

Country Guide

Panama

Prepared by

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A GUIDE TO DOING BUSINESS IN PANAMA

Prepared by



April, 2018

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A GUIDE TO DOING BUSINESS IN PANAMA

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ABOUT ARIAS, FÁBREGA & FÁBREGA

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Our practice covers 30 areas of law, organized into 14 practice groups, including capital markets, banking and finance, mergers and acquisitions, business and corporate law, regulatory work, government contracts, trade, competition and antitrust, real estate, environmental matters, employment relations, shipping, trust and estate planning, litigation, taxation and intellectual property.

Over time, our firm has upheld its distinguished reputation for consistently providing the highest quality legal advice and is highly recognized for its unparalleled expertise in structuring innovative and sophisticated solutions for the most complex transactions in Panama and the Central America region.

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For selected clients, we offer more sophisticated estate and family financial planning services through our affiliate SWISSARIFA, a leading provider of trustee services based in Geneva and Panama for high net worth individuals and their families in Latin America.

Our success is the result of the superior quality of our lawyers, most of them educated in leading law schools in the United States and Europe or trained in law firms in London, New York, Miami and other cities. This unique background of our legal teams enables the firm to act as a bridge between legal and business cultures and to provide effective legal services to clients, particularly in challenging cross-border transactions.

Not surprisingly, the firm and many of its lawyers are top ranked by the leading international legal publications, including Chambers & Partners, Legal 500, IFLR1000, Who's Who Legal, and Latin Lawyer 250.

On-going investments in state-of-the-art law office systems and the support of professional managers and highly trained personnel allow us to offer the most efficient and competitive services to clients.

At ARIFA, we hold ourselves to the highest professional and ethical standards, and work with clients who share and cherish these values. Knowing our clients and their needs is essential to the work we do for them. We take pride in our organization and with the support of our lawyers, personnel and clients we expect to continue focusing on what we have known to do best for over a century: The practice of law, protecting our clients' interests with excellence and integrity. You are welcome to visit us and learn more about the firm at www.arifa.com.

List of Abbreviations

ACP:	Panama Canal Authority (“Autoridad del Canal de Panamá” in Spanish)
ACODECO:	National Authority of Consumer Protection and Defense of Competition (“Autoridad de Protección al Consumidor y Defensa de la Competencia” in Spanish)
ADR:	Alternative Dispute Resolution Methods
ANATI:	National Land Administration Authority (“Autoridad Nacional de Administración de Tierras in Spanish)
ARAP:	Authority of Aquatic Resources of Panama (“Autoridad de Recursos Acuáticos” in Spanish.)
APOSTILLE:	Authentication in lieu of Consular Legalization under 1961 Hague Convention Abolishing the Requirements of Legalization from Foreign Public Documents
ASEP:	National Public Services Authority (“Autoridad Nacional de los Servicio Públicos” in Spanish)
BVP:	Panama Stock Exchange (“Bolsa de Valores de Panamá” in Spanish)
CAT:	Tax Credit Certificates (“Certificados de Abono Tributario” in Spanish)
CIF:	Cost, Insurance and Freight
CFI:	Certificate of Industrial Development (“Certificado de Fomento Industrial” in Spanish)
DGI:	General Revenue Directorate (“Dirección General de Ingresos” in Spanish)
DGMM:	Directorate General of the Merchant Marine (“Dirección General de Marina Mercante” in Spanish)
DGRM:	General Directorate of Mineral Resources (“Dirección General de Recursos Minerales” in Spanish)
DMCW:	Directorate of Municipal Construction and Works (“Dirección de Obras y Construcciones Municipales” in Spanish)
DGPR:	Directorate General for Public Procurement (“Dirección General de Contratación Pública” in Spanish)
EIS:	Environmental Impact Studies
EMP:	Environmental Management Plan (“Plan de Manejo Ambiental” in Spanish).
FECI:	Special Interest Compensation Fund (“Fondo Especial de Compensación de Intereses” in Spanish)
GDP:	Gross Domestic Product

ICSID:	International Centre for Settlement of Investment Disputes
LLC:	Limited Liability Company
MARPOL:	International Convention for the Prevention of Pollution from Ships, 1973.
MICI:	Ministry of Commerce and Industries (“Ministerio de Comercio e Industrias” or “MICI” in Spanish)
MIVIOT:	Ministry of Housing and Land Planning (“Ministerio de Vivienda y Ordenamiento Territorial” in Spanish)
MIGA:	Multilateral Investment Guarantee Agency
NIC-Panama:	Network Information Center of Panama
OECD:	Organisation for Economic Co-operation and Development
PAMA:	Environmental Adaptation and Management Program (“Programa de Adecuación y Manejo Ambiental” in Spanish)
PMA:	Panama Maritime Authority (“Autoridad Marítima de Panamá” in Spanish)
SOFA:	Security Office of the Fire Department (“Oficina de Seguridad del Cuerpo de Bomberos” in Spanish)
SCM:	Superintendency of Capital Markets
SINAP:	Protected Areas National System (“Sistema Nacional de Áreas Protegidas” in Spanish)
SOLAS:	Convention for the Safety of Life of at the Sea, 1972.
TBEA:	Technical Board of Engineers and Architects (“Junta Técnica de Ingeniería y Arquitectura” in Spanish)
UNCITRAL:	United Nations Commission on International Trade Law
VAT:	Value Added Tax (“Impuesto a las Transferencias de Bienes Corporales Muebles y la Prestación de Servicios - ITBMS” in Spanish)
WTO:	World Trade Organization

I. PANAMA AT A GLANCE

Panama connects Central and South America and, as a place of transit, serves as an international commercial and financial center. Panama is located between Costa Rica and Colombia, and is bordered by the Atlantic and Pacific Oceans. In addition to the Panama Canal, which brings ships from all over the world to the country, the Tocumen International Airport in Panama City serves as a regional hub for many major airlines, facilitating travel within Latin America, as well as to North America and Europe.

A. Government

Panama is politically a representative democracy divided into ten provinces and five indigenous reservations. Panama enjoys a presidential system of government, which is divided into three separate branches: the Executive, the Legislative and the Judiciary. The Executive branch is composed of the President and one Vice President, who are elected by direct popular vote for a five-year term, without the possibility of an immediate re-election, and the Cabinet of 12 Ministers, appointed by the President. The Legislative branch consists of a one-chamber body called the National Assembly, which is composed of 71 Assemblypersons, also elected by direct popular vote, who are responsible for passing laws. An independent Electoral Tribunal governs the political elections. The Judicial branch is composed of nine members appointed to the Supreme Court of Justice, and both the Superior District Courts and other lower courts are established by law. Supreme Court judges are appointed by the President (Executive branch), and are subject to confirmation by the National Assembly (Legislative branch).

B. Population and Languages

Growing at a rate of 1.56%, the Panamanian population is estimated at almost four million, one hundred sixty two thousand , six hundred eighteen inhabitants (4.2 million people). Forty-eight percent of the total population lives in Panama City, located on the Pacific coast of the isthmus.

The official language of Panama is Spanish. However, English is widely spoken as a second and commercial language, particularly in the main cities of Panama and Colon.

C. Currency

Although Panama has its own monetary currency, it does not have a central bank. Instead, the Superintendency of Banks determines a reserve system and establishes interest rates in place of a central bank. The official currency of Panama is the Balboa, which has the same value as the United States dollar. However, the balboa only exists in the form of coins, which are minted in the same size and denomination as US coins. The United States dollar (US\$) is legal tender and has circulated freely in Panama since 1904. With its fully dollarized economy, Panama offers monetary stability. Panamanian law additionally allows contracting parties to conclude contracts in any currency they choose, providing considerable flexibility for international commercial transactions.

D. Economy

Panama's economy is heavily service-oriented, with more than 80% of the Gross Domestic Product and 50% of the nation's employment resulting from this sector.

Panama has been a member state of the World Trade Organization (WTO) since 1997. As a result of such affiliation, a number of economic measures have been implemented by successive governments, including the privatization of state-owned companies and the implementation of internal laws that adhere to international standards, as well as the drastic reduction of import tariffs and tariff processes in the agricultural sector. Panama has signed comprehensive bilateral trade agreements with many of its major trading partners, and continues to be engaged in negotiations with other important trading partners in order to enhance the country's competitiveness in the international economy. Panama has additionally signed several international investment agreements to protect foreign investors and their investments.

E. The Panama Canal

Since the handover from the United States in 1999, the canal has been successfully managed, operated, and maintained by the Panama Canal Authority (Autoridad del Canal de

Panamá or “ACP”), an autonomous entity of the government of Panama, which is duly recognized by the Constitution. The ACP is directed by an administrator under the supervision of an 11 member board of directors, and has a workforce of approximately 9,000 people. The Panama Canal expansion was the largest infrastructure project since the Canal’s opening in 1914. Since its inauguration on June 2016, it increased the waterway’s capacity to meet the growing demand of maritime trade using larger vessels. The expansion consisted in a new set of locks on the Atlantic and Pacific sides of the waterway, creating a third lane of traffic and doubling the cargo capacity of the waterway. The Panama Canal will continue to provide the world with value for years to come.

II. FOREIGN INVESTMENT

A. General Absence of Restrictions

Panama boasts one of the most open and welcoming economies to foreign investment in Latin America. There is no need to obtain prior approvals or to fulfill registration requirements for foreign investments in Panama. Capital can be moved freely in and out of the country, as the United States dollar has been legal tender and the common means of exchange since 1904. There is no central bank and there are no currency or exchange controls in Panama. As a result, Panama is now Latin America's largest recipient of foreign direct investment as a percentage of its GDP.

B. National, Fair and Equitable Treatment

Panama offers equal, fair and equitable treatment to national and foreign investors under its laws. In addition to these principles covered by local laws, the country has signed several bilateral investment agreements and free trade agreements, which include provisions granting most-favored-nation, and fair-and-equitable treatment to foreign investors.

