



CONSTITUTION

of

AUSTRALIA-LATIN AMERICA BUSINESSCOUNCIL LIMITED

A COMPANY LIMITED BY GUARANTEE

ACN 27 091 186 015

*Amended by Special Resolution May
2020*

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1. INTERPRETATION

1.1 Definitions

In this Constitution, unless the context otherwise requires,

Board means the Board of the Directors of the Council;

Council means the Australia-Latin America Business Council Limited;

Chief Executive Officer includes the assistant or acting Chief Executive Officer or any substitute for the time being for the Chief Executive Officer.

Latin America means each of the countries listed in the Schedule.

Member means a person admitted as a Member and whose name is entered on the register of Members

Nominated Representative means a person nominated as such by a Member under clause 6.4 of this Constitution;

1.2 Interpretation

(a) In this Constitution, unless the context requires otherwise:

- (i) the singular includes the plural and vice versa
- (ii) where an expression is defined in this Constitution, any other grammatical form of the expression has a corresponding meaning
- (iii) words and expressions defined in the *Corporations Act* have the same meaning in this Constitution
- (iv) a reference to a section number means that section of the *Corporations Act*
- (v) headings are for purposes of convenience only and do not affect the interpretation of this Constitution
- (vi) a reference to a statute or regulation includes all amendments, consolidations or replacements of the statute or regulation
- (vii) a reference to this Constitution or another instrument includes all amendments or replacements of the Constitution or the other instrument; and
- (viii) a reference to a statutory or other body that ceases to exist or the powers and functions of which are transferred to another body includes a reference to the body:
 - (A) that replaces it; or
 - (B) to which substantially all the powers and functions relevant to this Constitution are transferred.

(b) The notes to this Constitution are for purposes of convenience only and do not affect the interpretation of this Constitution. The notes do not form part of this Constitution and may be removed or modified without the Council complying with the *Corporations Act* requirements that apply to removal or modification of constitutional provisions.

1.3 Time

Unless expressly provided otherwise, when this Constitution, or any notice given under this Constitution, states a time or a period of time, the time stated is, or the period of time is calculated by reference to, Standard Time or Summer Time, as the case may be, at the Council's registered office.

1.4 Application of Replaceable Rules

The replaceable rules in the *Corporations Act* apply to the extent that they have not been negated or modified in this Constitution.

1.5 Notices

- (a) This Rule applies to all notices and documents that the *Corporations Act* or this Constitution requires a party to this Constitution to send to another party to this Constitution.

Corporations Act Commentary

The parties to the Constitution are the Council and its Members, directors and secretaries:
see s 140(1).

- (b) In this Rule, business day means a day that is not:
- (i) a Saturday or Sunday; or
 - (ii) a public holiday or bank holiday in the place where the notice is received.
- (c) A person sending a notice must do so in writing and must address it to the recipient at the following respective addresses if to:
- (i) the Council — at its registered office or such other address as the Council specifies to Members from time-to-time; and
 - (ii) a Member — at the Member's address appearing on the register of members from time-to-time.
- (d) A person may send a notice or other document to another person in any of the ways set out in column 2 of the table. The other person receives the notice at the time set out in column 3:

Delivery Method		Time Person Receives Notice
1	Hand delivering the notice personally	The other person receives the notice: (i) if hand delivered before 4:00pm on a business day — on that business day (ii) if hand delivered after 4:00pm on a business day — on the next business day (iii) if hand delivered on a day other than a business day — on the next business day
2	Sending the notice by pre-paid post	The other person receives the notice on the third business day after posting unless it is actually delivered earlier
3	Sending the notice by facsimile transmission	The other person receives the notice: (i) if sent before 5:00pm on a business day — on that business day (ii) if sent after 5:00pm on a business day — on the next business day (iii) if sent on a day other than a business day — on the next business day This rule does not apply where the person sending the facsimile has evidence that the transmission was unsuccessful
4	Sending the notice by electronic means	The other person receives the notice: (i) if sent before 5:00pm on a business day — on that business day (ii) if sent after 5:00pm on a business day — on the next business day (iii) if sent on a day other than a business day — on the next business day This rule does not apply where the person sending the notice by electronic means has evidence that the notice did not reach the other person's electronic address

2. NATURE OF THE COUNCIL

- (a) The Council is a public company limited by guarantee.
- (b) The Council must not:
- (i) be carried on for the purpose of the profit or gain of any Member;
 - (ii) apply, pay or transfer, whether directly or indirectly, any portion of the income and property of the Council for the benefit of, or to a, Member.

