

PANAMA



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# **DOING BUSINESS IN LATIN AMERICA AND THE CARIBBEAN**





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IN LATIN AMERICA AND THE CARIBBEAN



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## DOING BUSINESS IN LATIN AMERICA AND THE CARIBBEAN

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The following currency notations are used in this book.

ARS	Argentinean Peso	DOP	Dominican Republic Peso
BSD	Bahamian Dollar	GTQ	Guatemalan Quetzal
BRR	Brazilian Cruzeiro Real	HNL	Honduran Lempira
KYD	Cayman Dollar	MXN	Mexican New Peso
COP	Colombian Peso	NIO	Nicaraguan Córdoba
CRC	Costa Rican Colón	PYG	Paraguayan Guarani
USD	United States Dollar	UYU	Uruguayan Peso

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Panama is the southernmost country of Central America. It has a total landmass of 75,517 square kilometers and an estimated population of 3,510,045 as of a July 2011. Its government is a constitutional democracy and the official language is Spanish. Panama's service-based economy is centered on banking, commerce and tourism. Panama is considered an international business center, with one of the largest economies in Central America, as well as the fastest growing economy and the highest "per capita" consumption index in such region.

## FOREIGN INVESTMENT

Panama's legal and institutional framework offers many facilities and incentives for the development of international trade and service activities in Panama, with very few requirements about the nationality of investors and with no restrictions on converting currencies or transferring funds. One of the few exceptions is retail trade, which is reserved by the National Constitution exclusively for Panamanian nationals.

As a consequence, foreign investments are allowed by law in the majority of commercial activities. Some relevant aspects of "freedom of investment" in Panama are the following:

- Allows free currency movement with no foreign exchange regulations
- Uses the U.S. dollar as legal tender and its sole paper currency
- Has an international banking centre, comprising 94 banks with an estimated consolidated assets of USD100.3 billion (as of June 2012)
- Has readily available financial services, such as securities, insurance and reinsurance, trust operations, financial leasing activities and money remittances services, among others
- Has worldwide communications, becoming the point of convergence for five submarine fiber-optic cables
- Has few restrictions on foreigners for purchasing real estate
- Has a qualified workforce
- Has readily accessible credit
- Has one of the largest and most efficient maritime hubs
- Has the Panama Canal that serves more than 144 maritime routes worldwide

- Has an international airport serving over 60 destinations, through approximately 31 airlines
- Has political stability and modern legislation that protects the interests of nationals and foreigners equally

## **MODERNIZATION OF THE PUBLIC SECTOR**

As part of the strategy to create a modern public sector, the government of Panama created the National Secretariat of Science, Technology and Innovation to attend to all the needs for the promotion and good use of information technologies and communications in the governmental sector as well as to promote governmental innovation projects.

## **ELECTRONIC COMMERCE**

Law 51 of 2008 defines and regulates electronic documents and electronic signatures as well as the provision of storage of technological documentation and certification of electronic signatures. Law 51 also takes other provisions for the development of electronic commerce in the Republic of Panama.

## **MARITIME REGISTRY**

Since its creation, the Panamanian Maritime Registry has had a remarkable growth. This registry adopts the “open registry system,” where restrictions concerning nationality and residence were eliminated. As a consequence, Panama Maritime Registry accepts the registration of vessels belonging to nationals and foreigners alike, provided that all legal requirements are duly fulfilled, mainly those related to the administration of the ship, safety and pollution control, technical as well as fiscal matters.

## **NATIONAL SAVINGS FUND**

The Panamanian government, through Law 38 of 2012, recently created the national savings fund as a forward-looking initiative aimed at safeguarding the country against future negative shocks (e.g., natural disasters, tail risk events, economic recessions, etc.). Law 38 provides the government with a sophisticated and transparent investment vehicle to manage the country’s financial surplus.

## **PANAMA’S INVESTMENT GRADES BOND RATINGS**

In 2010, international rating agencies Moody’s, Standard & Poor’s and Fitch Ratings gave Panama investment grade. Recently, Standard & Poor’s upgraded the investment grade rating of Panama (BBB), while Fitch Ratings reaffirmed it (BBB).

## SPECIAL REGIMES

Panama has established special regimes that promote and spur foreign investment in the country, such as the following:

### Stabilization Regime

On 22 July 1998, Law 54 was enacted. This statute promotes and protects all kinds of investments in Panama; moreover, Law 54 establishes that foreign investors have the same rights and obligations as national investors.

The main benefit rendered by Law 54 is that it allows investors registered with the Ministry of Commerce and Industry to continue being regulated for a period of 10 years by the same legal, fiscal (national and municipal), custom and labor regulations they were subject to at the time of registration.

### Free Zones

Free Zones created under Law 32 of 2011, are zones of free enterprise, specifically delimited for the establishment of enterprises from all over the world whose activities are the production of goods and services, high technology, scientific research, logistics services, higher education, environmental services, health services and general services. These zones can be established anywhere in the country.

Companies involved in manufacturing activities, assembly, processing of finished or semi-finished products, logistical services, higher education, scientific research, high technology, environmental services, health services and general services may be located within a Free Zone.

Regarding fiscal incentives, we may indicate, among others, the following:

- Raw materials, semi-finished products, purchase and import of equipment and construction materials, machinery, spare parts, tools, accessories, consumables, packing materials and any property or service required for their operations, will be exempt from taxes and costumes duties.
- Income tax exemption in the lease and sublease for free zone promoters.
- Service Companies, Business Logistics, Business of High Technology, Scientific Research Centre, Higher Education Centres, General Services Enterprise, Specialized Centres for the Provision of Health and Environmental Service Companies, are one hundred percent (100%) exempt from income tax for its foreign operations.

