with physical offices in Puerto Rico: Prior to commencement of operations, all businesses that will engage from a designated location are required to obtain an Use Permit from the Office of Management of Permits (“OGPe” for its acronym in Spanish) or the corresponding municipality where the office is located.
- For Employers: Business with employees must also register with the Commonwealth of Puerto Rico Department of Labor and Human Resources (unemployment and disability insurance) and the State Insurance Fund Corporation (workmen compensation insurance). Filing requirements in each agency will vary.

Tax Incentives for Business

- Puerto Rico offers a highly attractive incentives package that includes a fixed corporate income tax rate – one of the lowest in comparison with any U.S. jurisdiction – various tax exemptions and special deductions, training expenses reimbursement and special tax treatment for pioneer activities.
- Examples of the most popular incentives legislation include:
 - Act 20 -2012, known as the “Law to Promote the Export of Services” which aims to promote the environment and opportunity to develop Puerto Rico as an international service center, promote the retention and return of local professionals and attract foreign capital, promoting in this way the economic development and social improvement of Puerto Rico.
 - Act 22-2012, known as the “Law to Encourage the Transfer of Investors to Puerto Rico ” with the objective to grant tax exemption in regards to revenue, resulting from investments accrued by individuals who are residents in Puerto Rico;
 - Act 73-2008, known as "Economic Incentives for the Development of Puerto Rico Act," allows qualifying industrial operations in Puerto Rico to obtain high profits while stimulating the local economic development.
 - Key provisions which may be available under incentive acts include:
 - 100% exemption applicable to the interests and dividends income earned by a resident individual investor (Act 22)
 - ⇒ 4% or 8% fixed corporate income tax rate (Act 20, Act 73)
 - ⇒ 1% income tax rate for "pioneer" industries and/or “strategic services” (Act 20, Act 73)
 - ⇒ Allows for tax credits on their corporate income tax return for job creation tax, investment in machinery and equipment, purchase of locally manufactured products (Act 73)
 - ⇒ Reduced electric energy cost of the industrial exempt business (Act 73)
 - ⇒ Provides 90% exemption from personal and real property taxes, 60% exemption from municipal license taxes and 100% exemption from state and local sales and use tax on raw material (Act 20, 73)

Taxation

Taxation in Puerto Rico takes the form of both Federal (US) and Commonwealth taxes. Puerto Rico has independent tax-levying authority by provisions of 48 U.S.C. § 734 of the United States Code, and the Puerto Rico Internal Revenue Code.

- Correlation with the United States Tax Laws.

Though the Commonwealth government has its own tax laws, Puerto Ricans are also required to pay most U.S. federal taxes:

- Individuals Residing in Puerto Rico. Residents of Puerto Rico pay into Social Security, and are thus eligible for Social Security benefits upon retirement. Other federal taxes paid by Puerto Rico residents include import/export taxes, and federal commodity taxes. Like residents of the United States, residents of Puerto Rico are subject to federal income tax on their worldwide income. However, U.S. Code Section 933, for tax purposes, allows a bona fide individual resident of Puerto Rico to exclude Puerto Rico source income from his/her gross income. The process for determining and establishing bona fide residence for income tax purposes hinges on the result of three

tests found in U.S. Code Section 937: (a) the presence test, (b) the tax home test and (c) closer connection test.

- Employers in Puerto Rico. Are subject to both Federal Insurance Contributions Act (FICA) tax (a payroll withholding tax, which funds Social Security and Medicare) and the Federal Unemployment Tax Act (FUTA). Employers in Puerto Rico are legally obligated to withhold the employee portion of FICA taxes from their employees' wages and contribute the employer portion of FICA.
- Puerto Rico Corporations. Puerto Rico corporations are treated as foreign corporations for U.S. income tax purposes. Thus, Puerto Rico corporations are subject to a 30% U.S. income tax withholding on, among others: interest, rents, wages, premiums, annuities, compensation, remuneration, emoluments and other fixed or determinable annual or periodical gains, profits and income from sources within the United States. Dividends received by a Puerto Rico corporation from a U.S. corporation, however and provided certain conditions are met, are subject to a reduced U.S. income tax withholding instead of the 30% rate applicable to other foreign corporations. Puerto Rico corporations are subject to regular U.S. tax rates on their income effectively connected to a trade or business in the United States.

- Puerto Rico Tax System.

The Internal Revenue Code for a New Puerto Rico ('Puerto Rico Internal Revenue Code') is the main body of domestic statutory tax law. It covers income taxes, payroll taxes, gift taxes, estate taxes and more.

- Personal Income Tax.

Individuals are taxed on a graduate rate based on their tax bracket, which ranges from 7% to a maximum of 33%. A person is considered a "resident" of Puerto Rico if he or she lives in Puerto Rico for at least 184 days in a calendar year. Capital gains earned by resident individuals are also taxed. Long-term capital gains are gains earned from an asset, which is held for more than 6 months. The taxable gain is computed by deducting the acquisition costs from the gross selling price.

- Puerto Rico corporations.

