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Panama



XI. Panama

A. Foreign investment

i. Authorisations versus limitations or prohibitions

A. GENERAL ABSENCE OF RESTRICTIONS

Panama offers one of the most open and welcoming economies to foreign investment in Latin America. There is no need to obtain prior approvals or to fulfil special registration requirements for foreign investments in Panama. Capital can be moved freely in and out of the country as the US dollar has been legal tender and the common means of exchange in Panama since 1904. There is no central bank nor currency or exchange controls in Panama. As a result, Panama is now Latin America's largest recipient of FDI as a percentage of its GDP.

B. NATIONAL, FAIR AND EQUITABLE TREATMENT

Panama affords equal, fair and equitable treatment to national and foreign investors under its laws. In addition to these principles contemplated by the Constitution and local laws, the country has signed several bilateral investment agreements and FTAs, which include provisions granting national treatment, most favourable nation treatment, and fair and equitable treatment to foreign investors.

According to Panama's Constitution, nationals and foreigners are treated equally under the law. Both Panamanian and foreign investors must fulfil the same basic requirements to organise and operate business activities in Panama. Furthermore, the Investment Stability Law grants overall protection to all foreign and national investors by stabilising the tax, labour and customs regime under which the relevant investor conducted its investment for up to ten years.

In addition, since 2009, Panama has negotiated treaties to avoid double taxation with Mexico, Italy, Belgium, Barbados, the Netherlands, Qatar, Spain, France, Luxembourg, Portugal, South Korea, Singapore, Ireland, the Czech Republic, Austria, Bahrain, the United Arab Emirates, Israel, the UK and Vietnam. As of 2018, tax treaties with Mexico, Barbados, Qatar, Spain, Luxembourg, Israel, Italy, the Netherlands, Singapore, France, South Korea, Portugal, Ireland, the Czech Republic, Vietnam, the United Arab Emirates and the UK are currently in force. Panama also has tax information exchange agreements in force with the US, Iceland, Canada, Finland, Norway, Sweden, Greenland and the Faroe Islands.

On the multilateral front, Panama is also a party to the World Bank Convention on the International Settlement of Investment Disputes and the World Bank convention that created the Multilateral Investment Guarantee Agency (MIGA). Since 2017, Panama has also ratified the OECD's Convention on Mutual Administrative Assistance in Tax Matters, which allows collaboration on fiscal matters between participating jurisdictions via posterior bilateral agreements.

C. THE INVESTMENT STABILITY LAW

Foreign investors, as well as nationals, can benefit from stability with respect to labour, tax and customs duties under the 1998 Investment Stability Law. Under this law, investors can register investments in excess of US\$2m in certain qualified businesses with the National Investment Registry of the Ministry of Commerce and Industry, and obtain a guarantee from the government that these investments will not be affected by adverse changes in labour, tax and customs laws for a period of up to ten years.

D. FREE CHOICE OF LAW AND JURISDICTION

Except in the case of government contracts and certain cases where common principles of conflicts of laws require the application of Panamanian law (eg, contracts related to land in Panama), parties to any commercial agreement can freely choose the governing law of the agreement. Thus, foreign investors, as well as nationals, are free to govern their commercial relations by Panamanian law or any foreign law.

In addition, parties to a private commercial agreement are also generally free to submit any dispute arising under such an agreement to the courts of Panama or the courts of a foreign jurisdiction, as well as to arbitration and other alternative means of dispute resolution.

E. OPERATION PERMITS

Any person that intends to engage in commercial and industrial activity in Panama must obtain an operation permit (*'aviso de operacion'*) from the Ministry of Commerce and Industry (Ministerio de Comercio e Industrias (*'MICI'*)). In general, this is the only permit required for entities involved in unregulated activities.

Certain types of businesses must register with the pertinent regulatory agency before applying for their operation permit. These businesses include banks, insurance companies, financial entities, companies engaged in the sale of arms, security and transport companies, brokerage houses, construction companies and oil companies, among others.

It should also be noted that retail activities are restricted to Panamanian nationals under the Constitution. Thus, an operation permit cannot be granted to foreigners seeking to register this type of business.

Operation permits are not required for individuals, legal persons engaged in the following:

- agricultural agro-forestry, and similar activities;
- non-profit activities;
- activities that are not commercial or industrial in nature, conducted by natural persons or civil partnerships;
- the practice of liberal professions, by individuals or civil partnerships, so far as they are not considered commercial activities;

- businesses with a multinational business headquarters licence;
- companies operating in the Panama-Pacifico Special Economic Zone; or
- individuals or legal persons established within the international duty free zone of the Colón Free Zone or any other free zone.

In addition, limited liability microenterprises are not required to obtain an operation permit.

An operation permit is obtained by completing a simple process through an online system, 'PanamaEmprende', which is administered by MICI. The user must provide information about the company, the operations to be conducted by the company, its address and other general information. Information registered via this system is publicly accessible and available to third parties.

The operation permit automatically conducts other registrations and processes, such as the processes for obtaining a taxpayer identification number (*registro unico de contribuyente*) from the Ministry of Economy and Finance, and a new business registry number (*registro de nuevos negocios*) from the relevant municipality. The taxpayer identification number is used for the payment of national and municipal taxes, as well as for registrations with the Social Security Administration and other institutions.

The cost of obtaining the operation permit is US\$15 for individuals and US\$55 for legal persons. The annual tax incurred by holders of the operation permit is two per cent of the company's capital, with a minimum payment of US\$100 and a maximum payment of US\$60,000. Natural or legal persons whose invested capital is less than US\$10,000 are exempt from this tax.

ii. *Treatment of foreign investment in infrastructure initiatives and PPP projects*

Over the years, Panama's legal scenario has been conducive to foreign investment, trade and development through the enactment of several laws containing various types of incentives. The creation of special economic areas, such as Panama Pacifico, and other foreign investment initiatives has helped Panama to attract a significant amount of FDI in the region.