These fiscal incentives will be modified starting on 1 January 2016.

In addition, it is important to point out that special labor provisions enacted for Free Zones make them more flexible than companies operating in the rest of the territory.

### **Call Centers**

Pursuant to Law 54 of 2001, any person exploiting call center activities duly authorized by the Authority of Public Services, may benefit from the tax incentives granted to companies operating within a Free Zone, in accordance with Law 32 of 2011.

### **Oil Free Zones**

Pursuant to Law 8 of 1987 a special regime was established for the Oil Free Zones, which were considered as petroleum tax-free zones, where companies are granted tax benefits.

### **Tourism**

Law 8 of 1994 regulates tourism activities in Panama, providing for incentives and benefits granted to projects including hotels, restaurants, nightclubs, convention centers, condominiums, airports, ecological tourism, among others.

Those investing in special tourism zones will have the following incentives:

- 20-year exemption on real estate tax;
- 15-year exemption on income tax;
- 20-year exemption for import duties, contributions and value added tax;
- 20-year exemption on taxes and duties levied on the use of ports and airports built by the company;
- 20-year exemption tax for interest derived from credits.

There are also legal incentives for the construction, equipment and rehabilitation of public touristic accommodations.

### **The City of Knowledge**

Law Decree 6 of 1998 approved the contract for the City of Knowledge, which promotes educational and scientific research within a specific area.

The area comprising the City of Knowledge has the following tax exemptions:

- Import taxes
- Tax on the transfer of tangible personal goods and rendering of services (ITBMS)
- Real estate tax
- Taxes on equipment related to innovative enterprises with high technology standard

## The Colon Free Zone

Law 18 of 1948 created the Colon Free Zone as a segregated free trade area for wholesale operations at the Atlantic entrance to the Panama Canal.

Nowadays, the Colon Free Zone has become one the leading Free Zones in the Western Hemisphere and one of the largest global logistics centers.

The furthestmost benefits of the Colon Free Zone for investors are, among others, the following:

- Goods may be imported, stored, modified, repackaged and re-exported without being subject to any customs regulations
- An exceptional tax-free system on imports, re-exportations, manufacture and other activities
- Low costs for land and storage space
- A “Lease Back System” or recognition of investment in infrastructure
- Protection and guardianship of intellectual property rights

Companies located in the Colon Free Zone shall be required to pay the following taxes:

- 1% per annum on the capital of the company, with a minimum of USD 100 and a maximum of USD 50,000
- Dividend tax in the amount of 5%

## Panama-Pacific Special Economic Area

Law 41 of 2004 created the Panama-Pacific Special Economic Area located on the Pacific coast of Panama as a tax-free zone with a special legal, tax, customs, labor and immigration regime.

Panama-Pacific Special Economic Area is a tax-free zone where companies are exempt from income tax, income tax on dividends, withholding tax, import tax and tax on transfer of tangible personal goods and rendering of services (ITBMS) that may arise from the following:

- Services provided to individuals or juridical entities outside Panama
- Transfer of stock from companies in the Panama-Pacific Special Economic Area
- Transfer, by any means, of goods and merchandise and services that may be provided to other parties within the Panama-Pacific Special Economic Area or to companies in other special economic zones



- Transfer of goods and merchandise, and also services provided to ships crossing the Panama Canal with foreign ports as their destinations, or to ships sailing between any Panamanian port and a foreign port, unless the transfer is made by the manufacturer or a member of the manufacturer's economic group
- Transfer of all kinds of chattel and/or provision of services to aircraft that use airports in Panama, with destination to foreign airports, unless the transfer is made by the manufacturer or a member of the manufacturer's economic group
- Transport, handling and storage of air cargo in general, and also the repair of aircraft or aircraft components to be imported, exported or transferred by any means to other companies in the Panama-Pacific Special Economic Area or in other special economic zones
- Manufacture of high-tech products, components or spare parts
- Multimodal and logistic services
- Call Center services
- Reception, processing, storage and broadcasting of digital data and information; uplink of radio, television, audio, video and/or data signals, and also research and development of digital resources and applications to use in Intranet networks or Internet

The Panama-Pacific Special Economic Area has a special customs regime that allows companies located in this area to introduce all kinds of merchandise and goods without limitations and are exempt from paying taxes, import duties and other fiscal contributions, except for those established in the Law.

The Panama-Pacific Special Economic Area has special labor regulations, and although it is based on the Panamanian Labor Code, it is more flexible; also the Panama-Pacific Special Economic Area has special immigration regulations.

### **Multinational Enterprises Headquarters**

The special regime for the establishment and operation of Multinational Enterprises Headquarters was created by Law 41 of 2007; its primary objective is to promote investments, employment and technology transfer, by attracting multinational enterprises for purposes of providing intra-group services.

In accordance with the law, Multinational Enterprises Headquarters have to provide the following services (or a combination thereof) to companies of the

same economic group of the holder of the corresponding Multinational Enterprises Headquarters authorization:

- Direction and/or management for geographical operations
- Logistic and/or storage of components or parts of manufacturing products
- Technical assistance
- Financial management, including treasury
- Accounting
- Preparation of blueprints
- Processing electronic data of any activity including consolidations of operations and network operations
- Advisory and coordination of goods and services rendered, as well as marketing and advertising
- Support of operations and research for goods and services development

A Multinational Enterprises Headquarters will have the following tax exemptions:

- Tax on the transfer of tangible goods and services provided to persons located abroad who do not generate taxable income in Panama.
- Income tax associated with services provided in Panama to entities abroad that do not generate taxable income within Panama.