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, Bahrein, the United Arab Emirates, Israel, Vietnam and the United Kingdom. As of 2017, the tax treaties with Mexico, Barbados, Qatar, Spain, Luxembourg, The Netherlands, Singapore, France, South Korea, Portugal, Ireland, the Czech Republic, the United Arab Emirates, Israel, Italy, Vietnam, and United Kingdom are currently in force. Panama also has tax information exchange agreements in force with the United States, Iceland, Canada, Finland, Norway, Sweden, Denmark, Greenland and the Faroes Islands.

On the multilateral front, Panama is also a party to the World Bank Convention on the International Centre for the Settlement of Investment Disputes (ICSID), and to the World Bank Convention that created the Multilateral Investment Guarantee Agency (MIGA).

C. Investment Stability Law

Foreign investors, as well as nationals, can benefit from stability with respect to labor, tax and customs duties under the 1998 investment stability law. Under this law, investors can register investments in excess of US\$ 2 million in certain qualifying 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 laws in the areas of employment relations, taxation and customs duties for a period of up to 10 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 (e.g., contracts related to land in Panama), parties to any commercial agreement can 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 agreement to the courts of Panama or to the courts of a foreign jurisdiction, as well as to arbitration and other alternative methods of dispute resolution.

III. STRUCTURES FOR DOING BUSINESS

Panama offers many advantages as a location for the incorporation of local companies, including the territorial taxation regime and the country's status as a major international port and banking and commercial center.

A. Corporations

Corporations (“sociedades anónimas”) are the most widely-used vehicle for conducting business in Panama.

(1) Incorporation Process

Any two persons, regardless of their nationality and domicile, may organize a corporation by executing articles of incorporation before a notary public and filing them at the Public Registry. The articles of incorporation are the main organizational document of a corporation. The following minimum information must be included in them:

- The names and addresses of each of the corporation's subscribers.
- The name of the company, which must not be the same or similar to the name of another corporation of any kind already in existence.
- The general purpose of the corporation.
- The paid-in capital and the number and par value of shares. If there are various classes of shares, the number of each class of shares, together with their designation, preferences, privileges, voting rights and restrictions should be stated. Alternatively, a provision may be included that these elements will be determined by a resolution of a majority of shareholders or by a resolution of a majority of directors.
- The number of shares each subscriber will take.
- The address of the company, and the name and address of the corporation's agent in Panama.
- The duration of the corporation. The duration may be perpetual or non-perpetual. If non-perpetual, the duration is expressed either as a date certain or as a number of years.

- The number of directors, which may be no less than three, including their names and addresses.
- Any other lawful clause that the corporation's subscribers wish to include.

Corporations may also adopt by-laws to further regulate their internal affairs, but are not required to do so.

(2) Corporate Name

Corporations may adopt any corporate name, expressed in any language; however, the name must include the word "Corporation", "Incorporated", "Sociedad Anonima" or any of their abbreviations: "Corp.", "Inc." or "S.A.", which denotes that the entity is a corporation. The suffix "Limited" or "Ltd." by itself may not be used for corporations, and certain other words, such as "bank", "trust", "insurance" and the like, are reserved for companies licensed to operate in these regulated businesses.

(3) Corporate Purpose

Corporations are permitted by law to engage in any lawful business or activity in and outside Panama. The list of corporate purposes in the articles of incorporation does not preclude the corporation from pursuing other activities not so specified, unless expressly prohibited in such articles. Corporations that wish to carry out regulated activities, such as banking, insurance, securities or trusts, must obtain the approval of the government agency that regulates such activities.

(4) Capital

Corporations must have an authorized capital which may be stated: (i) in terms of a certain sum of money divided into a stated number of shares with a stated par value each; or (ii) in terms of a stated number of shares without par value; or (iii) a combination of both. The authorized capital may be stated in any currency.

There is no minimum or required paid-in capital. Shares may be either paid in full upon issuance or paid over time, except for bearer shares, which must be fully paid when issued.

All bearer share certificates issued by Panamanian corporations must be deposited with authorized custodians.

(a) Corporations that have bearer shares validly issued and outstanding prior to May 4, 2015. Corporations with bearer shares validly issued and outstanding prior to May 4, 2015 had a transition period that expired on December 31, 2015 to deliver the certificates issued to the bearer to an authorized custodian together with a sworn statement including certain identifying information regarding the owner of the shares.

For corporations incorporated before May 4, 2015 that wished to maintain the possibility of issuing bearer shares, the board of directors or the shareholders had to authorize the company to avail itself to the regime of custody, and that authorization had to be registered in the Public Registry. In these cases, the delivery of the shares issued to bearer to an authorized custodian had to be made together with the sworn statement, before December 31, 2015.

After December 31, 2015, the articles of incorporation of Panamanian corporations that did not avail themselves to the regime of custody are deemed automatically amended by operation of law, prohibiting the issuance of bearer shares.

(b) Corporations that issue bearer shares after May 4, 2015. Corporations that wish to allow the issuance of bearer shares after May 4, 2015 shall deliver the share certificates issued to the bearer to an authorized custodian within a period of twenty (20) days from the date on which the issuance of bearer shares is approved. In these cases it would also be necessary for the board of directors or the shareholders to authorize the company to avail itself to the regime of custody, and register that authorization in the Public Registry. If the holder of a share certificate issued to bearer after May 4, 2015 does not provide the information and the sworn statement within the time-frame established therein, the company shall annul the bearer shares thus issued.

The share certificate issued to bearer together with the sworn statement must be, at all times, held by an authorized custodian.

All shares of stock issued by a corporation must be registered in the corporation's share register. It is not necessary to maintain the share registry in physical form. The registry may

be maintained in an electronic format; however, the electronic document must clearly state the required information and certain measures must be taken to guarantee that the information cannot later be modified or deleted.

The share register is a private document; therefore, there is no requirement to file the names of the shareholders with the Public Registry of Panama. The share registry must include the names of all of the corporation's shareholders, with the exception of holders of bearer shares, together with their address, the number of shares held, the date on which shares were acquired and either the amount paid for the shares or an annotation that the shares are fully paid. Moreover, a copy of the share register must be kept by the Registered Agent.

(5) Voting Rights

Generally, each share of common stock entitles its holder to one vote in all matters to be decided by shareholders. However, non-voting shares, both preferred and common shares, as well as limited voting rights, and shares with special voting rights, are all permitted. Voting trust arrangements are lawful. A valid voting trust arrangement requires the following:

- Shareholders must sign a voting trust arrangement.
- Share certificates must be delivered to the company and cancelled, and new share certificates must be issued in the name of the trustee.
- An annotation must be made in the share registry.
- A true copy of the voting trust arrangement must be filed with the corporation.

(6) Shareholders

No minimum or national requirements. There is no required minimum number of shareholders, and a corporation may be wholly-owned by any single shareholder. There are also no nationality or residency requirements applicable to shareholders. Shareholders may be individuals or legal entities.

Meetings. Shareholders meetings may take place anywhere in the world, if so provided in the articles of incorporation. There are no requirements to hold annual meetings or a minimum number of meetings per year. However, shareholders owning at least 5% of the issued

and outstanding voting shares have the right to request that a shareholder meeting be called. The articles of incorporation or by-laws may also grant this right to a smaller percentage of shareholders. Notice of meetings must be given not less than 10 and no more than 60 days before the meeting, unless the articles of incorporation provide otherwise. Shareholders may waive notice of meetings, and may vote by proxy holders. The law does not specify the percentage of shares or shareholders that must be represented at a shareholder meeting to constitute a quorum; therefore, it is generally assumed that a simple majority is required. The required quorum is usually specified in the company's articles of incorporation or by-laws. Ordinarily, shareholder decisions are adopted by holders of a majority of the issued and outstanding shares entitled to vote on the matter under consideration, but a supermajority vote for specific matters may be required by the corporation's articles of incorporation. Shareholder resolutions may be adopted either at meetings or by written resolutions in lieu of meetings, which may be signed in different locations on different dates.

Powers. The following corporate decisions are reserved by law to shareholders: (i) the amendment of the articles of incorporation; (ii) the election and removal of directors; (iii) the transfer of all or a substantial portion the corporation's assets (unless otherwise provided in the articles of incorporation); (iv) the granting of security interests on corporate assets for the benefit of third parties (unless otherwise provided in the articles of incorporation); (v) the merger, spin-off or transformation of the corporation; (vi) the continuation of the corporation in a foreign jurisdiction; (vii) the dissolution and winding-up of the corporation; (viii) the reactivation of the corporation and (ix) the removal or replacement of the liquidator of the corporation.

Shareholder agreements. Shareholder agreements are lawful in Panama.

Limited liability. Shareholders are not personally liable for the obligations of the corporation. Shareholders are only liable for the unpaid portion, if any, of the subscription price of the shares that they owe to the corporation.

(7) Board of Directors

Board composition. The board of directors must be composed of at least three members. There are no nationality or residency requirements for directors, nor are directors required to be shareholders of the corporation. Directors may be individuals or legal entities.

Election and removal. Directors are elected and removed by the shareholders, although vacancies may be filled by a resolution of the remaining directors, if not prohibited by the articles of incorporation. Directors may be removed from office by the shareholders with or without cause.

Duties and powers. Panamanian law entrusts the control, management and supervision of the business and affairs of a corporation to its board of directors. The board of directors exercises all corporate powers that are not expressly reserved to shareholders by law, by the articles of incorporation or the by-laws of the corporation.

Meetings. Meetings of the board of directors may be held anywhere in the world, unless restricted by the articles of incorporation or the by-laws. Directors are entitled to receive notice of all meetings and may waive notice of meetings. Directors may vote by proxy, if so provided in the articles of incorporation. The default quorum to hold a meeting is a majority of the directors in office. Decisions of the board of directors are adopted by the favorable vote of the majority of the directors present at the meeting. Directors' resolutions may also be adopted by written resolutions in lieu of a meeting.