3. MEMBERS

3.1 Admission to Membership

The Board may admit any person eligible for membership under Rule 3.2, as a Member on the terms and conditions it prescribes from time to time.

3.2 Eligibility for Membership

- (a) To be eligible to be a Member the applicant must be an individual or body corporate which in the opinion of the Board, is involved in trade, investment, technical and economic co-operation or tourism between Australia and any country in Latin America.
- (b) The Board may at its discretion admit as a Member an individual or body corporate other than one referred to in paragraph 3.2(a) where the Board considers that the admission of that organisation or individual would advance achievement of the objects of the Council.

3.3 Annual Fees

- (a) Annual membership fees shall be as determined by the Board from time to time.
- (b) The Board may set differential annual fees for different categories of Members as the Board determines from time to time.

3.4 Guarantee of Members

Each Member undertakes to contribute a maximum of ten dollars (A\$10.00) to the Council for payment of:

- (i) the debts and liabilities of the Council;
- (ii) the costs, charges and expenses of any winding up; and
- (iii) the adjustment of the rights of Members among themselves, in the event that the Council is wound up
 - (A) while the Member is a Member; or
 - (B) within one year after the Member ceases to be a Member.

4. CESSATION OF MEMBERSHIP

4.1 Non-payment of Subscription

If a Member fails to pay its annual fee for:

- (i) more than 2 months, the Board may suspend all or any privileges of membership of that Member until payment in full
- (ii) more than 3 months the Board may terminate the membership of that Member and remove the Member's name from the register of members.

4.2 Board's Powers in respect of a Member's Conduct

- (a) If any Member is guilty of any conduct which, in the opinion of the Board, is unbecoming of a Member or prejudicial to the interests of the Council, the Board has the power to censure, suspend or expel the Member from the Council.
- (b) At least one week before the meeting of the Board at which a resolution under paragraph (a) is proposed the Council shall provide the Member with:
- (i) notice of the meeting;
 - (ii) the allegations against them;
 - (iii) the intended resolution; and
 - (iv) advice that the Member shall, at the meeting and before the passing of the resolution, have an opportunity to give, orally or in writing, any explanation or defence they may think fit.

5. HOLDING MEMBERS' MEETINGS

Corporations Act Commentary

Holding a Members' meeting

A Members' meeting must be held at a reasonable time and place: see s 249R.

A Members' meeting can be held using any technology (such as video conferencing), provided that it gives the Members as a whole a reasonable opportunity to participate in the meeting: see s 249S.

Notice of Members' meeting

At least 21 days notice must be given of a Members' meeting. A meeting can be called on shorter notice with the consent of the requisite number of Members, but not to remove a director or auditor: see 249H.

Written notice must be given individually to each Member and director.

The auditor must also receive the notice convening a general meeting and other communication Members are entitled to receive: see s 249K.

Content of notice

A notice convening a Members' meeting must

- set out the place, date and time of the meeting and the technology to be used to conduct the meeting if it is to be held in 2 or more places;
- state the general nature of the meeting's business;
- state the terms of any special resolution and the fact that it is proposed as a special resolution;
- in relation to proxies:
 - that the Member has a right to appoint a proxy;
 - whether or not the proxy needs to be a Member of the Council; and

- that a Member entitled to cast 2 or more votes may appoint 2 proxies and may specify the proportion or number of votes each proxy is appointed to exercise: see s 249L.

Auditor's right to attend

The Auditor has a right to attend any general meeting and to speak: see s 249V.

Members' request for statement to be distributed

The Council must distribute a statement about a resolution, or other matter to be considered at a general meeting, as requested by a certain number of Members: see s 249P.

The AGM

The Council must hold an AGM within 5 months after the end of its financial year: see s 250N.

The business of an AGM may include the following, even if not referred to in the notice of meeting:

- consideration of the annual financial report, directors' report and auditor's report;
- election of directors;
- appointment of auditor;
- fixing of the auditor's remuneration: see s 250R.