It is important to mention that Law 41 provides for special immigration regulations.

### **Promotion of Industrial Activities.**

Law 76 of 2009 promotes the establishment and development of industrial activities in the Republic of Panama, through the emission of an Industrial Promotion Certificate by the government.

The main benefit granted by said law is the issue of Industrial Promotion Certificates recognizing a percentage, ranging between 25% and 35%, of the disbursements made by companies with respect to the following activities: a) research and development; b) activities directed to the implementation of environmental management and quality; c) new investments or reinvestment of profits; d) training of human resources; and, e) increase in employment associated with production.

Industrial Promotion Certificates can be used for the payment of taxes and contributions.

Law 76 of 2009 applies to industrial companies that render the following activities:

- Manufacture activities
- Agro-industrial activities
- Marine resources transformation

## **BUSINESS ENTITIES**

In Panama there are several business entities that an investor may use for rendering commercial activities in the country; among them, we can mention the following:

### **CORPORATIONS**

Law 32 of 26 February 1927 regulates the incorporation and operation of companies in Panama, and since then, such a statute has endorsed an agile, stable and versatile vehicle for the administration of business by foreigners and nationals.

According to Law 32, two or more persons of legal age, who need not be citizens or residents of Panama, may form a corporation for any lawful purposes by signing an Incorporation Chart or Articles of Incorporation. The standard procedure is for two attorneys or employees of a law firm to incorporate and then assign their subscription rights to the clients.

The Articles of Incorporation may be executed in any place and in any language.

The Articles of Incorporation must be in the form of a public deed, or in any other form, provided that said articles are acknowledged before a notary public or before any other official authorized to take acknowledgements at the place of their execution. If the Articles of Incorporation are not in the form of a public deed, they must be “protocolized” in a Notary’s Office in Panama.

If said document should have been executed outside of Panama, it must, before it is protocolized, be authenticated by a Panamanian Consul (if there should be none, by the Consul of a country friendly to Panama) or pursuant to the 1961 Hague Convention on the Apostille. Articles of Incorporation drafted in a language other than Spanish must be protocolized with an authorized translation executed by an official or public interpreter licensed in Panama.

The public deed or the protocolized document containing the Articles of Incorporation must be presented for registration in the Public Registry of Panama, and it shall, at least, include the following information:

- The name and domicile of the incorporators.
- The name of the corporation, which must include the words “*sociedad anónima*,” corporation, incorporation, or incorporated or their abbreviation, and cannot be similar to other previously organized corporations.
- The main purposes of the corporation, which may engage in any lawful business.
- The amount of authorized capital stock and the number and par value of the shares into which it is to be divided or, if the corporation is to issue shares without par value, the total number of shares that may be issued by the corporation along with a statement that such shares are to have no par value. The corporation may have common or preferred stock.
- Shares may be of different classes, values and rights. They may be issued to bearer or to a registered owner, or both at the same time.
- The number of shares of stock that each subscriber to the articles of incorporation agrees to take.
- The domicile of the corporation, and the name and domicile of its resident agent, who must be a lawyer or a law firm in Panama.
- The term during which the corporation is to exist, although it is normally (and legally) indicated that it shall have perpetual existence.
- The names and addresses of the directors, of whom there may not be fewer than three, and the names of the president, treasurer and secretary. One person may hold more than one office at the same time. Directors and/or officers may be of any nationality.
- Any other special provision desired.

The following are among the basic features of a Panamanian corporation:

- There are no legal requirements regarding a minimum of capital. According to the law, there is no need to state that the capital subscribed has been paid in.
- The corporation is not deemed to have legal existence with respect to third parties until the date it is registered in the Public Registry.

- The corporation may execute in favor of one or more individuals a broad power of attorney to operate the company.
- Panamanian law allows 100% foreign ownership of a Panamanian corporation.
- There is no obligation to hold shareholders' or directors' meetings annually or at any other interval.
- There is no need to have a corporate seal, but one may be adopted if so desired.
- A Panamanian corporation may merge with another Panama corporation or with a foreign corporation. In the latter case, either the foreign corporation or the Panamanian corporation may be the surviving corporation.
- A Panamanian corporation may be dissolved by resolution of the holders of a majority of the outstanding shares entitled to vote at a duly called meeting, or by written consent of all outstanding shares of the corporation entitled to vote without the necessity of a meeting.
- There are no minimums or maximums with respect to the authorized capital, which can be integrated by contributions of the members in cash, goods or services.
- The economic liability of each member for obligations acquired by the company shall be limited to the amount of their respective participation made or promised.

On the topic of the corporate bodies, we can mention the following:

- **Stockholders:** With the exceptions of corporations engaged in the retail business in Panama, stockholders need not be nationals or residents of Panama. Also, stockholders do not need to be registered in a public office in Panama. Meetings of stockholders may be held outside of Panama, if so provided in the charter. Stockholders may be represented by proxy.
- **Board of Directors:** There must be at least three directors, but unless otherwise provided in the Articles of Incorporation, directors need not be stockholders, or nationals or residents of Panama (with the exceptions of corporations engaged in the retail business in Panama). Meetings of directors may be held outside of Panama and directors may be represented at meetings of the board of directors by proxy; a proxyholder need not be a director. The board of directors is elected by the stockholders, but vacancies, whether resulting from an increase in the authorized number of directors or otherwise, may be filled by the vote of a majority of the directors then in office.

- **Officers:** There must be at least a president, a secretary and a treasurer, who shall be chosen by the board of directors. Any person may hold two or more offices, if so provided by the Articles of Incorporation or by the bylaws.