Liability of directors. As a general rule, directors are not personally liable for the obligations of the corporation. However, directors have a general duty of care to the corporation and may become personally liable for negligence in the discharge of these duties. In addition, directors may be held jointly and severally liable for certain specific acts as outlined in the Code of Commerce. Furthermore, directors may be held liable to creditors of the corporation for certain acts which may impair the capital of the corporation.

(8) Officers

Corporate officers are appointed and removed by the board of directors. Corporations are required to have at minimum a president, a secretary and a treasurer, and may have such other officers as the board of directors determines. The officers may be the same persons as the directors, but need not be directors or shareholders. The same person may hold more than one office.

(9) Corporate Records

Corporations are required to keep minutes of director and shareholder meetings and a share registry. Corporate records may be kept in or outside of Panama. Corporate records may be maintained in physical or in electronic form. Shareholders have a right to access this information.

(10) Accounting Records and Underlying Documentation

Corporations that do not carry out commercial operations within the Republic of Panama are required to keep accounting records and underlying documentation at the offices of its Resident Agent or in any other place within or outside the Republic of Panama as approved by the Board of Directors. In the latter case, corporations are obligated to provide to the Resident Agent the following information:

- Physical address where the accounting records and underlying documentation are kept.
- Name and contact details of the person who keeps custody of the accounting records and underlying documentation.

In the event the accounting records and underlying documentation are kept outside the Republic of Panama, the corporation shall be obligated to deliver such copies to the Resident Agent within 15 business days following the notice from the competent authority.

In the event of any change in the above information, the Resident Agent shall be informed within 15 business days.

The accounting records and underlying documentation shall be maintained and be available for at least 5 years after the relevant commercial transactions have been completed or after the date the corporation ceases operations.

(11) Transfer of Shares

In general, shares may be freely transferred, unless restrictions are included in the articles of incorporation or by-laws of the corporation. However, any clause which places an

absolute prohibition on the transfer of shares will be null. All share transfers must be noted in the share registry. In addition, a shareholder may exchange bearer shares for registered shares, or vice versa, provided that this is stipulated in the articles of incorporation.

The formalities for the transfer of title to property over the shares of a corporation depend upon whether the share certificates representing such shares are issued in registered form or to the bearer. Transfer of title to property over bearer shares is made by the delivery of a formal notification to the authorized custodian of the share certificates from the current owner together with a sworn statement from the new owner stating his/her name, nationality, country of incorporation (if applicable), passport number (or corporate registration number), physical address, phone number and email.

If the shares are represented by share certificates in registered form, title to property over the shares is transferred by the endorsement and delivery of the share certificates to the transferee. In such cases, the transfer of shares is not binding on the corporation until the transfer of shares is duly noted in the share register of the corporation.

(12) Creating a Security Interest on Shares

Security interests may be granted on shares. The Corporation Law does not place any restriction or limitations on a shareholders ability to grant a security interest on shares; however, the articles of incorporation may include such restrictions. In general, taking a security interest on shares does not automatically entitle the holder of such an interest to any shareholder rights. There is no obligation on the shareholder to inform the company of the creation of a security interest on shares.

(13) Amendments to the Articles of Incorporation

Prior to the issuance of shares, the articles of incorporation may be amended by approval of the corporation's subscribers. After shares have been issued, amendments to the articles of incorporation must be approved by either (i) all of the shareholders with voting rights or (ii) the majority of shareholders with voting rights in the matter at a shareholders meeting. If the amendments alter the preferences of any class of shareholders, or authorize the issuance of shares

with preference over any other class of shares, the resolution must be approved by the majority of each class of shareholders with voting rights in a duly constituted shareholder meeting.

(14) Registered Offices and Resident Agent

There is no requirement for a corporation to have a registered office in Panama. However, every corporation must have a resident agent in Panama, who must be either a lawyer or law firm. The resident agent is empowered by law to file corporate documents with the Public Registry on behalf of the corporation. The resident agent also processes the payment of the corporation's annual franchise tax. However, the resident agent is not the proper party to receive service of process of documents on behalf of the corporation.

Prior to the establishment of the professional relationship between the resident agent and the corporation, the resident agent must apply know-your-customer measures to identify the beneficial owner of the corporation and gather the identification documents required by law. This information is strictly confidential and must not be revealed to third parties without an order from a competent court.

(15) Annual Franchise Tax

All corporations are required to pay the government a franchise tax of US\$300 every year, before July 1 (in the case of corporations organized in the first semester of the year) or before January 1 (in the case of corporations organized in the second semester of the year). Late payments are subject to a US\$50 surcharge per year or for any portion of the year. Failure to pay the annual franchise tax when due also has the effect of prohibiting the registration of any act, document or agreement or the issuance of any certificate related to the company at the Panama Public Registry Office. If a company misses three consecutive or alternate payments, a fine of US\$300 will be applied and a note will be made on the company's file in the Public Registry indicating that the company is in arrears. If a company misses 3 consecutive payment periods, the Public Registry will suspend the corporate rights of corporations subject to the order of the DGI.

Once the suspension has been recorded with the Public Registry, corporations shall have a term of 2 years in order to be reactivated, which will entail a fine of US\$1,000.00. If the

aforementioned term expires, the Public Registry shall proceed with the striking off, thus considering the corporation dissolved.

(16) Dissolution

The existence of the corporation terminates upon the expiration of the term set forth in its articles of incorporation, if any such term has been set, or by a shareholder decision. In the latter case, a certificate of dissolution must be recorded before the Public Registry, and a notice of dissolution must be published in a newspaper in Panama.

After dissolution, the company will remain in existence for the purpose of winding up the affairs of the corporation. The shareholders may appoint the trustees of the liquidation, and in the absence of an express resolution regarding this matter, the directors in office will fill this role until the end of the liquidation or until the shareholders expressly appoints a trustee.

The Shareholders will continue to exercise all the powers reserved to them by law or by the articles of incorporation during the process of liquidation. However, the corporation will only be entitled to exercise the activities intended to successfully wind up the company.

Once the liquidation is completed and the corporate assets have been distributed accordingly, the shareholders will notify this to the Public Registry by the recording of a resolution of the shareholders in connection with this matter.

A corporation dissolved by the resolution of its shareholders may be reactivated at any moment prior to the registration of the liquidation notice before the Public Registry. The resolution of reactivation must be adopted by a majority of the shareholders in a meeting called for this purpose. Even after the recording of the dissolution before the Public Registry, the corporation may be reactivated if any of its assets were not distributed.

(17) Merger

A Panamanian corporation may merge into another Panamanian corporation or consolidate with another Panamanian corporation to form a third corporate entity. These restructurings require directors' approval and shareholders' approval by majority vote of all shares with the right to vote on the matter. A Panamanian corporation may also merge with a foreign

company with either entity surviving the merger. If the surviving corporation is the foreign corporation, this corporation must remain registered with the Public Registry for a period of five (5) years and maintain a representative in Panama throughout this period who is duly authorized to receive notifications as a representative of the company. If there is no representative available, notifications will be received by the company's resident agent. The merger becomes effective upon recordation of the relevant merger documents and corporate authorizations at the Public Registry.

(18) Spin-off

A Panamanian corporation may spin-off one or more of its divisions by transferring all or part of its assets to one or more existing companies, or to one or more newly incorporated companies. Every shareholder of the parent company must become a shareholder in the spin-off company in the same proportion that they hold in the parent corporation.

The parent company must notify the DGI of its intention to spin-off thirty (30) days prior to the date of the meeting of the shareholders that will be held to discuss the matter. Once discussed and approved, the resolution of the shareholders will be recorded at the Public Registry.

From the date of the recording of the resolution of the shareholders in which the spin-off is approved, the spined-off company will substitute the parent company in all the assets, liabilities, rights and obligations attributed to the spined-off company by the terms of the spin-off.

After the recording of the resolution of the shareholders, an extract from the Public Registry with the details of the spin-off will be published in a national newspaper for three (3) days. The creditors of the parent company will be able to object to the spin-off within thirty (30) days from the last day of the publication of the extract.

The spined-off company will be jointly and severally liable together with the parent company to the creditors of the latter if the transference of the assets under the spin-off proves to be detrimental to such creditors. The liability of the spined-off company is limited to the amount acquired in the spin-off.

(19) Continuation

(a) Continuations to Panama. Continuation is in effect a change in the laws governing the very existence of the corporation, or something akin to the adoption of a new nationality. The laws of Panama provide that a foreign corporation may continue into and become a corporation organized under the laws of Panama. Continuation in Panama is done by registering the following documents in the Public Registry:

- 1) Evidence that the company is constituted under the laws of its jurisdiction, issued by the relevant authority or, if this is not possible, through a notarized certificate.
- 2) A certified true copy of the agreement or of the resolution in which the relevant corporate body approves the company's continuation in Panama.
- 3) Articles of incorporation that adhere to the laws of Panama with an indication that these articles replace the company's former corporate organization documents.

This is the case whether or not the laws of the country where the corporation was originally incorporated provide for such a result.

(b) Continuation from Panama. Panamanian law expressly recognizes the continuation of a Panamanian corporation into a foreign jurisdiction without a loss of corporate identity or interruption of the corporate existence. Continuation from Panama is carried out by presenting a certificate or certified true copy of the decision in which continuation was agreed upon, together with certification of the company's registration in the foreign jurisdiction, to the Public Registry. In essence, the Panamanian corporation is allowed to continue as a foreign corporation under the laws of the chosen, foreign jurisdiction.

B. LLC

In recent years, LLC's ("sociedades de responsabilidad limitada") have gained popularity as vehicles for doing business in Panama, especially for US tax payers; however, it is important to note that Panamanian LLC's are different from US limited liability companies and have unique characteristics as provided by Panamanian law.

(1) Incorporation Process

As is the case with corporations, organizing LLC's in Panama is simple. Any two persons, regardless of their nationality and domicile, may organize a LLC's by executing an organizational agreement and filing it at the Public Registry. The following minimum information must be included in the organizational agreement:

- The names and addresses of each of the company's grantors and partners.
- The address of the company.
- The duration of the company.
- The general purpose of the company, which may be either broad or limited in scope.
- The authorized capital, which may be in any currency, and the quotas into which the company is divided and the value of each.
- The designation of the company's administrator(s), who may or may not be members.
- The designation of one or more officers or representatives and the powers conferred to each.
- The designation of a resident agent, who must be a lawyer or law firm.
- Any other lawful clause which the grantors wish to include.