The chair of the AGM must:

- allow Members a reasonable opportunity to ask questions about, and to comment on, the management of the Council: see s 250S; and
- allow Members a reasonable opportunity to ask the auditor or the auditor's representative, when present, questions relevant to the conduct of the audit and the preparation and content of the auditor's report: see 250T.

5.1 Calling Meetings of Members

Corporations Act Commentary**Members' right to call a general meeting**

A general meeting must be held if 100 Members, or Members with at least 5% of the votes ask for it. The Board has to call a general meeting within 21 days after the request and the meeting itself must be held within 2 months: see ss 249D and 249F. In any case, Members who hold at least 5% of the votes can call and arrange to hold a meeting themselves: see s 249F.

Other than as required by the *Corporations Act*, only the Board may call a Members' meeting.

5.2 Adjourning Meetings of Members

- (a) The chair of a Members' meeting at which a quorum is present:
- (i) may adjourn the meeting with the consent of the meeting by ordinary resolution; and
 - (ii) must adjourn the meeting if directed by ordinary resolution.

Corporations Act Commentary

Notice of Adjourned Meeting

Replaceable Rule: New notice of the adjourned meeting must be given if the meeting is adjourned for 1 month or more: see s 249M.

Business at Adjourned Meeting

Replaceable Rule: Only unfinished business is to be transacted at a meeting resumed after adjournment: see s249W(2).

5.3 Proceedings at Members' Meetings

- (a) The quorum for a Members' meeting is the lesser of 4 Members or half the Members, who must be present at all times during the meeting, and, for an adjourned meeting, 2 Members.

Corporations Act Commentary

Determining Quorum

Replaceable Rule: In determining whether a quorum is present include individuals present as proxies or body corporate representatives. If a member has appointed more than 1 proxy or corporate representative count only 1 of them. An individual attending as both a member and a proxy or body corporate representative is counted only once : see s 249T(2).

Adjourning Meeting for Lack of Quorum

Replaceable Rule: If a quorum is not present within 30 minutes after the meeting is set to commence the meeting is adjourned to the date, time and place the Board specifies, or if the Board does not specify:

- the date – the adjourned meeting is the same day in the next week;
- the time – the adjourned meeting is the same time;
- the place – the adjourned meeting is the same place : see s 249T(3).

No Quorum at Adjourned Meeting

Replaceable Rule: If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the meeting is dissolved: see s 249T(4).

- (b) The chair of Members' meetings is:

- (i) the chair of meetings of the Board; or
- (ii) if the chair of meetings of the Board is not present or declines to act for the meeting (or part of it) — the deputy chair of meetings of the Board.

If the chair or deputy chair of meetings of the Board is not available within 30 minutes of the appointed start of the meeting, or declines to act, the Members must elect an individual present to chair the meeting.

5.4 Member's Resolutions

- (a) Members may give the Council notice of a resolution they propose to move at a general meeting in accordance with section 249N(2) and (3).
- (b) If the Council receives notice under paragraph (a) it must deal with it as if section 249O applied.

Corporations Act Commentary

Members' right to give notice of a resolution

Members with at least 5% of the votes that may be cast at a general meeting or at least 100 Members may give a Council notice of a resolution that they propose to move at a general meeting: see s 249N. *This clause reduces the required number of members to 5.*

This resolution is to be considered at the next general meeting that occurs more than 2 months after the notice is given: see s 249O.

6. VOTING AT MEMBERS' MEETINGS

Corporations Act Commentary

How Voting is Carried Out

Replaceable Rule: A resolution put to the vote at a Members' meeting must be decided on a show of hands unless a poll is demanded: s 250J(1)

Replaceable Rule: Before a vote is taken the Chair must inform the meeting whether any proxy votes have been received and how the proxy votes are to be cast: s 250J(2).

Number of Votes

Replaceable Rule: Each Member has 1 vote, both on a show of hands and a poll: s 250E(2)

Objections to Right to Vote

Replaceable Rule: A challenge to a right to vote at a meeting may only be made at the meeting and must be determined by the Chair, whose decision is final: s 250G.

6.1 Voting

- (a) The Members' meeting passes an ordinary resolution only if more than half the total number of votes cast on the resolution are in favour of it.
- (b) The chair does not have a casting vote in addition to his or her deliberative vote.