## LIMITED LIABILITIES COMPANIES

In accordance with Law 4 of 2009, the main particulars of a Limited Liabilities Companies are the following:

- Any limited liability company shall have a name agreed by its incorporators, which must be followed by the words “*Sociedad de Responsabilidad Limitada*” or its abbreviation “S. de R.L.”
- These are corporations of commercial nature and, as such, subject to the laws and commercial uses, may engage in any type of lawful civil or commercial transactions not legally reserved to any other type of corporation.
- They can be constituted by two or more natural persons or corporate bodies. The minimum number of members is also two and they can be natural persons or corporate bodies, regardless of their nationality.
- There are no minimums or maximums with respect to the authorized capital, which can be integrated by contributions of the members in cash, goods or services. The number of quotas or participations in which the capital is divided must be expressed, as well as the value for each one of them. The authorized capital can be increased or decreased through amendments to the charter of incorporation. Nevertheless, no decreases can be made if the resulting assets are inferior to the passives of the corporation.
- The economic liability of each member for obligations acquired by the company shall be limited to the amount of their respective participation made or promised.
- The corporation must be organized by Public Deed and registered in the Public Registry.
- The corporation might adopt statutes which make registration in the Public Registry optional.
- Every member has the right to receive a certificate of participation subscribed by any of the administrators.
- Members in a limited liability company, as long as they have totally paid their participation in the capital of the company, will have, among others, the following rights:
  - ▶ To vote in the deliberations of the company in proportion to the value of their participation in the capital.

- ▶ To participate in the earnings and losses in proportion to their participation in the capital.
- ▶ To subscribe a proportional part to their participation in case of an increase of the capital.
- Each member will be able to assign his participation quotas by means of a private document, but such transfer must be registered in the Public Registry.
- Notice of Members' Assembly must be sent to all members at least 10 working days prior to the scheduled date for the Assembly. The notice must be in writing or in electronic format and it must include the date, place and time of the Assembly. Extraordinary Members' Assemblies may be held when the administrators consider it to be convenient or at any time it is requested, in writing, by members representing at least 5% of the paid capital of the company.
- The administrative functions shall correspond to the natural or juridical person or persons who are appointed to such office in the charter of incorporation or by a subsequent agreement. The appointment of the administrator shall take effect with respect to third parties from the moment of registration in the Public Registry.
- The members can agree to the removal of the administrators at any time and name their replacement.
- If there are several administrators, decisions will be adopted by a majority of votes. Powers can also be awarded so that administrators may act independently from one another.

## SOCIEDADES EN COMANDITA

Our Commercial Code provides for a special form of a Limited Liability Company known as *Sociedad en Comandita*. There are two types of *Sociedad en Comandita*:

- ***Sociedad en Comandita Simple***. This company is organized by two or more partners at least one of whom has unlimited liability (called *socio comanditado*), whereas, the other partner or partners are only liable up to the amount of their contributions (called *socio comanditario*). Neither the *socio comanditario* nor the *socio comanditado* can transfer their quotas to the partnership or introduce a new partner without the unanimous consent of the other partners. The administration of the partnership is limited exclusively to the *socio comanditado*. An unlimited partner may not be an unlimited liability partner in another partnership, unless he obtains approval from all his present partners.

- **Sociedad en Comandita por Acciones.** This company is substantially similar to the *Sociedad en Comandita Simple*. The main difference is that the capital is divided into shares, while in the *Sociedad en Comandita Simple* the capital is divided into quotas. Only the unlimited liability partner can participate in the management of the partnership. The person must be appointed as administrator in the partnership agreement.

## PRIVATE FOUNDATIONS

Private interest foundations are regulated in Panama by Law 25 of 1995. One or more natural persons or entities, by themselves or through third parties, may create a private interest foundation. For this purpose, the constitution of a patrimony exclusively for the objectives or endeavors expressly established in the organizational document is required. The initial patrimony may be increased by the creator of the foundation, or by any other person.

Private interest foundations are governed by their Foundation Charter and their Regulations.

The following must be observed for the constitution of a private interest foundation:

- Granting of the foundation charter. Law 25 of 1995 establishes that the foundation charter may be granted in any language with Latin alphabet characters, and either:
  - ▶ By means of a private document signed by the founder, whose signature shall be authenticated by a notary public at the place of execution, or
  - ▶ Directly before a notary public at the place of constitution.
- Contents of the foundation charter. The foundation charter shall contain the following:
  - ▶ The name of the foundation, in any language using the Latin alphabet, which name shall not be the same or similar to that of a pre-existing foundation of Panama. The name shall include the word “foundation.”
  - ▶ The foundation’s initial patrimony, expressed in any currency being legal tender, which in no case shall be less than a sum equivalent to USD 10,000.
  - ▶ A complete and clear designation of the member or members of the Foundation Council, to which the founder may belong, including their addresses.
  - ▶ The foundation’s domicile.
  - ▶ The name and address of the foundation’s resident agent in Panama.