A. PANAMA-PACIFICO SPECIAL ECONOMIC ZONE

Built on the site of the former Howard US air force base, at the Pacific entrance of the Panama Canal, and just 15 minutes from Panama City, the Panama-Pacifico Special Economic Zone is a 1,400-hectare international business park. Established by special legislation in 2004, the master-planned park includes a business centre, industrial area, town centre, residential areas, hotels, medical facilities, schools and international airport. To qualify for the tax, labour and immigration incentives provided by law, companies must register with the Panama-Pacifico Agency, the government agency responsible for qualifying companies.

1. Qualifying activities

Any company that establishes itself in Panama Pacifico will receive labour and immigration benefits under the law, as well as several tax benefits. However, companies operating in the park that engage in one of the following qualifying activities receive additional tax benefits discussed below:

- offshore services;
- multimodal and logistics services;
- high-tech product and process manufacturing;
- call centre services;
- data and digital transmission;
- services related to aviation and exports, including transport, handling and storage of cargo, as well as maintenance, repair and overhaul of aeroplanes and their spare parts;
- exports of goods not manufactured within the Panama-Pacifico area to the extent such sales are performed by a multinational company or one of its affiliates or related entities;
- transfer of goods and provision of services to other companies established in the Panama-Pacifico area or in fuel free zones or port facilities;
- transfer of goods and provision of services to ships in transit or on route to foreign ports and their passengers, except by the good's manufacturing company;
- transfer of goods and provision of services to aircraft travelling to foreign countries, except by the good's manufacturing company; and
- transfer of goods and provision of services to visitors and persons in transit to foreign countries, except by the good's manufacturing company.

2. Tax benefits

All companies established in Panama Pacifico are exempt from the following taxes:

- import duties (unless goods are sold within Panama);
- export duties;
- VAT/items (sales tax) (except for services rendered by regulated professions);
- the obligation to withhold tax on payments made to foreign creditors with respect to interests, commissions, fees or other financial charges on financing granted to companies in the area;
- notice of operations (*aviso de operación*) tax;
- capital gains tax on company share transfers in certain situations; and
- stamp taxes.

In addition to these tax benefits, companies that participate in qualified business activities listed previously are also exempt from income tax, dividend and deemed dividend tax, and withholding tax on any goods or services sold or rendered within Panama.

3. Labour benefits

Companies established in the Panama-Pacifico area benefit from the following labour incentives:

- 25 per cent fixed surcharge for overtime;
- negotiable weekly resting day;
- may remain open on Sundays and holidays;
- vacation terms are negotiable with employees;
- fluctuation in market conditions or demand are recognised as just-cause for labour contract terminations; and
- 15 per cent of the workforce may be foreign employees, with exemptions made for additional hires that train Panamanians.

4. Immigration benefits

Companies established in Panama Pacifico benefit from the following immigration incentives:

- five-year ordinary work visas;
- three to five-year special visas;
- five-year investor visas for those who invest US\$250,000;
- family visas extended to immediate family members; and
- tax-free import of up to US\$100,000 of personal and household items.

All incentives established under Law No 41 are permanent for companies within the Panama-Pacifico area.

B. THE CITY OF KNOWLEDGE

The City of Knowledge is an international centre for education, research and technological innovation intended to promote and facilitate synergy between universities, scientific research centres, businesses, and international governmental and non-governmental organisations. The City of Knowledge is administered by the non-profit City of Knowledge Foundation, a PPP. Companies established within its premises enjoy a special tax regime.

1. Qualifying activities

To be established in the City of Knowledge, companies must perform activities related to the City of Knowledge's priority work areas:

- communication and information technology;
- biosciences;
- environmental management;

- human development; and
- business management and entrepreneurial culture.

Activities outside these areas may be considered by the City of Knowledge if they respond to regional or global priorities.

In addition, companies must qualify as 'innovative', which requires that there is not: (1) a similar programme or activity; or (2) a similar methodology or technology available in the country. An application must be submitted to the City of Knowledge for affiliation. However, there are no specific minimum capital or investment requirements, and affiliation is granted on a five-year renewable basis.

2. Tax, labour and immigration incentives

Companies operating within the City of Knowledge benefit from the following tax and immigration incentives:

- exemption from import taxes on all machinery, equipment, furniture, vehicles, devices and other materials;
- exemption from VAT (sales tax) on machinery, equipment, vehicles, devices and other materials;
- exemption from property taxes;
- exemption from any taxes, fees, duties or levies imposed on the transfer of funds abroad, when the transfer of such funds is related to the companies' operations;
- operations or activities of companies producing, assembling or processing high-tech goods within the city of knowledge are exempt from all direct and indirect taxes, including income tax, and such companies are exempt from taxes on capital and operation permits (*aviso de operación*);
- special visas are granted to foreign employees;
- visas are extended to immediate family members of foreign personnel relocating to Panama; and
- exemption on quotas for hiring highly skilled foreign personnel.

iii. Treatment of foreign investment in oil and gas and mining activities

Title to all mineral assets in Panamanian soil is vested to the Republic of Panama. The Panamanian Constitution states that concessions granting full possession and rights of use over those minerals may be granted to private persons for the purposes of engaging in prospecting, exploration, processing and transport activities, regardless of such persons' nationality or form of corporate organisation. Foreign states and foreign state-owned companies are prevented from holding any interest in mining concessions.

The Minerals Code is the main body of law governing most activities relating to Panama's subsurface estate (other than hydrocarbons). The Minerals Code establishes the system of mining concessions, and determines the relevant privileges and obligations of concession holders.

In addition, a number of laws have been passed since the 1970s to create a separate regime for the granting of concessions relating to minerals used in the construction industry, such as sand, gravel and clay. The Minerals Code sets forth two principal types of mining concession, the exploration concession and extraction concession, and also allows for the granting of prospecting permits (*permisos de reconocimiento superficial*) and processing and transportation concessions (*concesiones de beneficio y de transporte*).