(2) Company Name

LLC's may adopt any company name, expressed in any language, provided that it includes a word or abbreviation, such as "Sociedad de Responsabilidad Limitada", "S. de R. L.", "Limited Liability Company" or "LLC", that denotes that the entity is a limited liability company. The name of the company may not be the same or similar to the name of another company of any kind already in existence.

(3) Company Purpose

LLC's may engage in any lawful business or activity in and outside Panama.

(4) Capital

The authorized capital of LLC's may be stated in any currency. There is no minimum or maximum authorized or paid-in capital required by law. The authorized capital must be divided into quotas, and the allocation of quotas among members must be stated in the organizational agreement.

(5) Members

No nationality requirements. LLC's must have a minimum of two members. However, there are no nationality or residency requirements applicable to members. The identity of the members must be included in the organizational agreement; as such, unlike in the case of a corporation, the identities of the members of an LLC are a matter of public record.

Meetings. Meetings of members may take place anywhere in the world. There are no requirements to hold an annual meeting or a minimum number of meetings per year, although the organizational agreement may include such a requirement. However, members holding at least 5% of the paid-in capital of the company may request that a meeting of members be called. Notice of meetings must be given not less than 10 and not more than 60 days before the meeting, unless the organizational agreement provides otherwise. Members may waive notice of the meetings. Members may also be represented at meetings by proxy holders. The default quorum to hold a meeting is a majority of the paid-in capital, unless the organizational agreement requires a special quorum. Ordinarily, resolutions of members are adopted by members holding at least the majority of the paid-in capital of the company, but a supermajority vote for specific matters may be required by the organizational agreement. Members may adopt written resolutions in lieu of a meeting.

Powers. Members have the exclusive right to approve amendments to the organizational agreement; to approve or reject balance sheets and statements of profits and losses; to approve distributions of profits; to bring any actions against the administrators of the company; to remove and replace the administrators; to approve the dissolution, continuation, merger, spin-off or transformation of the company and to take any other actions that may be expressly reserved to members in the organizational agreement.

(6) Administrators

Composition. Administrators may be individuals or legal entities. Administrators may be appointed in the organizational agreement at the time of organization of the company or at a later date by a resolution of members.

Election and removal. Administrators will remain in office during the term of their respective appointments, unless they resign or are removed by the members before the expiration of their term.

Duties and powers. Administrators of LLC's are in charge of the companies' businesses and affairs. The organizational agreement, however, may require administrators to request special authorization from members to undertake any operations out of the ordinary course of business of the company; to dispose of company assets; to transfer company assets into trusts; to pledge or mortgage company assets; and to issue guarantees on behalf of the company to secure third-party obligations.

Administrators' liability. Administrators are liable to the company, its members and its creditors for damages arising from fault, willful misconduct or negligence on their part, from the violation of any law, or from the breach of the organizational agreement of the company, and, in general, from the inadequate discharge of their duties.

(7) Accounting Records and Underlying Documentation

LLC's are obligated to comply with the safekeeping of accounting records and underlying documentation in the same manner described for corporations under section III, A (10) Accounting Records and Underlying Documentation above.

(8) Creating a Security Interest on Quotas

Unless prohibited in the organizational agreement, security interests may be granted on member quotas. In this case, the members rights would be transferred to the holder of the security interest. The security interest may be created in a public or private document, which may or may not be registered with the Public Registry, but the member must inform the company of its creation and extinction.

(9) Dissolution and Liquidation

The dissolution and liquidation of an LLC may occur in any of the following events:

- As provided for in the partnership agreement;
- Pursuant to a resolution of the majority of the members;
- When the purposes for which the company was created have been achieved, or it becomes manifestly impossible to continue business operations;
- Upon expiration of the established term in the partnership agreement;
- If, upon a merger with another company, the LLC is not the surviving company;
- For a reasonable cause pursuant to judicial rulings;
- If the assets of the company have been reduced to less than half the capital determined in the partnership agreement; and
- In cases where the company remains has less than the required two (2) members.

Once the LLC has been dissolved and the proper dissolution document has been registered at the Public Registry, the company shall maintain its legal status for the purposes of liquidation and thus shall only be able to carry out activities for winding up, such as recover any loans made, pay any and all outstanding debts, dispose of assets, initiate judicial or extra-judicial proceedings and distribute its net assets after liquidation to the members, in proportion to their capital share. The members may appoint the trustees of the liquidation or, in the absence of an express resolution regarding this matter, the administrators in office will fill this role until the end of the liquidation or until the members expressly appoint a trustee.

The members will continue to exercise all the powers reserved to them by law or by the organizational agreement during the process of liquidation. However, the LLC will only be entitled to exercise the activities intended to successfully wind up the company.

Once the liquidation is completed and the corporate assets have been distributed accordingly, the members will notify the Public Registry by the recording of the resolution of the members in connection with this matter.

An LLC dissolved by a resolution of its members may be reactivated at any moment prior to the registration of the liquidation notice with the Public Registry. The resolution of reactivation must be adopted by a majority of the members in a meeting called for this purpose. Even after the recording of the wind up before the Public Registry, the LLC may be reactivated if any of its assets were not distributed in liquidation.

(10) Transformation, Mergers, Spin-Off and Continuation

LLC's may transform into any other type of company under Panamanian law, or may merge with any other type of company, pursuant to an agreement of the members, entered into in accordance with the provisions of the organizational agreement. In the case of mergers, LLC's may merge or become consolidated with any other type of Panamanian entity or with a foreign company pursuant to a resolution of the members stating the name of the surviving entity and the rights of the existing members under the surviving entity. Any such merger or consolidation must be registered with the Public Registry.

A Panamanian LLC may spin-off one or more of its divisions by transferring all or part of its assets to one or more existing companies, or to one or more newly incorporated companies. Every member of the parent company must become a member in the spin-off company in the same proportion that they hold in the parent corporation.

The parent company must notify the DGI of its intention of spin-off thirty (30) days prior to the date of the meeting of the members that will be held to discuss the matter. Once discussed and approved, the resolution of the members approving the spin-off will be recorded at the Public Registry. From the date that said resolution is recorded before the Public Registry, the spined-off company will substitute the parent company in all its assets, liabilities, rights and obligations attributed to the spined-off company by the terms of the spin-off.

After the recording of the resolution of the members, an extract from the Public Registry with details of the spin-off will be published in a national newspaper for three (3) days . The creditors of the parent company will be able to object to the spin-off within thirty (30) days from the last day of the publication of the extract.

The spined-off company will be jointly and severally liable together with the parent company to the creditors of the parent company if the transference of the assets under the spin-off

proves detrimental to such creditors. The liability of the spin-off company is limited to the amount acquired in the spin-off.

An LLC existing under the laws of Panama may be continued in a foreign jurisdiction, pursuant to the provisions and requirements of the foreign jurisdiction. A foreign LLC may continue to exist under the laws of Panama in accordance with the procedure of incorporation of LLCs.

C. Other Forms of Business Organizations

Other types of business organizations in Panama include limited partnerships (“sociedades en comanditas”) general partnerships (“sociedades colectivas”), and civil companies (“sociedades civiles”). Limited partnerships and general partnerships are seldom used, and civil partnerships are mostly used to carry out professional activities (The practice of Law, for instance).

D. Un-incorporated Forms of Doing Business

Unassociated Joint-venture structures and consortia are permitted in Panama, although they are not recognized per se as legal entities. Rather, these are only contractual arrangements between the parties to the venture. The contract should establish the purpose, interest and other conditions of the joint-venture or consortia; in the absence of these provisions the relationship will be governed by the Code of Commerce. The parties to the venture will be the actual persons or companies who associate to carry out the business and each will be personally and jointly and severally liable for the obligations of the venture.

Sole proprietorships are also possible in Panama, although seldom used for business ventures.

E. Branches of Foreign Companies

Foreign companies may also operate in Panama by establishing a branch. In order to register a branch of a foreign company, the following documents must be registered at the Public Registry: (i) the articles of incorporation, or other organizational company documents (ii) a

certificate of existence and good standing, (iii) the list of directors and officers of the corporation, (iv) a balance sheet of the company and (v) a resolution of the Board of Directors authorizing the opening of the Panama branch, allocating capital to the Panama branch and appointing a resident agent for the branch.

There are no significant differences between operating in Panama through a local subsidiary, or through a branch of a foreign corporation. The most significant difference relates to the treatment of dividend taxes, as explained in the taxation section of this guide.

IV. STRUCTURES FOR ESTATE PLANNING

A. Foundations

(1) Private Interest Foundations

Panama's private interest foundations are distinct legal entities frequently used by individuals as a vehicle to protect and transfer assets to future generations. Private interest foundations are frequently used as an alternative to the Anglo-Saxon trust, which allows the founder to keep a greater control over the entity and certainly over the implementation of his wishes. Unlike companies, foundations do not have shareholders, but they do have a management body similar to a board of directors known as the foundation council. Although foundations may not be profit oriented, they may engage in commercial activities in a non-habitual manner or exercise the rights deriving from the capital of business companies held as part of the foundation's assets, as long as the proceeds from such activities are used exclusively for the foundation's objectives.

(2) Establishment of a Foundation

Foundations are established by a public document known as the foundation charter, which is executed by a natural or legal person, known as the founder, who may or may not be a beneficiary of the foundation. The foundation charter is subsequently registered in the Public Registry of Panama. It must include certain minimum information as provided by Panama's foundation law, such as the name of the foundation, a statement of the value of the initial funds or assets that will be transferred to it, its purpose, and the names of the foundation council members whose duty it is to manage the foundation's affairs and assets.