- ▶ The purposes of the foundation.
- ▶ The manner in which the beneficiaries of the foundation, who may include the founder, are designated.
- ▶ The duration of the foundation.
- ▶ The use to be made of the foundation's assets and the manner in which its estate is to be liquidated in the event of dissolution.
- ▶ Any other lawful clauses deemed expedient by the founder.
- "Protocolization." The foundation charter, once granted, must be protocolized before a notary's office in Panama. It is important to note that if the foundation charter has not been drafted in Spanish, it must be protocolized together with its translation into Spanish.
- Registration. Lastly, the Foundation charter must be filed at the Panamanian Public Registry. The registration of the foundation charter at the Public Registry grants to the foundation the status of juridical person, without requiring any other legal or administrative authorization.
- Regulations. The names of the beneficiaries of a private interest foundation are contained in the Regulations, which is a private document established either by the founder or subsequently by the Foundation Council that does not need to be filed in the Public Registry and, therefore, is not a matter of public record. The timing and amount of the distribution to the respective beneficiaries are also set forth in the Regulations.
- Miscellaneous Provisions:
  - ▶ Any amendments to the Foundation Charter shall be made and signed in accordance with the provisions of the charter.
  - ▶ The assets of a foundation constitute an estate separate from the founder's personal assets, and therefore they may not be seized, attached or subjected to any lawsuits or attachments.
  - ▶ Foundations shall be irrevocable unless the Foundation Charter expressly provides otherwise.
  - ▶ Whenever a foundation has been created to take effect upon the founder's death, he shall have the unlimited right to revoke it.
  - ▶ The existence of any legal provisions concerning inheritance matters at the founder's or the beneficiaries' domicile shall not be opposable to the foundation.

- ▶ The creditors of the founder shall only have the right to contest the contribution or transfer of assets to a foundation where such transfer constitutes an act to defraud creditors. This right shall lapse three years from the date of the contribution or transfer of assets to the foundation.
- ▶ The Foundation Council may consist either of one or more corporate members or of at least three individuals.
- ▶ Unless otherwise provided in the Foundation Charter, the Foundation Council shall have the obligation to manage the assets of the Foundation, to inform the beneficiaries about its economic situation and to hand over to the beneficiaries the assets or resources settled in their favor.
- ▶ The Foundation Charter or its Regulations may provide that the members of the Foundation Council may only exercise their powers after obtaining prior authorization from a Protector.
- ▶ The founder may reserve for himself or for other persons the right to remove the members of the Foundation Council as well as to appoint or add new members.
- ▶ Foundations constituted in accordance with a foreign law may continue their existence as a Panama foundation.
- ▶ Foundations constituted in Panama as well as the assets that constitute their patrimony may be transferred to the laws of another country as may be provided in the Foundation Charter or its Regulations.

## REGISTRATION OF FOREIGN CORPORATIONS

A foreign corporation can render commercial activities within Panama after presenting the following documents to the Public Registry for its registration:

- Notarized document of registration of the foreign corporation's articles of incorporation duly translated.
- Copy of the foreign corporation's last balance sheet together with a declaration of the portion of the corporate capital utilized or to be utilized in business in Panama.
- A certificate that the foreign corporation is organized in accordance with the laws of the respective country, authenticated by the Panamanian consul in said country, or in the absence of a Panamanian consul in the foreign corporation's country of origin, by that of a friendly nation.

## **JOINT VENTURES**

This partnership type is utilized for temporary association for commercial purposes without incorporation; joint ventures are widely accepted in Panama although they have no separate juridical registry, up to the point that fiscal authorities may assign a tax number to the joint ventures to pay taxes. Joint ventures are commonly used for purposes of contracting with government agencies.

## **TAXATION**

### **INCOME TAX**

Taxable income is the difference or balance resulting from gross revenues after subtracting foreign income, nontaxable income, as well as deductible costs and expenditures.

The following forms of income are not subject to income tax because they are not considered to be produced in Panama:

- Billing the sales of merchandise or goods from an office established in Panama for an amount higher than they were billed to the office established in Panama, provided the merchandise or goods move exclusively abroad.
- Transactions conducted from an office in Panama, but perfected, consummated or having effect abroad.
- Distributing dividends or partners' participation in companies that do not require an Operation Notice or that do not produce taxable income in Panama, as long as such dividends or partners' participations do not come from income produced locally.

In addition, special formulas and procedures have been established to determine the net taxable income and the tax payable for certain activities, such as the transfer of real estate, and certain industries, such as film producing and distributing companies, international transport companies and communications companies.

### **CORPORATIONS' INCOME TAX RATE**

Corporations pay income tax over the net taxable income obtained during a fiscal year, at the following rates:

- As of 1 January 2011, 25%
- Energy generation and distribution companies, insurance companies, telecommunication companies, financial companies, concrete companies, casinos, mining and banks: From 1 January

2010 up to 31 December 2013, 27.5%; and from 1 January 2014, 25%

- Companies on which the State has a stock participation of more than 40%: 30%

Companies with taxable income of more than USD1.5 million annually will calculate their income tax at the rate that corresponds to the greater of:

- The amount of the net taxable income (calculated under normal principles); or
- The net taxable income that arises after applying 4.67% to the total taxable income.

If by virtue of payment of income tax the company incurs a loss, it could ask the fiscal regulator not to apply the “4.67% rule,” in which case the taxpayer will have to demonstrate to the regulator such alleged loss.

## TAX TREATMENT OF DIVIDENDS

In the event that a company has a notice of operation, operates in or from Panama and generates both Panamanian and foreign income, dividend taxes will be applied at a rate of 10% of the profits of Panamanian source and a rate of 5% of the profits of foreign sources.

In the event that the corporation does not distribute any profits, or that the total amount distributed is less than 40% of the amount of the net income for the corresponding fiscal year, less the income tax caused by the same, the corporation must withhold and pay the tax authorities, as complementary tax, 10% of the difference. In addition, in cases of the 5% withholding and no dividends were distributed, or that the total amount distributed is less than 20% of the amount of the net income for the corresponding fiscal year, the corporation must withhold and pay the tax authorities, as complementary tax, 10% of the difference.

Income tax over dividends paid to shareholders of bearer shares is at a rate of 20%.

Content of Double Taxation Treaties must be taken into account for the distribution of dividends or partners' participation.