A. THE GENERAL DIRECTORATE OF MINERAL RESOURCES

The General Directorate of Mineral Resources (Dirección General de Recursos Minerales (DGRM)) is a governmental bureau within MICI. The DGRM is the administrative entity in charge of all matters relating to Panama's sub-soil, except for hydrocarbons. The DGRM is in charge of receiving and reviewing applications for mineral concessions and recommending the acceptance or rejection of the applications.

In the case of exploration, and processing and transportation concessions, once the concessionaires and their applications have been approved by the DGRM, the concession will be granted by means of a concession contract entered into by the concessionaire and the Minister of Commerce and Industry representing the state of Panama. In the case of construction materials, extraction concessions will not require approval by the Cabinet Council. All mineral concessions contracts will also have to be countersigned by the Comptroller General of the Republic. The concession's term will start to run on the date the fully signed contract is published in Panama's Official Gazette.

B. OIL AND GAS ACTIVITIES

Although Panama is now considered an emerging country within the mining industry, with gold as the main product, Panama has modernised the registration framework for oil and gas exploration and extraction activities to develop the ground rules for a national petroleum policy and guides for the development of the Petroleum Free Zones. Panama's legal framework in oil and gas activities during the past years have developed beyond the provisions of the National Policy for Hydrocarbons due to the restructuring of this global industry and thus require updated legislation.

C. CONCESSIONS IN GENERAL

Holders of concessions are required to file certain information with the DGRM, including annual reports of their operations, information as to each concession (or part thereof) cancelled, abandoned or otherwise terminated, quarterly reports on royalties owed to the Panamanian Government, detailed reports on all technical aspects of operations (which are normally required to be submitted on an annual basis unless the DGRM requires more frequent documents), annual tax reports and statements as to compliance with the relevant provisions relating to employment found in the Minerals Code, among others.

Holders of concessions are permitted to assign their rights in those concessions, whether outright or by way of a mortgage in financing, provided the DGRM is satisfied with the technical and financial standing of the potential assignee. In the case of project financing, the DGRM's consent would be necessary at the time of the granting of the mortgage on the concession or any transfer thereof in order for it to be valid. In addition, the DGRM's prior approval may also be necessary in the case in which the secured party or a third party is to take over the management of the concession or acquire title to the concession pursuant to mortgage foreclosure proceedings.

iv. Treatment of foreign investment in real estate

Any person, whether an individual or legal entity, foreign or national, can hold title to real property in Panama, subject to the limitation that foreigners cannot acquire land within 10 kilometres of national land borders.

A. FINANCING REAL ESTATE

Real estate acquisitions in Panama can be financed by local or foreign lenders. The buyer usually gives security to the lender in the form of a real property mortgage over the subject property. Mortgages must be granted in the form of a public deed before a notary public in Panama and registered at the Public Registry of Panama to perfect the security interest.

B. CONSTRUCTION

Any investor planning to build in Panama will be required to have the necessary construction plans approved by the Directorate of Municipal Constructions and Works of the respective municipality (Dirección de Obras y Construcciones Municipales). The plans must be signed by professionals duly licensed by the Technical Board of Engineers and Architects (Junta Técnica de Ingenieros y Arquitectos). Once the construction is finished, and prior to occupation of the building, an application for an occupancy permit must be submitted to the Directorate of Municipal Constructions and Works. To apply for the occupancy permit, the following permits must have already been obtained in respect of the construction: a permit issued by the Security Office of the Fire Department, the aforementioned construction permit, an electricity permit and a permit for the installation of air conditioners (when applicable).

v. Treatment of foreign investment in agribusiness activities

For agribusiness activities, Panama has certain natural advantages, for example, the high number of daylight hours, the absence of extreme summers, high soil quality and excellent humidity conditions contribute to the products' high quality, allowing Panama to position its exportable goods into markets such as the US, Canada, Central America and Europe.

The constant growth and development of this industry in Panama originated a positive change in the mechanisms usually employed by local producers. In parallel, the Panamanian Government has pursued an aggressive plan of infrastructure development that includes the construction and extension of irrigation systems, maintenance of roads and the implementation of a cold chain

to preserve perishable goods. Alongside these improvements, the legal framework regarding agribusiness activities addresses key elements, such as credit facilities and tax incentives, that not only encourage local producers, but also foreign investors.

One of these instruments within the agribusiness legal framework is the Certificate of Promotion to Agricultural Exports (Certificado de Fomento a las AgroExportaciones ('CeFA')). This certificate, in principle, aims to encourage the export of non-traditional products by granting local or foreign producers and companies a tax incentive, which can be used to pay any of the national taxes. Companies located in special zones (ie, free zones), individuals and legal entities that accept other fiscal incentive programmes are not subject to the benefits of this certificate.

The agency for the Attraction of the Investments and Promotion of the Exports (Proinvex) is a state agency, ascribed to the Ministry of Commerce and Industry, whose objective is to promote investment in strategic sectors, such as logistics, tourism and agribusiness activities. This agency manages an integrated information system that allows investors to easily identify the instruments that the Panamanian Government has for attracting FDI, as well as all the commercialisation and promotion of the exports of national products.

vi. Treatment of foreign investment in the rendering of public services

Panama has an open and non-discriminatory government procurement system in which both nationals and foreigners can freely participate and bid for public contracts. Foreign companies can participate by setting up a subsidiary or registering a branch in Panama, or entering into a joint venture arrangement with local or foreign companies already established in Panama.

In certain cases of urgent public interest, government agencies may be allowed to enter into direct negotiations with any provider or supplier of goods and services. In these cases, contracts must be approved as follows: (1) by the Directorate of Public Contracting (if the contract amount is below US\$300,000); (2) by the National Economic Council (if the contract amount exceeds of US\$300,000 but is below US\$3m); or (3) by the Cabinet Council (if the contract amount is above US\$3m).