6.2 Voting on a Show of Hands

On a show of hands, the chair's declaration is conclusive evidence of the result, so long as the declaration reflects the show of hands. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against the resolution. The minutes only need to record that the resolution was passed or not passed.

6.3 Voting on a Poll

Corporations Act Commentary

Section 250L allows the following to demand a poll:

- 5 Members entitled to vote on the resolution;
- Members with at least 5% of the votes to be cast on the resolution; or
- the chair.

A proxy may join a demand for a poll: see s 249Y(1)

Section 250K states that a poll may be demanded on any question (subject to the exceptions in clause 6.3(a) below) and that the demand may be withdrawn.

Replaceable Rule: A poll must be taken when and in the manner the Chair directs: s 250M(1).

- (a) A poll cannot be demanded on any resolution concerning:
- (i) the election of a person to chair the Members' meeting
 - (ii) an adjournment of the meeting.
- (b) The Members' meeting may conduct other business even though a poll is demanded on a resolution.

6.4 Body Corporate Representatives

Corporations Act Commentary

Section 250D says that a body corporate Member may appoint a representative to exercise the Member's powers at a general meeting. The appointment can be a standing appointment. The appointment can set out restrictions on the representative's powers. A Member can appoint more than 1 representative but only 1 can exercise the Member's powers at any one time.

- (a) A Member that appoints a body corporate representative must give the Council:
- (i) if the Member appointed the representative by Board resolution — a certified copy of the Board resolution appointing the representative; and

- (ii) otherwise — a copy of the instrument appointing the representative, as soon as practicable after appointing the representative, and in any event before any Member's meeting at which the representative may exercise the Member's rights.
- (b) In addition to the rights and powers a Member's representative may exercise under the *Corporations Act*, the representative may exercise the Member's right to vote in a ballot to appoint directors by election.

6.5 Proxies

Corporations Act Commentary

Sections 249X to 250C set out Members' powers to appoint proxies and the rights and obligations of proxies.

- (a) An appointment of a proxy is not invalid merely because it does not contain all the information required for a valid proxy appointment, so long as it contains:
 - (i) the Member's name; and
 - (ii) the proxy's name or the name of the office that the proxy holds.
- (b) A proxy does not have a right to vote on a show of hands.
- (c) If a Member appoints the chair as the Member's proxy and directs the chair to vote either in favour of or against the resolution, the chair must demand a poll on the resolution.

7. OFFICERS

Corporations Act Commentary

Powers of Directors

Replaceable Rule: The business of the company is to be managed by or under the direction of directors. The directors may exercise all the powers of the company except any powers that the *Corporations Act* or this Constitution requires the company to exercise in general meeting: s 198A.

Replaceable Rule: Any 2 directors may sign, draw, accept, endorse or otherwise execute a negotiable instrument. The directors may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way: s 198B.

Remuneration of Directors

Replaceable Rule: The directors are to be paid the remuneration the company determines by resolution. The company may also pay the directors' travelling and other expenses they properly incur in certain circumstances: see s 202A.

Terms and Conditions of Office for Secretaries

Replaceable Rule: A secretary holds office on the terms and conditions (including as to remuneration) that the directors determine: see s 204F.

7.1 Number of Directors

- (a) The Board determines the number of Directors subject to paragraph (b).
- (b) The Council must have at least 3 and not more than 10 Directors (excluding the Chief Executive Officer) unless the Council in general meeting determines otherwise.

7.2 Eligibility to be a Director

Only a natural person who is either:

- (i) a Member; or
 - (ii) a Nominated Representative of a Member,
- can be a Director.

7.3 Appointment of Directors

Corporations Act Commentary

Section 201B(1) provides that only individuals (not bodies corporate) who are at least 18 may be directors.

Section 201B(2) provides that a person who has been disqualified from managing corporations under Part 2D.6 may only be appointed a director if the appointment is made with ASIC's permission under s 206F or the Court's leave under s 206G.

Directors May Appoint Other Directors

Replaceable Rule: The directors may appoint a person as director. A person can be appointed as director in order to make up a quorum for a directors' meeting even if the total number of directors is not enough to make up a quorum: s 201H(1).

Replaceable Rule: The company must confirm the appointment of a Board appointed director by resolution at the company's next AGM, otherwise the person ceases to be a director at the end of the AGM: s 201H(3).