In addition, foundations may adopt regulations, which is a legally binding document that governs the actions of the foundation council, and contains, among other things, the identity of the beneficiaries and their respective interest in the foundation. The regulations are a private document that does not have to be registered with the Public Registry.

(3) Assets of a Foundation

Unlike a trust, a foundation is a legal entity and, as such, it has the legal capacity to acquire rights and obligations on its own behalf. Foundations may hold assets of any kind, present

or future, situated in Panama or elsewhere, which may be contributed by the founder or by any other person.

Excepting situations when the founder's transfer of assets to the foundation constitutes an act in fraud of creditors, the rights and actions of creditors of the founder or of third parties shall be time-barred after three (3) years from the date of the contribution or transfer of the asset to the foundation.

The Foundation Council of a Private Foundation may approve the constitution of pledges or mortgages over the foundation assets, whether to secure the Foundation's own obligations or those of third parties, provided that the founder does not expressly forbid it in the Foundation Charter.

(4) Management of a Foundation

As stated previously, the affairs of the foundation are managed by the foundation council, and its powers and responsibilities are established in the charter and/or the regulations. Unless expressed otherwise in the foundation's charter or regulations, the council will have the following duties and obligations:

- Administer the foundation's assets in accordance with the charter and regulations.
- Engage in any action and conclude any contracts or other legal business that may be convenient or necessary to achieve the objectives of the foundation.
- Inform the beneficiaries of the financial status of the foundation, as outlined in the charter or regulations.
- Distribute assets or resources to beneficiaries as established in the charter or regulations.
- Carry out any actions or contracts entered into by the foundation, as permitted by law.

The number of members of the council may not be less than three, unless a legal entity acts as council, in which case the council may have a sole member. There is no restriction as to the nationality or domicile of council members.

In addition, Panama's foundation law expressly allows the founder to appoint a protector or other supervisory committee to oversee the council. The supervisory committee may include both natural and legal persons, such as auditors. The powers of the supervisory committee

should be outlined in the foundation charter or regulations, and may include, among others, the following:

- Ensure that the foundation is accomplishing its objectives.
- Request that the council submit its accounts for review.
- Modify the objectives of the foundation if the original objectives become too difficult or impossible.
- Appoint new members of the council.
- Increase the number of members of the council.
- Countersign resolutions adopted by the council.
- Monitor the foundation's assets and ensure that they are being used for their stated purpose.
- Exclude beneficiaries and add new beneficiaries as permitted in the charter or regulations.

(5) “Forced Heirship”

The existence of legal provisions of forced heirship regarding successions in the domicile of the founder or of the beneficiaries may not be opposed to the foundation, nor shall they affect its validity or prevent the attainment of its objectives in the manner provided in the charter or its regulations; moreover, there are no “forced heirship” laws in Panama.

(6) Taxes

Foundations are required to pay an annual franchise tax of US\$ 400 (US\$ 350 the first year upon registration). Late payments are subject to a US\$50 surcharge per year or for any portion of the year. Failure to pay the annual franchise tax also has the effect of prohibiting the registration of any act, document or agreement, or the issuance of any certificate related to the foundation. If a foundation fails to pay the annual franchise tax for three consecutive or alternate periods a fine of US\$ 300 will be applied and a note will be made on the foundation's file in the Public Registry indicating that the foundation is in arrears.

The tax principle of territoriality applies to private interest foundations and, as such, when the foundation's patrimony only includes income producing assets that are located outside of Panama or other income that is produced from sources outside Panama, the foundation will be exempt from all taxes and charges on its creation, modification, dissolution and liquidation, or the transfer or encumbrance of the foundation's assets.

B. Trusts

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

(1) Establishment of a Trust

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 thereon must be authenticated by a notary public, and the deed must contain the following:

- The clear and complete designation of the settlor, the trustee and the 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 which 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 a law firm and who must countersign the trust deed.
- The address of the trust in Panama.
- 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 fulfillment 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 settlor and the trustee, or the trustee alone, makes a declaration to this effect.

(2) Assets of a Trust

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 settlor 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.

The trust assets are for all purposes deemed to be separate from those of the trustee or settlor, and are therefore protected against claims of preventive attachments (“secuestros”) or attachments in aid of execution (“embargos”) by creditors of the settlor 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.

(3) Management of a Trust

The trustee may be a duly licensed natural or legal person, with no restriction as to his/her/its nationality or domicile. The powers and duties of the trustee must be included in the trust deed. Pursuant to Law 21 of 2017, acting as a trustee of a Panamanian trust requires a trust license issued by the Superintendency of Banks.

The trust deed may establish limitations on the liability of the trustee, except for losses or damages caused by gross negligence or willful misconduct. Unless otherwise provided for, the trustee will be responsible for any losses 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 settlor from appointing a supervisory body to oversee the actions of the trustee.

The settlor 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, settlor, beneficiaries or Attorney General and will transfer the assets of the trust to the substitute trustee.

(4) Trust Licenses

Individuals and companies providing trust services are required to obtain a trust license and are regulated by the Superintendency of Banks.

(5) Taxes

Unlike the 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 neither the income producing assets are located in Panama nor is any other income earned derived from a Panamanian source, neither the income nor the distributions from said income to the beneficiary will be subject to tax.

V. NOTICE OF OPERATION

A. Notice of Operation (Aviso de Operación)

Any person or legal entity that intends to engage in a commercial service, or industrial activity in Panama must obtain a Notice of Operation from MICI. In general, this is the only permit required for entities involved in unregulated activities.

Certain types of businesses must first register with the pertinent regulatory agency before applying for the Notice of Operation. These businesses include banks, insurance companies, financial entities, companies engaged in sales of arms, security and transportation companies, real estate brokerage, brokerage houses, construction companies, and oil companies, among others.

It should also be noted that retail activities are restricted under the Constitution to Panamanian nationals. As such, a Notice of Operation may not be granted to foreigners seeking to register this type of business.

Notices of Operations are not required for individuals or legal entities 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, wherever they are not considered commercial activities;
- Businesses with a multinational business headquarters license;
- Companies operating in the Panama-Pacifico Special Economic Zone;
- Individuals or legal persons established within the international duty free zone of the Colon Free Zone or any other free zone.

In addition, limited liability microenterprises are not required to obtain a Notice of Operation.

The Notice of Operation is obtained by completing a simple process through the 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.

The Notice of Operation automatically leads to other registrations and processes, such as the processes for obtaining a Taxpayer Identification Number (“Registro Único 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 (see the Labor and Employment section of this document) and other institutions.

The cost for obtaining the Notice of Operation is US\$15.00 for individuals and US\$55.00 for legal persons. The annual tax incurred by holders of the Notice of Operation is 2% of the company’s capital, with a minimum payment of US\$100.00 and a maximum payment of US\$ 60,000.00. Natural or legal persons whose invested capital is less than US\$ 10,000.00 are exempt from this tax.

VI. BANKING AND OTHER FINANCIAL INSTITUTIONS

A. Overview of Financial Institutions

Since the 1970s, Panama has been a leading financial center in Latin America. There are over 75 banks in Panama (both local and international) , as well as numerous insurance and reinsurance companies, thrift companies (“financieras”), leasing companies, and factoring companies.

Among the factors that have contributed to making Panama a leading financial center in the region has been the absence of currency controls as the result of use of the US dollar as the official legal tender, the absence of a central bank, and the existence of a stable and regulated financial system, overseen by regulatory authorities with comprehensive supervisory powers over their respective industries.

B. Banks

(1) Types of Banks

Three types of banking licenses are issued in Panama: (i) general banking license, (ii) international banking license, and (iii) banking license for a representative office.

General banking licenses are issued to banks that intend to engage in the business of banking within Panama, as well as to carry out from Panama banking transactions that are executed, performed or take effect outside of Panama. International banking licenses are issued to banks that only intend to engage in transactions that are executed, performed or take effect outside of Panama from an office established in Panama. Representative office banking licenses are issued to banks that only intend to act as a marketing liaison between its head office or other offices and its clients. Banks operating under a representative office banking license are not allowed to take any deposits, make any loans or engage in any banking business in Panama, either with resident or non-resident clients.

Any foreign bank may apply for a general, international or representative office banking license. Foreign banks and their subsidiaries or branches operating in Panama must be overseen by the national banking authority in their home jurisdiction.

Banks with a general banking license must keep a minimum paid-in share capital of US\$10,000,000.00, while banks with an international banking license must keep a minimum paid-in share capital of US\$3,000,000.00. All general license or international license banks are also required to comply with minimum capital adequacy ratios of 8%. Microfinance banks must keep a minimum paid-in share capital of US\$3,000,000.00. There is no minimum paid-in share capital required for representative banking offices.

(2) Banking Products

Banks in Panama offer world-class financial services in all major banking fields. For example, in private banking, banks offer their customers a wide array of investment products such as mutual funds, exchange traded funds, and treasury notes, as well as wealth management services and even accounts in foreign currencies. In retail, banks offer common checking accounts, checking accounts that pay interest, savings accounts, and time deposits (“plazo fijos”). They also offer diverse lending services, with mortgage-backed loans, auto loans and personal loans, among the most popular products. Commercial lending is also a prominent source of business for banks in Panama, including project financing, syndicated loans, credit lines, and daily overdrafts.

(3) Taxes

Under the Panamanian Tax Code, interest received from deposits with banks in Panama is exempted from taxation in Panama. This applies both to time deposits, savings accounts and all other interest generating accounts held with Panamanian banks. The exemption applies equally to Panamanians and foreigners.

However, unless a specific tax exemption applies interest payable to foreign creditors (that are not Panamanian taxpayers) by a borrower that makes use of any of the proceeds of the loan within Panama, is subject to taxation in Panama. The income tax in question is payable by a withholding by the borrower at an effective tax rate of 12.5%.

(4) Bank Secrecy

The principles of confidentiality of information in Panama are well-founded and date back to the Panamanian Constitution. The Banking Act sets forth specific provisions on bank secrecy, which provide the confidentiality that banks must keep vis-à-vis the SBP and vis-à-vis third parties, as well as the confidentiality to be maintained by the SBP vis-à-vis third parties.