As a general rule, the government agency seeking to purchase the goods and services is the entity responsible for conducting the procurement process and awarding the contract. Contracts are awarded to the qualified participant that submitted the best bid in accordance with the tender documents. Tender documents require that bidders post a bid bond of up to ten per cent of the contract amount as a condition for submitting a bid. Once the contract is awarded, the provider or supplier and the government agency enter into a final agreement in the form prescribed by the tender documents. This contract must then be recorded and countersigned by the Comptroller General of Panama.

A. CONCESSION REGIME

As discussed above, the award of concession agreements to private companies for the construction, maintenance, conservation, restoration and operation of toll roads, and other infrastructure projects is governed by a special infrastructure concessions law. Administrative concessions generally grant the right to construct and operate an infrastructure project, and to collect tolls and other fees from users of the project, under the supervision of a regulatory agency.

The award of concessions regarding power generation and distribution, telecommunications, paid and open television, ports, mining exploration and extraction, and airport operations are governed by sector-specific laws and subject to different rules.

Panama has an open and non-discriminatory government procurement system under which nationals and foreigners can freely participate and bid for public contracts. Foreign companies can participate by setting up a subsidiary, or registering a branch in Panama, or entering into a joint venture arrangement with local or foreign companies already established in Panama.

The award of concession agreements to private companies for the construction, maintenance, conservation, restoration and operation in connection with infrastructure projects is governed by a special infrastructure concession law. Administrative concessions generally grant the right to construct and operate an infrastructure project and to collect tolls and other fees from users of the project, under the supervision of a regulatory agency.

B. CONTRACT LAWS

A contract law is an agreement negotiated and signed by the Executive Branch of the Panamanian Government with a private company and then submitted to the National Assembly for approval and enacted as a special law. Contract laws afford the maximum degree of security and stability to foreign investors, as they can only be amended with the consent of the affected company and by means of another law. However, it is a very time-consuming process and the Panamanian Government tends to reserve this type of contracts for big projects of particular national interest.

B. Rendering of public services

i. General framework

In 1992, the Panamanian Government started a privatisation programme of public services, properties and companies owned or performed by the public sector. The programme resulted in the privatisation of the telephone and power companies, a cement factory, sugar mills, ports and railway services.

The regulatory entity for certain public services, including water and sewerage systems, telecommunications and paid television services, energy generation and distribution is the National Public Services Regulator (Autoridad Nacional de los Servicios Públicos ('ASEP')), which is responsible for the granting of concessions, licences and authorisations, standard setting, implementation of tariff structure, and the regulation and supervision of public services.

ii. Governmental monopoly versus private initiative

Panama's antitrust and competition laws and regulations apply to all companies doing business in the Panamanian market. Antitrust and competition laws are relevant to business enterprises in at least in two ways. First, these laws identify certain practices, such as price fixing, allocation of markets and bid rigging among competitors that are absolutely forbidden or illegal per se, as well as other practices, such as tying, exclusive distribution agreements and exclusivity clauses, which may or may not be

illegal, depending on various factors, including whether or not the economic agent has market power in the relevant market. The former practices, known as absolute monopolistic practices, correspond in general terms to ‘per se’ violations under US antitrust laws, and the latter practices, known as relative monopolistic practices, have as their closer equivalents conduct subject to the ‘rule of reason’ under US antitrust laws.

Panama’s antitrust laws prohibit mergers, acquisitions and other forms of business combinations that hinder or restrict competition in the relevant market. The law does not require the parties to a merger, acquisition or business combination to seek pre-approval from the National Authority of Consumer Protection and Defence of Competition (Autoridad de Protección al Consumidor y Defensa de la Competencia (‘ACODECO’)). However, this regulatory agency has the powers to investigate and challenge in court any merger, acquisition or business combination that violates antitrust laws and regulations. Interested parties may voluntarily seek approval from this agency prior to any merger, acquisition or business combination. If this approval is granted, the transaction cannot be subsequently challenged by third parties on the grounds that it violates antitrust laws.

In addition to general rules set out in antitrust laws and regulations, some sector-specific laws, such as the laws applicable to power generation and distribution, telecommunications, and open and paid television, contain additional antitrust and competition regulations.

iii. Privatisation general rules

The framework for the privatisation of assets, companies and services was established in Law No 16 of 1992. Privatisation entails that the Panamanian Government transfers the ownership of companies, properties and shares to the private sector, and may also assign the management or furnishing of public services to private individuals. The methods by which the privatisation of companies and/or services owned and managed by the public sector occur are the following:

- the transformation of companies or state entities into corporations (*sociedades anonimas*);
- the transformation of state entities into corporations of mixed economies in which the Panamanian Government is a minority shareholder;
- the establishment of management contracts or administrative concessions, with or without a purchase option;
- partial or total lease, with a purchase option, prior to the settlement of the price;
- hiring of companies or private individuals to perform specific functions or activities;
- release of activities usually performed exclusively by the state that are not designated by a constitutional mandate; and
- issuance of licences and concessions for the exploitation of services.

The Cabinet Council must approve the terms of the tender (which contain specific details of the privatisation) in order to receive proposals from companies or individuals willing to render public services. The Cabinet Council is also in charge of declaring the privatisation of properties,

companies and state activities, subject to a technical examination. Privatisation in Panama took place mainly during the 1990s.

iv. Limitations and/or prohibitions to private parties in the rendering of public services

The rendering of public services by private parties in Panama has no major limitations or prohibitions except that some laws provide that such services cannot be performed by a company or entity owned or controlled by a foreign state.

C. Real estate

i. Holding title to real estate

A. WHO CAN HOLD TITLE?

Any person, whether an individual or legal entity, foreign or national, can hold title to real property in Panama, subject to the limitation that foreigners cannot acquire land within 10 kilometres of national land borders. It is important to point out that our legal framework in connection with real property does not differ between urban and rural properties. Thus, both are subject to the same provisions. Certain rules may apply, however, to land used for agricultural purposes.