## NATURAL PERSONS' INCOME TAX RATE

Personal income is taxable at the following annual rates:

<b>TAXABLE NET INCOME</b>	<b>PERCENTAGE</b>
Up to USD11,000	0%
More than USD11,000 and up to USD50,000	15% over the excess of USD11,000 up to USD50,000
More than USD50,000	USD5,850 for the first USD50,000 and 25% over the excess of USD50,000

Every employer is obliged to withhold income taxes from the salaries and other remunerations paid to its employees, according to charts prepared by the income tax authorities.

Employees who receive salaries from more than one employer at the same time or obtain taxable income from other sources must file a personal income tax return. Amounts withheld must be paid to the National Treasury, through the Social Security monthly payroll, within the first 15 days of every month.

## REAL ESTATE TAX

All land and real estate improvements thereon located in Panama are subject to real estate taxes. The taxable base depends on the total value of the land plus improvements.

Certain properties and improvements thereon are exempt or can obtain exemption from real estate taxes according to special incentive tax laws. Real estate properties with assessed values of less than USD30,000 are exempted from taxes, excluding properties subject to the "horizontal property regime," which have to pay real estate tax at a 1% rate.

Real estate tax rates are progressive, as follows:

<b>TAXABLE VALUE</b>	<b>RATE</b>
USD10,001 to USD20,000	1.40%
USD20,001 to USD50,000	1.75%
USD50,001 to USD75,000	1.95%
Over USD75,000	2.10%

In addition, there is a combined alternative progressive rate of the real estate tax, as follows:

<b>TAXABLE VALUE</b>	<b>RATE</b>
USD30,001 to USD100,000	0.75%
Over USD100,000	1.00%

Real estate taxes can be paid in three installments, by April 30, August 31 and December 31, and a tax clearance certificate must be obtained before any real estate transaction can be completed.

## **MOVABLE PROPERTY TRANSFER AND RENDERING OF SERVICES TAX (ITBMS)**

In general, all transactions involving tangible personal property (consumer goods and products) as well as the rendering of services are subject to a transfer tax at a rate of 7%.

Sellers and those rendering services are liable for the collection and payment of this tax, which must be paid either monthly or quarterly, depending on the gross monthly income of the seller or the service provider.

Exemptions from the ITBMS include food, medical and pharmaceutical products, as well as various other items and transactions. This tax is a major source of income for the government, along with the income tax and import taxes.

## **OPERATION NOTICE TAX**

All individuals or firms engaging in commercial or manufacturing activities are required to have an Operation Notice from the government and pay an annual tax based on the total of owners' equity or corresponding net assets.

The tax is 2% of the total capital and retained earnings and ranges from a minimum tax of USD100 up to a maximum tax of USD60,000.

It is not mandatory for entities located within a special-trade regime to obtain an Operation Notice; however, such entities will have to pay 1% annually over the company's capital and retained earnings, with a minimum tax of USD100 and a maximum tax of USD50,000.

## **STAMP TAX**

There is a stamp tax of USD8 per page in Panama that must be paid for certain administrative petitions, certificates and notarial documents.

The contracts relating to business transactions subjected to the jurisdiction of the Republic of Panama must be stamped at a rate of USD0.10 per USD100 of the declared value stated in the document.

## **EDUCATIONAL TAX**

Both employees and employers must pay a tax assigned for educational purposes. Employers must deduct 1.25% from their employees' salaries, and pay for their own account an additional 1.50%. Self-employed individuals must pay the total 2.75% of their annual income subject to income tax.

This tax is deductible from income taxes for both employees and employers.

## **MUNICIPAL TAXES**

Municipalities may assess taxes on streets, sidewalks, automobile licenses, buildings and on its improvements, municipal land as well as most commercial and industrial activities. In Panama City, monthly municipal taxes range between USD0.50 up to USD1,000.

## **INTERNATIONAL TAXATION**

### **Double Taxation Agreements**

Furthermore, Panama has initiated a stout process for negotiating and approving Double Taxation Agreements with several countries, in order to avoid double or multiple taxations by foreign investors, when both Panama and any other country consider that it has the right to impose taxes.

Since June 2010, Panama has signed Double Taxation Agreements with Mexico, Italy, Barbados, Qatar, Portugal, Netherlands, Luxembourg, Spain, South Korea, Singapore, France, Ireland and Czech Republic. It has concluded negotiations for Double Taxation Agreements with Belgium, Israel, Bahrain and United Arab Emirates.

Lastly, the following countries have demonstrated their interest in negotiating Double Taxation Agreements with Panama: Germany, Canada, Russia, Hungary, Georgia, Great Britain, Switzerland, India, Bulgaria and Malta.

The most important advantages for investors from a Double Taxation Agreement are the following:

- Creates a favorable investment environment
- Bilaterally consolidates a predictable and secure legal structure
- Establishes methods for reducing or eliminating double taxation
- Includes an alternative method for resolving controversies
- Strengthens the control activity of the fiscal regulator

## Tax Residence

Due to the enactment of several tax rules with an international application, Panama, through Law 52 of 2012, approved the standards that define the concept of tax residence.

Tax residents of the Republic of Panama are those individuals who remain in the country for over 183 days in a fiscal year or in the previous one, or that have established their permanent residence in the territory of the Republic of Panama.

Also, companies will be considered tax residents of the Republic of Panama which were incorporated under the laws of Panama or that are registered as foreign entities in Panama, and that have an address and management means within the Panamanian territory.