Confidential information is also protected by (i) the Panamanian Criminal Code, which establishes prison sentences for whoever intentionally reveals or allows to be revealed confidential information acquired by virtue of their profession and (ii) the Panamanian Constitution which protects private correspondence and documents from examination or retention unless it is required by a competent authority for specific purposes prescribed by law and through appropriate legal mechanisms.

(5) Opening a Bank Account in Panama

There is no legal obligation on the part of companies doing business in Panama to open a bank account in Panama. However, from a practical point of view, it is advisable for every such company to open and maintain one or more bank accounts in Panama. These bank accounts will be useful at the time the company has to pay obligations to third parties in Panama, such as salaries to local employees.

Bank accounts in Panama may be maintained in balboas and US dollars. There are also some banks in Panama that may offer the possibility of opening bank accounts in euros and other currencies.

The requirements for opening bank accounts vary from bank to bank. However, in general, banks request the following information from companies seeking to open an account in Panama:

- Customer recommendations or references: Commercial and banking references of the company.
- The company will be asked to complete banking forms (i.e., account agreements, signature cards, etc.). In addition, the company will have to designate the persons authorized to sign on the account.
- Identification of dignitaries, directors, proxies and legal representatives: The board of directors of the company or another governing body will have to adopt resolutions (usually following the form suggested by the bank) pursuant to which the opening of the bank account is authorized and signatories are designated and provide copies of their identifications.

- Customer identification and verification, as well as certifications proving the incorporation and existence of the legal entity: The company will have to supply copies of its articles of incorporation and a certificate of good standing.
- Identification of the final beneficiary: Banks are required to have knowledge and confirmation of the ultimate beneficial owner in case the client is a company using relevant information obtained through reliable sources.
- Source and origin of resources or equity: It is understood that the source and origin of resources refers to the written justification on the origin of funds used to conduct any transaction.
- Customer financial profile and transactional profile.
- In addition, banks must perform due diligence procedures to get to know the company and its intended operations in Panama. The due diligence procedures would require the company to submit the appropriate information requested by the bank.

C. Thrift and Leasing Companies

The business of thrift companies (or savings and loans companies) is common in Panama, with several prominent “financieras” (as they are called in Panama) offering a wide range of lending products for their customers, including mortgage-backed lending.

Thrift companies are regulated by MICI and require authorization by the MICI to operate in Panama as well as a minimum paid-in capital of US\$ 500,000.00.

Leasing companies are also widespread with over 100 authorized entities currently operating in Panama. Leasing companies are also regulated by the MICI and require authorization by the MICI to operate in Panama, as well as a minimum paid-in capital of US\$100,000.00.

Thrift and Leasing companies are also required to comply with Panamanian laws to prevent money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction.

D. Factoring Companies

In Panama, the business of factoring (buying invoices at a discount in return for immediate cash) is a growing business. It is unregulated, except for compliance with Panamanian laws to prevent money laundering, terrorist financing and the financing of proliferation of weapons

of mass destruction. In addition to banks, there are several companies in Panama that are dedicated to factoring.

VII. FINANCING FOR BUSINESS OPERATIONS

A. General Overview

While straightforward loan financing remains popular in Panama, borrowers are increasingly tapping into the capital markets to take advantage both of investors' high liquidity in Panama, and the tax advantages afforded to financing that is structured through the local stock exchange.

Since its creation in 1990, the BVP has been an important part of the development of Panama's role as a regional financial center. The BVP is the largest dollar-based securities markets in the Central American region, although it has contracted in recent years due to the delisting of companies acquired by international conglomerates and the downturn in the global economy. Its operations are performed through qualified intermediaries (stockbrokers) who, with the BVP's prior authorization, may access the floor when in session.

B. Capital Market Financing

(1) Public Offering of Securities

Under the Securities Act, any issuer, underwriter or agent of an issuer that sells or offers to sell securities to the public must first register the securities with the SCM. There is no minimum size limit, trading record, working capital or free float requirement to register any securities with the SCM for public offering or trading on the BVP.

The registration process for a public offer of securities begins with the filing of a registration statement with the SCM. The registration statement must consist of two parts: (i) the prospectus, including financial statements, and (ii) all other information required by the SCM, including organizational documents, corporate authorizations and material contracts related to the offer. Petitions for registration filed with the SCM must be reviewed within thirty (30) days of the filing date. However, should the SCM have comments on any of the documents presented with the registration statement, the thirty (30) day period may be extended until such comments are addressed.

In order to list and trade securities on the BVP, a written petition to the board of directors of the BVP must be filed. This petition must include the prospectus and financial statements filed with the SCM, as well as other information required by the BVP, including organizational documents, corporate authorizations, material contracts related to the offer, and a certified copy of the resolution issued by the SCM authorizing the public offer of the securities.

Additionally, to negotiate securities through the BVP, said securities must be deposited with the Clearing Agency, which has a similar registration process and documentation requirements as the BVP. The filing of the petitions with the BVP and the Clearing Agency may be done while the registration process with the SCM is ongoing.

(2) Mandatory Registration

Companies with a certain amount of capital and number of shareholders must register with the SCM and become public companies under the Securities Act. Although no new capital is raised by this mandatory registration, the company does become subject to the Securities Act. There is no requirement, however, that these companies list their stock for trading on the BVP, although most do.

(3) Continuing Obligations

All issuers of registered securities must comply with the continuing obligations set out in the Securities Act as well as with applicable BVP rules, regardless of whether they are a domestic or foreign issuer in Panama. Some of these continuing obligations include filing annual and quarterly reports which discuss the issuer's financial and operating results, accompanied by audited financial statements for the respective period. Annual reports must be filed within three months from the end of the fiscal year and quarterly reports must be filed within two months from the end of each fiscal quarter. Issuers must also put out immediate press releases of certain material events identified in the Securities Act. Reports of material events should be filed with the SCM and disclosed to the market within one business day from the occurrence of the event (when the event is deemed irreversible).

Issuers of registered securities are also subject to other provisions of the Securities Act, which prohibit:

- Entering into certain fraudulent or deceitful activities;
- Misusing privileged or confidential information by insiders;

- Making of false or misleading statements of material facts, or omitting to state a material fact;
- Manipulating the price or the market of a security; and/or
- Forging any accounting or financial information.

(4) Offering Securities on a Non-Registered Basis

Companies may issue securities on a non-registered basis if the offer is exempt from registration under the Securities Act. Registration is not required under the Securities Act, among other instances, if the securities are offered:

- In a private placement;
- To institutional investors; or
- Under the correspondent broker exemption.

The two most commonly used exemptions in connection with raising capital are the private placement exemption and the institutional investor exemption. Investors acquiring securities in non-registered offers are usually institutional investors such as large banks, mutual funds, insurance companies and pension funds.

(a) Private Placement Exemption

Under the Securities Act, a private placement is any offer or series of offers of securities made to no more than 25 offerees (other than institutional investors, as defined below) domiciled in Panama, which result in sales to no more than 10 of those offerees within a period of one year. It is irrelevant for the purposes of the Securities Act whether the offer is made to existing clients or to new clients, whether the offer is made by telephone, fax, mail, courier, e-mail or personal visits, or whether the offer is made by local broker-dealers or by foreign broker-dealers. As long as the issuer, and its underwriters or agents, limit the distribution efforts, the securities are not required to be registered with the SCM. No mass mailings or public advertisement of the securities should be made in Panama, as this would be interpreted as an offer to more than 25 people.

(b) Institutional Investor Exemption

Under the Securities Act and its regulations, the following persons qualify as institutional investors and therefore any offer made to these persons is exempted from registration:

- (1) Sovereign states and any department, political subdivision, or agency thereof which is authorized to make investments in securities;
- (2) Licensed banks; insurance and reinsurance companies; investment companies registered with the SCM; investment trusts managed by licensed trustees; certain retirement and pension funds licensed to operate in Panama; and broker-dealers when they act on their own account and at their own risk; and
- (3) Any legal entity (such as a corporation, trust or foundation) domiciled in Panama, with a net worth of at least US\$1 million according to its most recent audited financial statements, which, on a regular basis during the two years preceding the offer, has dealt in securities, and whose key executives or the majority of its officers and directors have at least two years of experience dealing with securities.

As a general rule, offers made to institutional investors in Panama must be reported to the SCM by filing a report in a form prescribed by the SCM within fifteen (15) days of the offer. However, if the issuer of the securities is domiciled in a jurisdiction “recognized” by the SCM, such a filing with the SCM is not required. If the issuer is domiciled in a recognized jurisdiction, it is sufficient that the issuer comply with the disclosure requirements applicable to exempted offers to institutional investors under the laws of said jurisdiction.

If securities are offered and sold pursuant to this exemption, the following legend must be included in the offering material distributed to institutional investors:

“These securities have not been and will not be registered with the Superintendency of Capital Markets of the Republic of Panama under Decree Law N°1 of July 8, 1999 as amended (the “Panamanian Securities Act”) and may not be publicly offered or sold within Panama, except in certain limited transactions exempt from the registration requirements of the Panamanian Securities Act. These securities do not benefit from the tax incentives provided by the Panamanian Securities Act and are not subject to regulation or supervision by the Superintendency of Capital Markets of the Republic of Panama.”

Institutional investors that purchase non-registered securities pursuant to the institutional investor exemption must hold these securities for a year and during that period may only sell these securities to other institutional investors.

(c) Correspondent Broker Exemption

In addition to the above exemptions, the Securities Act allows broker-dealers licensed to operate in Panama to offer foreign securities to their clients domiciled in Panama without having to register those foreign securities with the SCM, provided that (i) the securities are not offered by public means of communication (e.g., newspapers, mass mailings, etc.) in Panama, (ii) the local broker-dealer does not actively solicit purchase or sale orders with respect to the securities to clients domiciled in Panama, (iii) the client is informed that the securities are not registered with the SCM, and (iv) the trade of the securities is executed outside of Panama by a broker-dealer licensed to operate in a jurisdiction recognized by the SCM. The relationship between the foreign broker-dealer and the Panamanian broker-dealer must be disclosed to the SCM and a copy of any agreement between these parties must be filed with the SCM.