B. RECORDATION OF TITLE

Panama has a public recordation system where all matters pertaining to real property are registered, including title to property and improvements, encumbrances and restrictions, or limitations on ownership. Each titled property that is registered is given a plot number that identifies it. The information registered includes the name of the owner, registered value, area, metres and boundaries, and any liens registered on the property.

A person interested in acquiring titled property in Panama can verify title to the property in the Public Registry of Panama. Then, through registration in the Public Registry of Panama of a public deed containing the terms of the purchase and sale contract for the property, the buyer registers the title to his/her name. In addition, possessory rights in some areas of the country can also be recognised through a titling process regulated by the National Land Administration Authority (Autoridad Nacional de Administración de Tierras). However the process of titling property held through possessory rights can be a difficult and lengthy.

C. HORIZONTAL PROPERTY

Panama has a horizontal property regime to which buildings and projects that wish to be regulated in a condominium-style format can adhere. The purpose of the regime is to regulate the rights and obligations of owners of property built on common land. Thus, for example, the regime divides these properties into common and private areas, and establishes the rights, obligations and limitations that each unit owner has with respect to these areas. The horizontal property regime law requires buildings or projects that wish to adhere to the regime to develop regulations that will apply to the

property. These regulations must be approved by the Ministry of Housing (Ministerio de Vivienda) and registered in the Public Registry of Panama. The regulations include, among other things, designation of the building administrator; faculties of the board of directors; determination of use that can be given to each unit; and matters related to the assembly of property owners, including the necessary quorum to hold meetings and votes to adopt resolutions, present an annual budget, maintain a record of minutes and conduct an audit of the balance sheet. The horizontal property regime law provides that the regulations can only be amended by the vote of a supermajority of property owners, and grants juridical status to the assembly of property owners once the regulations are registered in the Public Registry of Panama. The regulations are usually not registered until a certain percentage of the building or project has been constructed.

ii. Transferring real estate

A. RECORDATION OF TRANSFER

All transfers of real property must be registered in the Public Registry of Panama to be effective against third parties. Any document that is registered in the Public Registry of Panama must be vested with the requisite formalities, namely that it is granted in a public deed before a notary public of the Republic of Panama or, if granted in a private document, (if the law permits) that it is formalised in a public deed before a notary public. The law requires certain documents that deal with real property transfers, dispositions and encumbrances to be granted in a public deed. These documents include final purchase and sale agreements, mortgages and certain types of leases.

B. INSTRUMENTS OF CONVEYANCE

The transfer of property is documented in a definitive purchase and sale agreement (usually just a short document that contains the few provisions necessary to transfer title), which is executed in a public deed before a notary public and is registered in the Public Registry of Panama. Registration of the deed of sale in the Public Registry of Panama is essential to perfect the transfer of title to the purchaser.

iii. Financing real estate acquisition

Real estate acquisitions in Panama can be financed by local or foreign lenders. The buyer usually gives security to the lender in the form of a real property mortgage over the subject property. Mortgages must be granted in the form of a public deed before a notary public in Panama and registered at the Public Registry of Panama to perfect the security interest.

iv. Leasing real estate

In Panama, real estate lease agreements are governed generally by the provisions of the Civil Code and special laws on lease agreements.

A. TYPES OF LEASES

For the purposes of regulation, leases in Panama are divided into two categories: the first covers residential leases with a monthly rental fee of US\$150 or less, while the second category covers residential leases with a monthly rental fee of US\$150 or more, as well as leases of premises for commercial, professional, industrial or educational use, regardless of the amount of the rental fee.

Lessees in the first category are protected by the Lease Law, which grants them certain rights, such as having the lease agreement respected by a buyer of the leased property in case it is sold; requiring a minimum lease term of three years, with the further right to have it extended for additional three-year terms if the lessee is in good standing regarding payment of rental fees; allowing the lessee to terminate the lease agreement at any time by giving a 30-day prior notice to the lessor; and providing that the rental fee cannot be increased by the lessor without prior approval of the Ministry of Housing.

Leases in the second category, however, are generally governed by the principle of contractual freedom, with only a few mandatory provisions being required by the laws on leasing.

B. LEASE AGREEMENTS

Lease agreements should contain, among others, the following provisions:

- the right of the lessee in residential leases to waive the minimum lease term and terminate the agreement at any time with a written notice sent at least 30 days in advance; and
- the right to sublease, although consent of the lessor may be required to sublease if so agreed.

The obligation to deposit with the Ministry of Housing a sum equal to the agreed rental fee (if monthly, then to a month's rental fee, if yearly, then to a year's fee, and so forth). It is the lessor's obligation to deliver this deposit to the Ministry of Housing, but the deposit is paid by the lessee.

The right of the lessee in residential leases to exercise his or her profession within the leased property, unless this interrupts the peaceful enjoyment of the property or violates the law.

All lease agreements must be registered with the Ministry of Housing using standard forms provided by this agency. In addition, lease agreements with terms of six years or more must be executed in the form of a public deed before a notary public, provided that they affect third parties. Leases, both residential and commercial, can be recorded at the Public Registry of Panama to put third parties on notice of the existence of the lease.