Puerto Rico corporate entities are taxed at on a graduated tax rate structure.

- Municipal taxes.

Other taxes applicable to the Puerto Rico tax systems include, excise tax, municipal license tax (gross volume) and real and personal property taxes. The percentages will vary depending on the local government and other considerations.

- Sales and Use Tax.

Puerto Rico residents and entities are also subject to 11.5% sales and use tax.

Intellectual Property

Puerto Rico is protected under the US legal framework for intellectual property protection:

- Patents

Patents are issued under United States federal law.

- Trademarks

Trademark rights can be used to prevent others from using the same, or very similar mark in connection with the same goods or services that are sold under the trademark. Trademarks enjoy protection under United States Trademark Act, as amended, and under Act 169-2009, known as “Puerto Rico Trademark Act”. If merchandise is used in inter-state commerce owners of trademarks can register them with the United States Patents and Trademarks Office. Applications for the registration of trademarks in Puerto Rico must be filed with the Registry of Trademarks and Commercial Names of the Puerto Rico Department of State. In Puerto Rico, registration with intent to use is allowed.

- Copyright

Copyright is available for authors of original works, including literary, dramatic, musical, artistic, and certain other intellectual works. Copyright is governed by Federal (US) and Puerto Rico law (Visual Artists Rights Act, and PR Author’s Moral Rights Act, Act 55-2012). Copyright protection subsists from the time the work is created in fixed form and immediately becomes the property of the author of the work. Copyrights can be registered with the US Copyright Office of the Library of Congress and with the Copyright Registry Office of the Puerto Rico Department of State.

Labor Law

- The Constitution of the Commonwealth of Puerto Rico establishes the framework for the Labor Laws of Puerto Rico, through its Articles 15, 16, 17 and 18. The Constitution provides the minimum range of protection that can be granted to employees. These provisions cannot be modified by a written employment contract unless it grants workers further favorable conditions than the ones that are set as a minimum by the Constitution and related laws.
- The Minimum Wage, Vacation and Sick Leave Act statutorily incorporates, as a substantive right the automatic and immediate application of the Federal Minimum Wage to all workers in industries in Puerto Rico covered by the Fair Labor Standards Act (FLSA).
- Both the Constitution and the Laws of Puerto Rico establish that eight (8) hours of work within a period of 24 consecutive hours constitute the legal and regular workday in Puerto Rico. Forty (40) hours of work constitute the regular workweek. Act 379-1948 requires payment of work in excess of eight hours a day or forty a week at double the regular rate of pay. If the employer is covered by the Fair Labor Standards Act, the employer has to pay for each overtime hour of work in excess of the legal eight hours per day, a wage rate of not less than one and a half time the wage agreed upon for regular hours unless otherwise established by mandatory decree or collective bargaining agreement. In addition, the employer and employee have the option to agree to a flexible work schedule as regulated by the “Flexitime Act”, Act 83-1995. This law allows for flexibility in determining the beginning of an employee’s regular workday or the beginning of his meal period.

- Meal Period are regulated by Act No. 379-1948, which states that the meal period shall not be less than one hour that the employee cannot work for more than five hours consecutively without taking his meal period.
- Vacation and Sick Leave. Employees of the company are entitled to accrue vacation leave with full pay to be made effective when the employee begins to enjoy the same, at the rate of one and one fourth (1¼) working day for each month in which he has worked at least one hundred and fifteen (115) hours. Employees shall accrue sick leave at the rate of one (1) working day for each month in which they have worked at least one hundred fifteen (115) hours for. The use of sick leave will be considered as time worked in the accrual of this benefit.
- Other Puerto Rico labor laws issues are governed by: “Unjust Dismissal Act”, “Maternity Benefits and Breast Feeding”, “Safety and Health in the Work Place”, “Workmen's Accident Compensation”, “Non-Occupational Disability and Social Security for Chauffeurs”, “Unemployment Insurance”, laws that prohibit discrimination and sexual harassment, laws concerning veterans and employees on military service leave, laws governing jury duty, witness leave for criminal cases, sports leave, automobile accident disability leave and “Christmas Bonus” Act.
- FOREIGN EMPLOYEES:
As a territory of the United States, Puerto Rico is governed by US immigration law. All foreign employees require work permits and/or residency permits issued by the United States Citizen and Immigration Services, ascribed to the Department of Homeland Security.

Immigration

U.S. Citizenship and Immigration Services (USCIS), ascribed to the Department of Homeland Security, is the government agency that oversees lawful immigration to the United States.

Other Licensing

Depending on the nature of the business, a company may also be required to obtain licenses particular to its industry: (e.g. a health-care providers are regulated by the Department of Health of the Commonwealth of Puerto Rico, insurance providers by the Office of the Commissioner of Insurance, banking or financial institutions by the Financial Institutions Commission, and so forth.)

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Any and all questions in connection with your interest in doing business in the Commonwealth of Puerto Rico should be addressed to our specialized attorneys at EDGE, for an in-depth assessment of the requirements for your particular business.

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