(5) Other Exemptions

Offers of the following securities are also exempted from registration with the SCM under the Securities Act:

- Securities issued or guaranteed by the government of Panama;
- Securities issued by international organizations of which Panama is a member;
- Securities issued only to existing shareholders of an issuer in connection with certain corporate reorganizations and other corporate transactions; and
- Securities issued only to employees and directors as part of compensation plans.

C. Taking Collateral

A preferred lien or security interest may be created by contract under Panamanian law either as a (i) mortgage or a (ii) pledge. Mortgages may be either real property mortgages, when they are created in respect of immovable property, or chattel mortgages, when they are created in respect of movable property. Pledges may be created over tangible and intangible movable property.

(1) Real Property Mortgages

Real property must be mortgaged in accordance with Title XIV of the Civil Code. In addition to property that is traditionally considered real estate, the definition of real property in the Civil Code extends to certain movables that by legal fiction have been declared to be an immovable. These include anything permanently attached to the land and objects placed in

buildings by the owner which reflect an intention to permanently attach them, as well as machinery, equipment, etc. destined by the owner for the exploitation of an industry. Government concessions for the construction or exploitation of public works, such as electricity generation, as well as easements and other in rem (“derechos reales”) rights may also be mortgaged. Legislation has also extended the use of real property mortgages to certain movables, such as ships.

In order to create a mortgage, the owner of record of the land must enter into a mortgage contract with the lender by means of a public deed executed before a notary public in Panama, which must then be filed and recorded at the Public Registry.

When a mortgage is created as security for subsequent disbursements or future obligations, it is possible to execute and record the mortgage at the time of closing the transaction notwithstanding the fact that the public deed containing the mortgage contract will not satisfy the requirements of an executory title (“título ejecutivo”) because, among other things, the amount of indebtedness and repayment schedule have not yet been determined. Since recorded mortgages are satisfied in the order of filing at the Public Registry, this type of mortgage (known as a “hipoteca de máximo”) is a useful financial instrument. However, in order to preserve the preference afforded by the early filing date, upon disbursement of the principal, a supplementary deed indicating the amount of the indebtedness and date of repayment must be filed.

Enforcement of a mortgage is by way of an executory proceeding known as a “proceso ejecutivo hipotecario” whereby the court determines on the face of the instrument presented to it that there is, in fact, a debt that is past due and payable and, in the absence of proof that the debt has been paid, will order the judicial sale of the mortgaged property. The obligations secured must be clear and past due, the fact that a default has occurred should be readily ascertainable from the contract itself, and the amount owed must be determined or determinable.

(2) Chattel Mortgages

Any movable property whether present or future, tangible or intangible, determined or determinable, may be secured by a chattel mortgage under the special chattel mortgage law. Movables that have already been attached to or incorporated into mortgaged land or buildings are precluded from being mortgaged separately from the land pursuant to this special legislation.

The chattel mortgage contract must be executed in a public deed and recorded at the Public Registry, except under certain circumstances. Recordation, in theory, serves to give notice to the public that a particular chattel is encumbered and may not be sold.

(3) Pledges

Movables that are located in the Republic of Panama and that are susceptible of being possessed and delivered may be pledged under Panamanian law by the owner as security for a principal obligation. A pledge must be created in writing either by executing a public deed, or by executing a private document. However, a pledge will not be enforceable against third parties unless its existence, and the date on which it came into effect, can be proven with certainty. Proof of the date of execution, or “date certain”, is usually accomplished by executing a public deed or complying with the requirements for the recognition of a private document stipulated in the Code of Civil Procedure. An exception to this rule is with respect to pledges securing bank loans, which are deemed to be valid and affect third parties as of the date that the private document is created without further authentication. However, in practice, bank creditors generally require the authentication of the parties’ signatures before a notary as a matter of course.

Delivery of the object of the pledge to the creditor or to a third person chosen by the parties to act as depositor is an essential condition. Delivery may be real (actual physical possession by the creditor or third-party custodian) or, in the case of intangible property or other rights, constructive (for example, by execution of a public deed). If the pledge consists of bills of exchange or negotiable instruments (“títulos a la orden”), the pledge may be created by endorsement of the corresponding language creating the security interest on the document. If the pledge consists of shares, obligations or other nominative titles (“títulos nominativos”), delivery may be accomplished by simply delivering the titles to the pledgee or to a third person acting as a depositary.

Enforcement of a security interest created by way of a pledge is predicated on the principle that the pledge grants the creditors the right to be paid with the value of the pledged assets and with preference to other creditors. Accordingly, in order to realize the value, it is essential that, upon default, the pledged assets be sold to pay the pledgee. The standard remedy provided in the Code of Civil Procedure to enforce a pledge is by way of a judicial auction (“proceso ejecutivo prendario”), whereby, presumably, the market value of the pledged asset will be realized.

The Code of Commerce also provides that the parties may contractually provide for a special sales mechanism and, if none is stipulated in the pledge agreement, the pledgee or depositor may dispose of the asset through a private sale, following an appraisal process. The parties may also establish in the pledge contract the method to be used to determine the value of the pledged item in the event of sale, or include a provision in the pledge agreement allowing for appropriation of the pledged property following an appraisal.

D. Local vs. Cross-border Financing

There are no restrictions on the making of loans by foreign lenders or granting security or guarantees to foreign lenders. Furthermore, the making of loans by foreign lenders is facilitated by the fact that there are no exchange controls in Panama and that the United States dollar is legal tender. However, some taxation issues may arise if the proceeds of the loan granted are to be used in Panama.

In addition, as discussed earlier, parties to any commercial agreement are generally free to choose the governing law of the agreement and the jurisdiction to which disputes may be submitted, which facilitates cross-border financing. The exception to this rule is with respect to real property mortgages, which must be governed by Panamanian law.

VIII. AGENCY, DISTRIBUTION AND FRANCHISE AGREEMENTS

Agency, distribution and franchise agreements are all common in Panama. However, with the exception of a few limited provisions relating to agency agreements and mandates in the Code of Commerce, there are no specific laws that regulate these agreements in Panama. Rather, they are simply contractual arrangements, and must only comply with the general rules for contracting. However, certain provisions contained in various laws do apply and should be considered in the context of these agreements.

A. Agency Agreements

A limited number of special provisions regulating agency agreements exist in the Code of Commerce. These provisions outline the responsibilities and limitations of agents in Panama. Agents, which are defined as persons that conduct commercial activities and enter into contracts in the name of another person, are required to attend to the interests of the principal with due care and inform the principal of any information that could affect the principal's business operations. As detailed below, Panama does not have a statutory indemnification due to agents upon the termination of the agency contract; however, agents may demand indemnification for loss or damage suffered for unlawful or unjustified termination.

B. Exclusivity

A franchise, distribution or agency agreement does not have to be exclusive, and there are no provisions preventing a company from appointing a distributor or agent as a non-exclusive distributor or agent. In fact, for some time, exclusive contracts were considered illegal in Panama as a restriction on free trade. This position has since changed, and the National Authority of Consumer Protection and Defense of Competition ("Autoridad de Protección al Consumidor y Defensa de la Competencia" or "ACODECO") considers that such exclusive agreements would be justified when motivated by the need to solve external problems such as: (i) when used as a mechanism seeking to allow the agent or distributor to access a new market where there is no established distribution network or organization; or (ii) to generate interest with the agent or distributor in the product and motivate the sale of such products. However, exclusivity clauses should be temporary and for a limited territory in order to avoid any suggestion that there are is an unlawful restraint of free trade.

C. Term

The Panamanian Constitution provides that there shall be no unredeemable obligations and sets twenty (20) years as the maximum term for redemption. As such, franchise, distribution and agency agreements should not exceed such a term, although they may be renewed freely for successive terms.

D. Use of Trademarks

The use of a company's trademarks by the agent or distributor is a matter of private contract between the parties. The company normally grants a trademark license of use to the agent or distributor, either within the agency or distribution agreement, or in a separate document that may be filed with the Industrial Property Registry in order to facilitate the enforcement of the company's rights against the agent or distributor, or against third parties. For such purposes, the principal company would first have to register its trademarks with the Industrial Property Registration Bureau. For more information, see the Intellectual Property section of this guide.

E. Termination

Panama does not have statutory indemnification due to agents or distributors upon termination of these contracts. However, the Code of Commerce establishes as a matter of general commercial law that the unjustified termination or revocation of a commercial mandate relationship (which includes agency agreements and may also include certain distribution agreements which contain agency provisions) may give rise to damages in favor of the agent who is unjustly terminated. Furthermore, as a matter of general contract law, the breach of contractual terms may give rise to claims for damages; however, damages have to be proven and, as a general rule, the claimant bears the burden of proof.

Termination of the agreement may create issues with respect to consumer protection. Under Panamanian law, the distributor, agent or franchisee will have certain obligations towards consumers that have purchased its products or services. Such consumers have warranties that, if considered breached, could lead to claims before the local courts. Panamanian consumers are used to first requesting solutions related to the warranties from the local distributor or agent before considering filing for action. If such claims are not addressed, the manufacturer or

franchisor could be at risk of facing a consumer protection action, as the manufacturer is ultimately liable to the consumer under the Panamanian consumer protection law. In addition, the distributor has the right to “call” the manufacturer as a third party to any proceeding filed by consumers either for consumer protection action or civil claims, as the ultimate warrantor. In a consumer protection action, the manufacturer would be directly liable before the consumer for claims regarding the mandatory warranties provided for in the consumer protection law. In a civil action, the manufacturer would be liable for its warranty obligations to the distributor and/or customers. Therefore, principals should consider contemplating a transition period after termination of an agency, franchise or distributorship agreement, to ensure that all claims and warranty obligations are adequately addressed.