The maximum term for a lease agreement is 20 years. In lease agreements partially excluded from the Lease Law whose term has expired and where the lessee still continues to occupy the property with the consent of the lessor, there is a holdover or implied continuation of the lease after the contractual term expires. In this case, the lease becomes an indefinite term agreement that either party may terminate at any time.

v. *Construction*

Any investor planning to build in Panama will be required to have the necessary construction plans approved by the Directorate of Municipal Constructions and Works (Dirección de Obras y Construcciones Municipales). The plans must be signed by professionals duly licensed by the Technical Board of Engineers and Architects (Junta Técnica de Ingenieros y Arquitectos). Once construction is complete and prior to the occupation of the building, an application for an occupancy permit must be submitted to the Directorate of Municipal Constructions and Works of the relevant municipality. To apply for an occupancy permit, the following permits must have already been obtained in respect of the construction: permit issued by the Security Office of the Fire Department, the aforementioned construction permit, an electricity permit and a permit for the installation of air conditioners (if applicable).

vi. *Expropriation events*

Any person, whether an individual or legal entity, foreign or national, can hold title to real property in Panama, subject to the limitation that foreigners cannot acquire land within 10 kilometres of national land borders. Nonetheless, Panama's Political Constitution contemplates another limitation regarding the holding of title in real estate: expropriation. Panama's Political Constitution states that, by means of public utility or urgent social interest as defined in specific laws, expropriation may be effective through a special judicial procedure and upon payment of adequate compensation to the effective owner. The expropriation proceedings apply equally and on a non-discriminatory basis, to local or foreign owners.

D. Development of ample/integrated capital markets and joint activities between Latin American countries

i. *Merger of stock exchanges: attempts versus realities*

The Republic of Panama currently has only one stock exchange, called the Bolsa de Valores de Panama. Legislation and regulation on stock exchanges and securities do not specifically contemplate the merger of stock exchanges, but such mergers or integrations are not in themselves prohibited.

ii. *MILA market: current results and expectations*

The MILA market is an integrated stock exchange market. At the present moment it is composed of Chile, Colombia and Peru. Currently, Panama does not form part of this stock exchange market integration, but the regulatory regime would not impede that Panama joins the MILA market.

iii. *Pacific Alliances: governmental action and proposed treatment and agreements*

The Pacific Alliance is a highly praised trade bloc that promotes economic liberty. The Pacific Alliance is presently composed of Chile, Colombia, Mexico and Peru. The Republic of Panama is currently paving its way into the Pacific Alliance, as it has now signed an FTA with each of the Pacific Alliance Member Countries. Panama completed this prerequisite in April 2014, signing an FTA with

Mexico, the only country in the Pacific Alliance that did not have an FTA with Panama. The efforts of Panama to join the Pacific Alliance are evidence of its intention to become a full member. As of 2018, Panama is still in the process of becoming a full member.

iv. IPOs of multilatin companies in Latin American capital markets

Panama does not have any multilatin companies that have performed an IPO in the Latin American capital markets. COPA Airlines, the Panamanian national carrier that operates in various Latin American countries, is a New York Stock Exchange (NYSE) traded company and also has its shares listed on the Panama Stock Exchange.

E. Offshore vehicle providers in Latin American countries

i. General concept: legal framework and scope of general activities

A. INTRODUCTION

Panama has traditionally served as a jurisdiction to establish offshore vehicles for asset protection and efficient tax planning strategies. Offshore vehicles are originated by foreign capital and generally do not carry out operations in Panamanian territory, benefiting from Panama's territorial tax regime. Jurisdictions that offer offshore services are often mistaken as tax free jurisdictions, yet Panama's corporate income tax is 25 per cent. Operations conducted outside Panama are not deemed as 'Panama source income'. Panama's geographical position and international background have been a key factor for its development as an offshore jurisdiction since 1927, when Panama passed its corporate law based on Delaware corporate law. As of 2018, Panama offers a variety of offshore vehicles, such as Panamanian corporations (*sociedad anónima*), private interest foundations, and LLCs and trusts, which are regularly used by international clients for asset protection or estate planning.

ii. Panamanian corporations

The Law on Panamanian Corporations was enacted in 1927 and it does not distinguish between 'onshore' and 'offshore' companies. It is characterised by its simplicity, flexibility and effectiveness; Panamanian corporations are frequently used inside and outside Panama. Two or more persons, from any nationality, with or without domicile in the Republic of Panama, may create a Panamanian corporation, for the accomplishment of any lawful objective, having to comply solely with the conditions required by the law. It is important to mention that the constitution of a corporation is a commercial act, and the persons who constitute it (the subscribers of the Articles of Incorporation) need to have full legal capacity and shall be able to dispose liberally of their assets.

As mentioned previously, the Panamanian taxation system is territorial. As such, income earned from commercial transactions conducted outside Panama is not subject to taxation in Panama. Income earned from distributing earnings or dividends or shares, when such dividends or earnings were produced from income generated or earned by the company solely outside Panama, is not subject to taxation either. In addition, interest paid by banks located in Panama to any depositor (including a Panamanian corporation) for deposits located in Panama, and Panamanian corporations that

operate abroad can distribute all or part of their assets among their shareholders without them or the corporation having to pay tax in Panama. In terms of offshore activities that could be carried out by corporations, the regulatory environment is simple; except for specific regulated activities within Panama, as stated before, such as banking, insurance or the rendering of public utility services, which are regulated by specific governmental agencies. In Panama, no government entity or agency has to authorise, approve or supervise the formation of a corporation; the amendment of its articles of incorporation or the beginning of its operations; the issuing or transfer of shares; or the modification of the authorised capital of the corporation, distribution of dividends, dissolution, winding up or sale of the assets of the corporation.

There is no obligation to file any type of statement or financial report before the fiscal authorities of Panama by corporations that do not carry out business within Panama. Transactions conducted abroad or the income earned from them are not subject to reporting.

Another benefit is that the law on Panamanian corporations does not require minimum corporate capital for their further operation or carrying out of their objectives. Neither is it required that corporate capital be totally paid up when shares are registered in a shareholder's name, thus, giving shareholders freedom and flexibility to manage their corporate affairs.

Shareholders are not liable for the obligations of the corporation. They only respond to the creditors of the company for the amounts owed to the corporation for the issuing of shares in the case in which they have not been fully paid. In addition, the corporation is not responsible for the personal liabilities of the shareholders. Additionally, the corporation may belong to only one person. There is no prohibition against the company having only one shareholder.