# INTELLECTUAL PROPERTY

## TRADEMARKS

Law 35 of 1996 protects not only inventions and trademarks, but also utility models, industrial models and drawings, industrial and commercial secrets, products and services trademarks, collective and security trademarks, geographic indications, indications of origin, names of origin, commercial names as well as advertising expressions and signs.

## COPYRIGHT

Law 64 of 2012 protects the rights of authors and “rights holders” in their literary, artistic or scientific works, whatever their genre, form of expression, merit or purpose, including “related rights” (*derechos conexos*); it also provides that copyright is independent and compatible with industrial property rights over the work.

This protection is recognized independently of the physical medium containing the work and is not subject to compliance with any formality.



## LABOR LAW

Panama labor law is thoroughly regulated by the Labor Code of Panama, containing the specific regulations and laws applicable to employment relationships.

Except for certain economic activities, such as farming, domestic service casual work of low value and work of low value in unpopulated areas, Panamanian labor law, as a general rule, requires an employment agreement to be in writing.

The Labor Code establishes a list of necessary elements that employment agreements shall contain, as follows:

- Personal Data
- Dependents of Employee
- Work and Work Methods
- Workplace
- Term
- Division of Workday
- Wages and Certain Related Information
- Incidents of Signing
- Signatures

New employees are subject to a three-month probationary term (if so stipulated in the contract), meaning that they could be dismissed without cause within such term with no responsibility for the employer.

Labor Agreements by law can be definite, indefinite or for a specific task. The maximum term for contracts that are for a definitive period is one year (and up to three years for services that require special technical skills), and may turn into an indefinite employment relationship if the employee continues to render services beyond the term (even if under multiple/succeeding contracts for a definitive period).

Employees' rights under the labor code (specifically with regard to benefits) cannot be waived or diminished, and such contractual provisions are rendered null and void.

## EMPLOYEES RIGHTS UNDER PANAMA LABOR LAW

In general, we can mention the following:

- Workers are protected by the Labor Law, since the "*in dubio pro operario*" premise applies, which means that in case of doubt, the employee shall be benefited.

- Presumption in favor of the employees, due to which the employers have to prove otherwise (the burden of proof is shifted).
- Employees have a right to earn a minimum wage, as fixed by decree of the Executive Branch.
- Women employees are protected; they cannot be dismissed while pregnant nor for a year after giving childbirth, unless there is a justified cause approved by a labor court.
- Employees have the right to form unions.
- Employees have the right to strike.

## TERMINATION OF EMPLOYMENT

Under article 210 of the Labor Code, there are six ways an employment relationship may be terminated:

- By mutual consent (if it is in writing and does not involve the waiver of rights)
- By expiration of the term of employment
- By death
- Dismissal for just cause (as defined in the Labor Code)
- By resignation
- Unilaterally by the employer as allowed by the Labor Code

The Panamanian Labor Code provides certain protection to both Panamanian and non-Panamanian employees, whereby an employer may not terminate an indefinite term labor relationship with an employee without having a fair justified cause as provided by the law and pursuant to its formalities.

However, the following cases are exempt from this labor protection:

- Employees having less than two years of continuous services
- Domestic employees
- Permanent or regular employees, from small agricultural, farming, agro-industrial or manufacturing companies, namely, farms and ranches with 10 or fewer employees; and agro-industrial companies with 20 or fewer employees and manufacturing companies with 15 or fewer employees
- Employees aboard vessels engaged in international services
- Apprentices
- Employees of retail sale establishments and companies having fewer than five employees, except for financial, insurance and real estate establishments

In the aforementioned cases in the event of dismissal, the employer shall notify the employee of the dismissal 30 days in advance (Forewarning Benefit) or might pay the employee the amount that corresponds to such period of prior notice; additionally, the employer shall pay the employee the corresponding indemnification.

Additionally, the Labor Code provides certain protection to employees who have been employed for a period of more than two years. Such protection is provided to Panamanian and non-Panamanian employees alike. These protection formalities include the following:

- The employer must notify the employee in advance and in writing, the date and the specific cause or causes for the dismissal or termination of the labor relation based upon what is established by the Labor Code. Subsequently, the employer may not be able to allege as valid causes any that are different from those contained in the notice.
- The dismissal is a unilateral act of the employer, since it manifests the will deriving from only one of the parties in the labor relation. Therefore, the employee may not presume that he has been dismissed, since the express manifestation of the employer is required to produce such dismissal.
- Panamanian legislation requires as a formality prior to the dismissal that the employer communicate to the employee its decision to dismiss him/her by a letter in writing, in which the causes in which the dismissal is based are explained in detail. The dismissal letter is intended to notify the employee of the causes for the dismissal, in order not to leave him defenseless.
- The Labor Code provides the restricted justified causes for dismissal that may be invoked by the employer in accordance with the situation and the reasons that gave grounds to the dismissal. These causes may be of a disciplinary, non-imputable and economic nature.

In the event of a dismissal based on a justified or unjustified cause the employer shall pay the employee the following in concept of acquired rights:

- Salary up to the last day worked
- Proportional vacations
- Proportional thirteenth month
- Seniority premium in case of indefinite term contracts
- Indemnity in conformity with the Labor Code
- Benefit for those workers with less than two years, in the event that such benefit has not been complied with

In the event of resignation or justified cause, the employer shall pay the respective sums corresponding to the previously listed concepts, with the exception of the indemnity and the Forewarning Benefit which does apply in certain cases.

The Labor Code requires that all enterprises located within Panama have at least 90% of its “ordinary” employees (employees with no technical expertise or knowledge) to be Panamanian citizens or aliens married to Panamanian nationals.

The Labor Code further provides that all enterprises are permitted to appoint non-Panamanians up to 15% of its staff, provided that such employees possess the technical knowledge or qualities or will dedicate to managerial activities.