Managing Director

Replaceable Rule: The directors may appoint 1 or more of themselves to the office of managing director for the period, and on the terms (including remuneration) as the directors see fit: see 201J.

Replaceable Rule: The directors may confer on a managing director any of the powers that the directors can exercise. The directors may revoke or vary a conferral of powers on the managing director: s 198C.

Replaceable Rule: A person ceases to be a managing director if they cease to be a director. The directors may revoke or vary an appointment of a managing director: s 203F.

- (a) The Members may only appoint a person as a Director by election at the Annual General Meeting in accordance with clause 7.4.

- (b) Directors elected by the Members at the Annual General Meeting hold office until the end of the next Annual General Meeting after election.
- (c) The Chief Executive Officer will ex officio be a Director without voting rights.

7.4 Procedure for Election of Directors

The election of Directors shall take place as follows:

- (i) Each nomination of a person as a Director shall be in writing signed by 2 Members entitled to vote at such election and shall bear the candidate's written consent.
- (ii) Each nomination shall be lodged at the registered office of the Council at least 14 days prior to the AGM at which such election is to take place.
- (iii) Directors who wish to stand for election for a further term shall advise the Chief Executive Officer of their intention to do so at least 14 days prior to the AGM and will not require re-nomination.
- (iv) If the number of nominations for Directors does not exceed the number of vacancies for such offices then the person so nominated shall be deemed to have been elected at the AGM.
- (v) If the number of nominations for Directors exceeds the number of vacancies for Directors, ballot papers shall be prepared containing the names of the candidates for Directors in alphabetical order.
- (vi) Every Member present at the AGM (present in person or by their Nominated Representative or by proxy or by attorney) and which has been a Member for a minimum of six months at the time of the AGM shall be entitled to vote for any number of candidates not exceeding the number of vacancies and the candidates with the greatest number of votes shall be elected to fill those vacancies.

7.5 Alternate Directors

Corporations Act Commentary

Replaceable Rule: Section 201K sets out how a director can appoint an alternate director, with the approval of other the directors, and the powers of the alternate director.

For the purposes of section 201K, the Chief Executive Officer may not appoint an alternate to exercise some or all of that Director's powers for a specified period.

7.6 Board renewal and succession

- (a) In normal circumstances, Directors can only serve for 2 consecutive 2 year terms after which time they must stand for a period of at least 1 year to be eligible to re-nominate for the Board.
- (b) Existing Directors at the time of the 2018 AGM who had been Directors for over 5 years could re-nominate for a 1-year term at the 2018 AGM. They would then be able to re-nominate for a further 2-year term at the 2019 AGM.
- (c) In view of the exceptional circumstances arising from the 2020 COVID-19 pandemic, Directors elected at the 2019 AGM will have their two-year term extended by one year. For those Directors elected under Article 7.6 (b), they would

not be eligible to nominate for the Board at the 2022 AGM.

For those Directors covered by Article 7.6 (c) and due for re-election at the 2020 AGM, they will be elected for a three-year period and will not be eligible to nominate for the Board at the 2023 AGM. Any Director elected for the first time at the 2019 AGM will serve for three years and will be eligible to nominate for election for the Board for a further two years at the 2022 AGM.

7.7 Vacation of Office of Director

Corporations Act Commentary

Section 203D provides that the general meeting may remove a director by ordinary resolution subject to certain conditions.

Section 203E declares void a resolution of directors of a public company to remove a director from office or to require a director to vacate his or her office.

Replaceable Rule: A director may resign by giving a written notice of resignation to the company at its registered office: s 203A.

In addition to section 203A, a director ceases to be a director when he or she:

- (i) ceases to be a Member or a Nominated Representative of a Member;
- (ii) for more than three months is absent without permission of the other Directors from meetings of the Directors held during that period.

8. DIRECTORS' MEETINGS

Corporations Act Commentary

Section 248D says that a meeting may be called and held using any technology consented to by all directors. The consent may be a standing one. A director can withdraw consent within a reasonable period before the meeting.

Replaceable Rule: Section 248F specifies that, unless the directors determine otherwise, the quorum for a director's meeting as 2 directors who must be present at all times during the meeting.