The management and completion of shareholders' and board of directors' meetings is fairly easy as the meetings can take place anywhere in the world. It is not necessary that the meetings be held in Panama. The law also allows that the resolutions of shareholders and directors be adopted by consent through electronic means, either by telephone or fax, provided that all the shareholders and directors that participated in the meeting are in contact among themselves and express by majority their consent or approval of the corresponding resolution.

The shareholders, gathered in a shareholders' meeting, are the supreme authority of the corporation. They do not need to be Panamanians or domiciled in Panama and may transfer and sell shares in unregulated corporations, without being subject to regulation or approval by, or registration with, any government entity or authority. However, limitations and restrictions can be established in the articles of incorporation as a condition for the transfer of shares by a shareholder.

Panamanian corporations can undertake and enter into any type of financial transaction without being subject to government approval or authorisation. Such operations do not need to be reported. However, in the case in which the corporation had deposits with banks located in Panama, any movement of funds for amounts up to US\$10,000 has to be reported as a means to prevent and control money laundering.

Any subsequent amendment to the corporation's articles of incorporation must be registered with the Public Registry of Panama. Likewise, the appointment and replacement of directors, officers and a resident agent must be recorded with the Public Registry of Panama. This gives security and certainty

about the legal existence of the corporation and the persons in charge of its legal representation. This is not a mechanism of governmental control or regulation over the corporation. The company's registration in the Public Registry of Panama is a form of notice to third parties.

The incorporation of a Panamanian corporation is a swift and simple procedure, as the law requires a set of established requisites, the payment of registry rights and there also exists an annual franchise tax, payable before 1 January or 1 July; depending on the semester in which the corporation has been organised. Furthermore, every corporation should have a Record of Minutes, where all the minutes and resolutions adopted by the shareholders and the board of directors must be kept. The corporation must also have a share registry where title or ownership of shares and the transfer thereof must be recorded.

Panamanian corporations may own foreign bank accounts, perform commercial operations abroad, buy assets and set up trusts overseas. Panamanian corporations are regularly used as holding companies of regional groups. The dynamic and flexible characteristics of this vehicle allow individuals to tailor the corporation to fit their particular needs.

iii. LLCs

This offshore vehicle is not to be confused with a Panamanian corporation. The latest legislation on this matter entered into force in 2009, and the concept has existed in Panama since 1966. LLCs are known as *sociedades de responsabilidad limitada* (S de RL).

LLCs may be dedicated to any lawful purpose at any part of the world. In order to constitute an LLC, there must be at least two partners (with no maximum number of partners), who execute a partners' agreement and file it at the Public Registry of Panama. The authorised capital is also required to be a part of the partnership agreement, and is composed of participation fees or quotas that must be nominative. The participation fees or quotas cannot be transferred without the consent of other partners, and the responsibility of partners is limited to the amount of capital that each contributes to the LLC.

Given the territorial regime of Panamanian tax law, income received by the LLC from operations executed, consumed or which produce their effects outside Panama and earnings that, in turn, it pays its partners shall be exempt from income tax in Panama. LLCs are frequently used by US clients as 'check-the-box' entities.

iv. Private interest foundations

In 1995, Panama enacted a statute that set forth the legal framework for the constitution of private interest foundations. This vehicle has an independent legal personality separate from that of its founder, beneficiaries or administrator. Private interest foundations are created when one or more persons (known as the 'founders') subscribe a legal document (known as the 'foundation charter') that must be registered at the Public Registry of Panama. The founders grant certain assets in favour of the foundation, which shall be managed by the members of the Foundation Council following the conditions established in the foundation charter and by-laws, for the benefit of one or more persons (known as the 'beneficiaries').

Private foundations are constituted to carry out individual and private objectives of personal nature, being used for religious, educational, heirship, philanthropic or charitable purposes, as well as for the protection of personal assets and enjoyment and disposition of goods in favour of third parties. They are composed by a founder, foundational council, protector and the beneficiaries.

As mentioned above, the founder is the person that constitutes the foundation and thus the person that appoints the Foundational Council, which is an administrative entity entitled to carry out the objectives and purposes of the foundation. In turn, private interest foundations may have a protector selected by the founder, to supervise the Foundation Council, in order to verify the fulfilment of its functions and the adequate performance of the purposes of the foundation. There can be multiple protectors, and they can be composed of individuals or legal entities. There are no requirements as to the number of protectors.

The beneficiaries of the foundation are those individuals or legal entities appointed by the founder in the by-laws of the foundation charter to benefit from the foundation and, particularly, enjoy the proceeds of the assets thereof. The law neither sets out any restrictions, limitations or requirements for the appointment of beneficiaries, nor regarding their capacity. Therefore, the founder has the right to appoint whoever he/she desires as beneficiary of the foundation, either individuals or legal entities including him/herself. The beneficiaries, once appointed, can be replaced by the founder at any time with or without cause. The founder can even appoint him/herself as a beneficiary of the foundation. The identity of the beneficiaries does not need to be registered with any public registry.

The beneficiaries are not part of the foundation, nor do they have the right of disposition on the assets thereof, even if said beneficiaries are relatives or presumed heirs of the founder by disposition of the legislation of their nationality or residence. The beneficiaries have the right to the assets of the foundation or its proceeds according to what has been stated by the founder either in the foundation deed or by-laws.

The by-laws of the foundation develop and regulate the provisions of the foundation charter. They constitute a document that the founder subscribes to concurrently with the foundation charter, to enter into force and have effect as of the creation of the foundation so that it may be executed and complied with by the Foundation Council. As previously indicated, the by-laws of the foundation charter constitute a private document, which does not require disclosure, nor has to be recorded in the Public Registry of Panama to have efficacy and validity.

