

ACT 399 Puerto Rico: Gateway for Insurers and Reinsurers to the US and Latin America

Due to its many advantages, including direct access to US and other international markets, Puerto Rico is a sound gateway for insurers and reinsurers wishing to enter the Latin American insurance and financial market.

Since 2005, the international insurers and reinsurers division of the Office of the Commissioner of Insurance of Puerto Rico (OCI) has sought to promote Puerto Rico as an important member of the international insurance arena.

The Government of Puerto Rico adopted this new initiative and incorporated it as part of its economic agenda. The OCI supervises the international insurers and reinsurers division, while the Department of Economic Development and Commerce oversees the promotion of the office's work and the extension of tax decrees, outlined below.

The experience of other jurisdictions near Puerto Rico has demonstrated that the development of such international business centers provides viable opportunities for efficient and effective economic growth for economies in search of such alternatives.

Why Puerto Rico?

Puerto Rico enjoys a privileged geographical location, offering easy access to the United States and Latin America. The advantages of a fully bilingual (Spanish and English) corporate culture have helped the Government of Puerto Rico attract and retain high technology, capital-intensive manufacturing industries.

Puerto Rico has dedicated billions of dollars to its local infrastructure, which features state-of-the-art communication and technology systems, as well as modern transportation and shipping facilities. To this effect, Puerto Rico's service sector has become one of its fastest growing industries, accounting for over 25% of Puerto Rico's total workforce.

As a US jurisdiction, Puerto Rico's free market economy is subject to both federal and state regulations designed to protect free market-competition specifically, but not limited to, the insurance and banking industries. Along with the use of US currency and general allowance of free flow of funds abroad, this regulatory structure guarantees sound credit and investment practices. Legal protection is provided under both federal and state constitutions, with legal redress venues available in federal or state courts.

Insurance Arena

The OCI's long history of regulatory expertise is further reason for Puerto Rico to be considered a viable alternative when considering where to transact insurance business. The OCI regulates 52 domestic insurers and 343 foreign reinsurers and reinsurers writing \$11 billion of premium for 2011. Puerto Rico constitutes the third largest insurance market in Latin America.

The OCI is an accredited member of the National Association of Insurance Commissioners (NAIC). The OCI is also a participating member of the Association of Insurance Superintendents of Latin America (ASSAL). The regulatory basis of the center calls for prudent but expedient regulation.

Legal Background

Act No. 399 and Act No. 400 in Chapter 61 of the Puerto Rico Insurance Code were adopted in order to establish the basis for the International Insurance Center (IIC), which provides a competitive environment for reinsurers to cover risks in and out of Puerto Rico under a secure and flexible regulatory system, with attractive tax benefits. In June 2011, Act No. 98 was passed to provide long-term tax status that will guarantee the tax treatment for an initial period of 15 years, renewable for two additional 15-year periods.

International insurance entities have various alternative ways to organize and operate within the IIC. These options include operating as an international insurance holding company, as an international insurer or a branch of an international insurer, and protected cell arrangements.

I. International Insurance Holding Company

- A holding company that must hold interests (shares and other securities) in an international insurer or international insurance holding company organized under Chapter 61 of the Insurance Code of Puerto Rico.
- May control International Insurers or other International Insurance holding companies, or businesses that are incidental and that provide services exclusively to International Insurers with which they maintain a relationship as subsidiaries or affiliates.
- Maintain its cash, equivalents and other investments in a proportion of no more of 1:1 with other insurance related assets, including interest in the international insurer.

II. International Insurer

- An entity organized to conduct insurance business outside Puerto Rico.
- Includes reinsurers, captives, and associated captive company structures.

III. Branch of Foreign Insurer

- Maintains main office in Puerto Rico.
- Segregates assets under a trust constituted pursuant to the laws of the Government of Puerto Rico.
- The deed of trust and all its amendments made according to the manner established by the Commissioner of Insurance.
- Has assets in trust in an amount at least equal to 150% of the capital and surplus required, or in the case of a Class 4 insurer, 110%.

IV. Protected Cell Companies

- With prior approval from the Commissioner, an International Insurer may establish and operate one or more segregated assets plans.
- Assets of a Segregated Assets Plan approved by the Commissioner are available solely for the payment of obligations of other segregated assets plans or of the general obligations of the insurer.
- No segregated Assets Plans shall be considered as an entity with a jurisdictional personality separate from that of the international insurer.

International insurers are licensed on a class basis depending on the type of risk and each class has different capital and surplus requirements.

Tax Treatment

Tax exemptions conferred under the International Insurers and Reinsurers Act of Puerto Rico include:

- Exemption from premium taxes.
- Exemption on dividends and other profit distributions made by the International Insurer and International Insurer Holding Company.
- Exemption on municipal franchise, real and personal property taxes.
- Exemption to the International Insurer and qualifying International Insurance Company from withholding taxes on payments of dividends and other profit distributions made to third parties, and from filing tax returns with the Puerto Rico Internal Revenue Service.
- Isolation of the proceeds and benefits paid by international insurers from state and donation taxation procedures.
- \$1.2 million tax exemption on net income. Exemption applicable at the individual cell level for protected cell company arrangements and at the company level.

Preferred 4% tax rate on net income, guaranteed by a decree effective over a renewable period of 15 years.

Other Tax Incentives

Export Services: The Act to Promote the Exportation of Services (Act No. 20 of 2012) will without a doubt turn Puerto Rico into an international services center. Some of the highlights of the Law include: (i) a 4% income tax rate that can be reduced to 3%, (ii) 0% income tax rate on distributions, (iii) 90% exemption of real and property taxes, (iv) 60% exemption on municipal license taxes and (v) 20 year exemption period that may be extended by an additional 10 years. Among the qualifying export services are: research and development, advertisement and public relations, consulting, investment banking, asset management and other financial services, and professional services such as legal, accounting, architectural and engineering services.

Individual Resident Investors: The Act to Promote the Relocation of Individual Investors (Act 22 of 2012) offers attractive tax benefits to individual investors who relocate to Puerto Rico (must be present in Puerto Rico at least 183 days amongst other resident requirements). In order to qualify, the new resident investor must not have been a resident of Puerto Rico during the past 15 years. Highlights of this Act include: (i) 100% exemption of income taxes (including alternative minimum tax) on interest and dividends received, and (ii) 100% tax exemption on capital gains that occurred while a resident of Puerto Rico and which are realized after 10 years of becoming resident of Puerto Rico.

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For more information on the various incentives provided under the Puerto Rico laws, please visit WWW.BUSINESSINPUERTORICO.COM and access our incentives alerts on the following topics:

- Tourism Development Act;
- Municipal Economic Development and Tourism Incentives Act;
- Cruise Industry Incentives Act;
- Film Industry Incentives Act;
- Green Energy Incentives Act;
- Economic Incentives for the Development of Puerto Rico Act;
- Incentives for Rum Producers in Puerto Rico;
- Export Services Incentives Act;
- Individual Investors Act;
- Tax Exemptions for Scientists;
- Incentives for business activity performed in Vieques and Culebra;
- Puerto Rico Housing Incentives.