Replaceable Rule: Section 248A allows for circulating resolutions, that is, a Board resolution without a director's meeting, provided all the directors sign the resolution document.

Replaceable Rule: Section 248C allows a directors' meeting to be called by a director giving reasonable notice individually to every other director.

Replaceable Rule: Section 248E allows the directors to elect a director to chair their meetings and to specify the period for which the director is to be a chair.

Replaceable Rule: Section 248G provides that a resolution of directors must be passed by a majority of the votes cast by directors entitled to vote on the resolution, allowing the chair a casting vote, if necessary.

Section 192 allows a director to give other directors standing notice about an interest and the nature and extent of the directors' interest must be recorded in the minutes of the meeting at which the director gave the notice or standing notice.

Section 195 provides that a director of a credit union who has a material personal interest in the matter that a Board meeting is considering must not:

- be present while the matter is being considered at the Board meeting; or
- vote on the matter, unless:
 - the other directors approve the director being present: see s 195(2);
 - ASIC approves the director being present: see s 195(3); or

the interest does not have to be disclosed: see s 191.

8.1 Chairing Directors' meetings

For the purposes of section 248E directors can appoint a Deputy-Chair to act when the Chair is unavailable.

9. WINDING UP

9.1 Rights of Members on winding up

If the Council is wound up or dissolved, the Members have no right to participate in any distribution or payment of the assets or property of the Council.

9.2 Distribution of assets

- (a) If the Council is wound up or dissolved, the assets and property available for distribution after satisfaction of all debts and liabilities shall be given or transferred to some other institution or institutions
- (i) having objects similar to the objects of the Council;
 - (ii) whose constitution prohibits the distribution of its income and property to an extent at least as great as that imposed by clause 2(b)(ii) and
 - (iii) which is approved by the Commissioner of Taxation as an institution exempt from sales tax and income tax.
- (b) The Board shall determine the identity of the institution or institutions at the time of dissolution.
- (c) If the Board fails to determine the identity of the institution or institutions the Supreme Court of New South Wales shall make that determination.

10. INDEMNITY

Corporations Act Commentary

Section 199A restricts the Council from giving an indemnity to persons who are, or have been, officers or auditors against certain liabilities they incur while acting in that position. Those liabilities include:

- liability incurred to the Council or a related body corporate;
- liability for pecuniary penalty orders under s 1317G or compensation orders under s 1317H;
- liabilities arising out of conduct involving a lack of good faith;
- liability for costs or expenses that the officer incurs:
 - in defending proceedings where the person is found liable (on the grounds described above);
 - in defending criminal proceedings where the person is found guilty;
 - in defending proceedings brought by ASIC or a liquidator for a court order if the grounds for the court order are established;
 - in connection with proceedings for relief under the *Corporations Act* where the court denies relief.

10.1 Indemnity

- (a) In this Rule indemnified person means an officer or agent, or former officer or agent, of the Council.
- (b) To the extent that the *Corporations Act* permits:
- (i) the Council must indemnify an indemnified person against any liability that the indemnified person incurs in conducting the Council's business or exercising the Council's powers as an officer or agent of the Council; and
 - (ii) the Council may indemnify, agree to indemnify or enter into (and pay premium on) a contract of insurance in relation to an indemnified person or any other person.
- (c) The indemnity in paragraph (b)(i) applies in relation to an indemnified person for all incidents occurring during the period that person is an officer or agent of the Council, even though a claim is made against the indemnified person after they have ceased to be an officer or agent of the Council.

Schedule

Latin America Countries (clause 1.1)

Argentina	Bolivia	Brazil
Chile	Colombia	Ecuador
French Guiana (France)	Falkland Islands (UK)	Guyana
Paraguay	Peru	Suriname
Uruguay	Venezuela	Mexico
Guatemala	El Salvador	Costa Rica
Panama	Nicaragua	Belize
Antigua and Barbuda	Aruba (Netherlands)	Bahamas
Barbados	Bermuda Islands (UK)	Cayman Islands
Cuba	Dominica	Dominican Republic
Grenada	Haiti	Jamaica
Netherlands Antilles (Netherlands)	Puerto Rico (US)	Trinidad and Tobago
St Kitts and Nevis	St Lucia	St Vincent and the Grenadines
Virgin Islands (US)	Honduras	