The by-laws constitute the document that, due to its private character, guarantees the founder confidentiality regarding the identity of the beneficiaries, or their successors or replacements; the identification of the assets owned by the foundation; and the form of management of said assets for the benefit of the beneficiaries of the foundation.

A private interest foundation offers a set of concrete benefits for asset management and protection, family asset planning and others. Private foundations cannot carry out commercial activities as their regular purpose or objective because, by nature, they do not have a for-profit purpose. They, however, can own property, including shares or quotas, and perform such other activities to carry out their purposes or to diversify their assets. Consequently, a founder can transfer to his/her foundation assets of any nature, such as real estate, stocks or securities, money, chattel goods and contract rights,

among others, and thus a foundation is able, for example, to exercise shareholders' rights, invest its assets, enter into contracts of any nature and own bank accounts, among others.

Private interest foundations pay an annual fee to the state. There are neither initial capital requirements nor obligations to hold Foundation Council meetings (which can be held abroad). Thus, this offshore vehicle is used: (1) as a replacement to the use of wills and prenuptial agreements; (2) as an instrument for the administration and maintenance of funds; (3) as a means of protection for loved ones and/or granting periodical allocations, goods or other benefits in their favour; (4) as an instrument to assure the good continuation of a business; (5) as an instrument for the creation and/or administration of charitable activities; (6) as a receiving entity for commissions and/or interest payments; (7) a 'holding company'; and (8) as the owner of real estate, valuable goods, inventions, etc.

Under the law, the foundation charter must comply with certain minimum requirements, such as the name of the foundation, name of the founder, names and addresses of the members of the Foundation Council, name and address of the resident agent and domicile of the foundation. Private interest foundations are subject to an annual licence fee.

Panamanian private interest foundations can constitute a convenient and useful offshore vehicle, and for asset management and protection; estate planning to set up the execution of philanthropic activities of interest for the founder; by reason of the absence of controls and restrictions for the creation of foundations in Panama; and the simplicity of organising a foundation and conducting its operations, as well as the reasonable protection that is afforded to the identity of the founder and beneficiaries of the foundation.

v. *Trusts*

A Panamanian trust is not a separate legal entity, but rather a legal arrangement whereby a person known as the settler transfers assets to a person known as the trustee to manage and/or dispose of them as set out in the trust deed in favour of such persons designated as beneficiaries. Under the applicable law, the settler itself may be a beneficiary of the trust.

The parties of a trust agreement enjoy contractual liberty to establish the terms and conditions of the trust agreement. The intention to create a trust must be express and in writing; verbal, presumed or implied trusts are not valid. A trust is established by means of a document known as the trust deed, which is typically a private document, with some limited exceptions. For perfection of the trust deed, signatures therein must be authenticated by a notary public, and the deed must contain, among other things, the following:

- clear and complete designation of the settler, trustee and beneficiary; in the event that the beneficiary is to be established in the future or is a class of beneficiaries, the trust deed must contain enough information to be able to identify the beneficiary;
- the designation of a substitute trustee and beneficiary, if any;
- the description of the property or estate or portion thereof that constitutes the trust;
- the express declaration of the intent to establish a trust;

- the powers and duties of the trustee;
- the prohibitions and limitation placed on the trustee in the exercise of the trust;
- the rules for accumulation, distribution or disposition of assets, income or products of the trust;
- the place and date on which the trust is established;
- the designation of a resident agent in Panama, who must be a lawyer or law firm and who must countersign the trust deed;
- the address of the trust in Panama; and
- an express statement that the trust was constituted according to the laws of Panama.

The absence of one or more of these clauses does not render the trust as a whole null unless the defect in question makes the fulfilment of the trust impossible.

In general, trusts constituted under Panamanian law are subject to the laws of Panama. However, the trust deed may stipulate that the trust is to be governed by the laws of another jurisdiction. Furthermore, the trust and its assets may continue into another jurisdiction or change the laws governing the trust if so stipulated in the trust deed.

Alternatively, a trust constituted under the laws of a foreign jurisdiction may continue into Panama provided that the trust deed allows for its continuation and either the settler and trustee, or the trustee alone makes a declaration to that effect.

A trust may hold assets of any nature, present or future, situated in Panama or elsewhere, which may be transferred to the trust at any time by the settler or any other person. If the trust assets consist of land or other real property located in Panama, then the trust deed must be granted in a public instrument and registered in the Public Registry of Panama.

The trust assets are for all purposes deemed to be separate from those of the trustee or settler, and are therefore protected against claims of preventive attachments (*secuestros*) or attachments in aid of execution (*embargos*) by creditors of the settler or trustee, except for obligations incurred in the execution of the trust, or by reason of a fraudulent transfer of assets to the trust in prejudice to creditors.

Unlike private interest foundations, trusts are not required to pay an annual franchise tax. However, as in the case of private interest foundations, trusts are also subject to tax territoriality; therefore, if the assets or income produced do not derive from a Panamanian source, neither the income nor the distributions from said income to the beneficiary will be subject to tax.

The trustee may be a natural or legal person, with no restriction as to its nationality or domicile. The powers and duties of the trustee must be included in the trust deed. No person can act as a trustee unless it has first obtained a trustee licence granted by the Superintendence of Banks.

The trust deed may establish limitations on the liability of the trustee, except for losses or damages caused by gross negligence or wilful misconduct. Unless otherwise provided for, the trustee will be responsible for any loss or damages that can be attributed to a failure to act with an appropriate standard of care. It should be noted that, although the trust law does not contemplate the figure of a

protector, it does not prevent the settler from appointing a supervisory body to oversee the actions of the trustee.

The settler may appoint one or more substitute trustees in the trust deed. In the case of revocable trusts, the trustee may be replaced and new trustees may be appointed at any time. If the trustee is declared dead or unfit, or is removed or resigns and no substitute has been appointed, a judge will designate a successor at the request of the trustee, settler, beneficiaries or Attorney General, and will transfer the assets of the trust to the substitute trustee.



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