## **WORK PERMITS**

Our legislation requires that foreign individuals employed be granted a work permit by the Ministry of Labor and Employment Development if they are to be employed in Panama.

The Ministry of Labor will authorize the following labor permits for foreign employees:

- Foreign employees with a Panamanian spouse
- Foreign employees with 10 or more years of legal residence in Panama
- Foreign employees within the permitted 10% of regular personnel
- Foreign employees as expert or technician within the permitted 15% of specialized personnel
- Temporary foreign employees as expert or technician within the 15% of specialized personnel
- Foreign employees who act as executive of companies in the Colon Free Zone
- Foreign employees in companies that have fewer than 10 employees, pursuant to the Marrakesh Agreement (Law 23 of 15 July 1997)
- Foreign employees of a trust employed with foreign operations
- Foreign citizens who are refugees
- Permission to foreign employees in the capacity of employee in a position of trust in companies with off-shore activities

## VISAS AND RESIDENCE PERMITS / IMMIGRATION

In addition to work permits, the applicant must obtain a visa, for which the employee will need a previously issued work permit.

### Immigration Categories

**Nonresident:** For purposes of Panamanian immigration laws, a nonresident is a citizen of any other country, who enters the Republic of Panama without the intention of establishing a permanent residence or of renouncing his own citizenship. Nonresidents seeking a visa must show proof of economic resources and must leave the country within the period established by law.

The most common visas requested by nonresidents are the following:

- **Tourist Visa.** This visa has a 90-day maximum term, which may be extended.
- **Housekeeper Visa.**
- **Short Term Visa.** This visa will be granted for a nine-month term only and will not be extended.
- **Passers Visa or Short Term Employees.** Any company may hire foreigners that temporarily enter the country for rendering technical, cultural, artistic, musical, sports, professional, educational or scientific services, for a particular project and for a renewable term of three months.

**Permanent Resident:** For purposes of Panamanian immigration laws, a permanent resident is a foreigner who enters the country with the intention of establishing his residence in Panama, based on economic and investment purposes in accordance with the specific policies adopted by the Panamanian government. In general, after the term of two years, the applicant may opt for permanent residence.

The most common visas requested by permanent residents are the following:

- **Married to a National Visa**
- **Retired Visa**
- **Self Solvency Visa**
- **Married to a Panamanian Visa**
- **Investment Visa**
- **Friendly Countries Visa.** The nationals from the following countries may request this special immigration category: Germany, Argentina, Australia, Austria, Brazil, Belgium, Ireland, Japan, Spain, United States, Chile, Canada, Czech Republic, Slovakia, France, Finland, the Netherlands, Ireland, United Kingdom of Great Britain and Northern Ireland, Norway, Switzerland, Singapore, Uruguay, South Korea and Sweden.

**Temporary Resident:** For purposes of Panamanian immigration laws, a temporary resident is a foreigner who enters the country with the intention of establishing a temporary residence in Panama. This visa is valid for a maximum of six years.

The most common visas requested by temporary residents are the following:

- **10% Visa.** This type of visa is granted to those foreign employees hired by a Panamanian company.
- **15% Visa.** This type of visa is granted to those foreign employees hired by a Panamanian company as experts or technicians.
- **Marrakesh Visa.** This type of visa is granted to companies with fewer than 10 and not fewer than three Panamanian employees.

**Special Policies Resident (Temporary):** These visas are the following:

- **International Executive Visa.** This type of visa is granted to those foreign employees that enter the country on a temporary basis as executives of international companies.
- **Retired Bondholder/Retired Investor.**
- **City of Knowledge.** This type of visa is granted to foreign employees that enter Panama as investigators, professors, students, among others, with the purpose of aiding the project of the foundation known as City of Knowledge.
- **Headquarters of Multinational Corporations.** These types of visas are granted to employees of companies established in Panama as headquarters of regional or multinational companies.

## THE SOCIAL SECURITY SYSTEM

The Social Security system in Panama replaces many of the employees' benefits usually provided by insurance companies in other countries. It not only provides retirement benefits, but also health, dental, maternity, disability and death benefits.

All employees working for the government, individuals or enterprises operating in Panama are subject to the mandatory system of social security. There is also a voluntary system for independent workers.

Every company organized to carry out activities in Panama must request an employer's inscription number from the Social Security Administration and is required to remit, as employer, 12% of wages paid to workers. This percentage is expected to increase in 2013 to 12.25%.

Similarly, the employer shall deduct from the source, and submit to Social Security on behalf of workers, 9% of wages paid to these until 31 December 2012; then this percentage will be 9.75%.

The definition of salaries includes amounts paid to employees for services rendered in Panama and for all amounts paid for such items as representation allowances, housing allowances, tuition allowances for the children of the employee, use of certain vehicles, among others.

## **INTERNATIONAL TRADE**

### **Treaties and International Trade Agreements**

Panama has proactively prompted its insertion in the international market, procuring the maximum development of its competitive advantages. In this context, Panama completed its insertion to the World Trade Organization (WTO) in 1997.

Since then, Panama has modernized its bilateral trade relationships with other countries, through negotiations and the implementation of treaties and international trade agreements, which embrace the establishment of a clear and comprehensible legal framework for the rendering of services and investments among Panama and many others of its strategic worldwide partners.

### **FINAL COMMENT**

Panama welcomes foreign and local investments through a variety of government and tax incentives discussed herein succinctly; hence, this information is of general nature and comprehensive counsel should be obtained before investing in Panama. ALEMAN CORDERO GALINDO & LEE would be delighted to assist you in this regard.

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