IX. INDUSTRIAL INCENTIVES

In November 2009, an updated legal framework was enacted to promote industrial activities, which created the CFI. This non-assignable certificate, issued by MICI, entitles holders to a tax credit equivalent to a certain percentage of the total expenditures or reinvestments made on certain qualifying activities. The CFI can be used by the company to pay national taxes, including income tax, although certain exceptions apply.

The CFI is available to companies engaged in manufacturing, agro-industry and the processing of marine resources, including microenterprises and small, medium, and large businesses that invest in: research and development; management and quality control systems and environmental management systems; training of human resources and the hiring of additional personnel to increase production. The reinvestment of profits for, among other purposes, the construction of new facilities, the expansion of existing facilities or the improvement of production processes, is also considered a qualifying activity. Companies that benefit from other tax incentives are not eligible for a CFI.

Investments made on the qualifying activities discussed above entitle the relevant company to request a tax credit by way of a CFI. Agro-industrial companies are eligible for a tax credit of 40% of the total amount invested in qualifying activities. Other industrial companies are also eligible for a tax credit of 40% of the total amount invested in qualifying activities. Companies may not deduct the amounts recognized in the CFIs as expenses or as depreciation when determining their taxable income.

In addition to the CFIs, there are other benefits available under the Industrial Incentives Law. In order to benefit from these incentives, the company must be registered before MICI under the National Registry of Industries. First, companies can import certain raw materials, machinery, equipment, parts, containers and packaging used in the manufacturing of their products, subject to a reduced 3% import tax on the CIF value of the relevant goods (instead of the regular tariffs) and the VAT. The law also allows qualifying companies to deduct 100% of the VAT paid on purchases of machinery, equipment, and spare parts used in their industrial processes related to food production. The law also allows companies to deduct the losses of one fiscal period over the course of the next five fiscal periods, limited to a deduction of up to 20% in each period, not exceeding 50% of the net taxable income of each fiscal period. The companies will also benefit from a customs

reimbursement regime, which allows, at the time of exportation, to obtain a refund of the taxes paid at the time of importation with respect to certain goods used in the production process of the exported goods.

X. SPECIAL DEVELOPMENT ZONES AND LAWS

Over the years, Panama has enacted various laws intended to foster foreign investment, trade and development through the creation of special economic zones and investment parks. The principal special economic or development zones are discussed below.

A. Panama as a Center for Regional Headquarters

In 2007 Panama enacted the Multinational Company Headquarters Law to encourage multinational companies to establish their Latin American and regional headquarters in Panama. Companies that operate under the Multinational Company Headquarters Law may establish their offices and operations in any part of the country.

(1) Qualifying Activities

To qualify under this law, a company must either establish operations in Panama for the purpose of offering services to its parent company, subsidiaries or other affiliates located anywhere in the world, or establish its parent company's headquarters in Panama. The multinational group of the company must have no less than US\$ 200 million in total assets worldwide, or subsidiaries and/or affiliated companies in no fewer than 40 countries, and in the case of establishing a headquarters, the company to establish the headquarters must have a minimum capital of US\$ 2 million .

Benefits under the law are reserved for companies that will provide the following services:

- Directing and/or administrating operations in a specific geographic area or globally for a particular business group.
- Logistical support and storage of components or parts used in the manufacturing of products sold by the multinational company.
- Accounting and financial services for the multinational's affiliates or subsidiaries.
- Real estate and facility design and construction services for the multinational's affiliates or subsidiaries.
- Marketing and marketing-related support services for goods or services offered by the multinational.

- Back-office and technology-related operational support services, including network-related support services.
- Operational support for research and development of products and/or services offered by the multinational.

(2) Tax, Labor, and Immigration Incentives

Companies that qualify as multinational headquarters under the above criteria as well as their employees enjoy several tax, labor and immigration incentives:

Tax Incentives:

- Companies are exempted from income tax payments as long as the income is generated by services provided to entities that do not produce taxable income in Panama.
- Companies are exempted from dividend tax.
- Services provided to entities that do not produce taxable income in Panama are exempted from VAT.
- Foreign personnel of the licensed company with special Permanent Personnel Visas, whose income is paid from sources outside of Panama, are exempted from personal income tax and social security contributions.
- Foreign personnel with Permanent Personnel Visas are exempted from import duties on household items when moving to Panama and also on importing a vehicle for personal use, once every two years.

Labor and immigration incentives:

- Companies are exempt from complying with the maximum quota established for the employment of foreign personnel by the national Labor Code, for personnel who will work in administrative and executive positions.
- Special immigration visas may be issued to employees and their dependents for the duration of the employment contract, up to a maximum of five years, which may be renewed for an unlimited number of five year terms . Workers with these visas are not required to have a work permit as long as they work for a company with the respective multinational business headquarters license. After completing at least one five year employment term at the multinational

headquarters, employees who have Permanent Personnel Visas have the option to become permanent residents.

- Temporary visas are issued to temporary employees who provide special training or technical services for periods of not more than three months while they are in the country for any activity related to the multinational headquarters. These workers are not required to have a work permit.

To help consolidate and expedite the processing of applications, licenses, immigration visas and other government permits, the law created an office at the MICI, housing representatives from the various government institutions concerned.

B. Panama-Pacifico Special Economic Zone

Built on the site of the former US Howard 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 (Law 41 of 2004), the master-planned park includes a business center, an industrial area, a town center, residential areas, hotels, medical facilities, schools and an international airport. To qualify for the tax, labor and immigration incentives provided in the law, companies must register with the Panama-Pacifico Agency, the government agency responsible for qualifying companies. A single, on-site government office, fast-tracks the licensing process.

(1) Qualifying Activities

Any company that establishes itself in Panama-Pacifico zone will receive labor 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 center 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 airplanes and their spare parts;
- Exports of goods not manufactured within the Panama-Pacifico zone 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 ships in transit through the Panama Canal or in route to foreign ports and their passengers, except in the case of goods or services sold or rendered by the manufacturer of the goods or by an affiliated entity of the manufacturer;
- Transfer of goods and provision of services to aircraft travelling to foreign countries, except in the case of goods or services sold or rendered by the manufacturer of the goods or by an affiliated entity of the manufacturer; and
- Transfer of goods and provision of services to visitors and persons in transit to foreign countries, except in the case of goods or services sold or rendered by the manufacturer of the goods or by an affiliated entity of the manufacturer.

(2) Tax Benefits

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

- Import duties (unless goods are sold within the customs territory of Panama);
- Export duties;
- VAT (except for services rendered by regulated professions);
- Companies are exempt from the obligation to withhold tax on payments made to foreign creditors with respect to interest, commissions, fees or other financial charges on financing granted to companies in the Panama-Pacifico zone;
- Notice of Operations tax (Business License Tax);
- Real estate property tax and real estate transfer tax;
- Capital gains tax on company share transfers; and
- Stamp taxes

In addition to these tax benefits, companies that participate in qualifying business activities listed previously are also exempt from income tax, dividend and complementary dividend tax and withholding tax on payments abroad for services, fees, royalties and interest and fee

payments to foreign creditors that are used for the generation or conservation of income within Panama.

However, companies engaged in the import, export and re-invoicing of products, or engaged in providing multimodal and logistic services from Panama-Pacifico are subject to dividend tax at a rate of 5% on the totality of the dividends distributed, and to complementary dividend tax. Such companies also will be subject to Business License tax at a rate of 0.5% over the company's patrimony, where the minimum amount due is US\$100 and the maximum is US\$50,000 per year.

(3) Labor Benefits

Companies established in the Panama-Pacifico zone benefit from the following labor incentives:

- 25% fixed surcharge for overtime;
- Negotiable weekly rest day;
- Companies may remain open on Sundays and legal holidays;
- Vacation terms are negotiable with employees;
- Fluctuation in market conditions or demand are recognized as just-cause for labor contract terminations; and
- 15% of the workforce may be foreign employees, with exemptions made for additional hires that train Panamanians.

(4) Immigration Benefits

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

- Two-year ordinary work visas
- Two-year special visas
- Five-year investor visas, for those who invest US\$250,000 or more
- 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 41 are permanent for companies within the Panama-Pacific zone.

C. Colon Free Trade Zone

Established in 1948, the Colon Free Trade Zone is the largest free trade zone in The Americas. Located in the City of Colon, at the Caribbean entrance of the Panama Canal, the Colon Free Trade Zone hosts over 1,800 companies, primarily in the import and export business, and related businesses such as the warehousing and re-packaging of goods and merchandise of all kinds. The Colon Free Trade Zone is managed by an autonomous government agency, which is responsible for granting operation permits, leasing lots and building spaces within the Colon Free Trade Zone, and promoting the economic development of the Zone.

Companies wishing to establish a physical presence in the Colon Free Trade Zone must execute a contract with the Colon Free Trade Zone's administration to lease a lot or a building space, or execute a contract to sublease a building space from a private operator . Companies may also purchase building spaces from the Colon Free Trade Zone's administration. Lease contracts with the Colon Free Trade Zone's administration are granted for a term of no less than one year and no more than 20 years. Contracts with private operators are granted for one year terms . Lease agreements with companies that have purchased building space in the Colon Free Trade Zone may be freely negotiated between the parties. Companies must also apply for a license to operate in the Colon Free Trade Zone. Alternatively, a company may elect to work with a representative already established in the Colon Free Trade Zone.

(1) Qualifying Activities

Companies established in the Colon Free Trade Zone may carry out any activity related to the importation, storage, packaging, assembly and general handling of all kinds of merchandise, products, raw materials and containers. These activities may be performed by national or foreign companies legally established in Panama. Foreign companies engaged purely in the exportation of goods need not be established in the country to operate in the Colon Free Trade Zone. There is no minimum capital investment required to operate in the Colon Free Trade Zone. However, companies that operate within the Colon Free Trade Zone must re-export at least 60% of all imported goods and merchandise in any given year and must employ more than five local workers.

(2) Tax, Labor and Immigration Incentives Tax

Companies that operate in the Colon Free Trade Zone benefit from the following tax incentives:

- Exemptions on income tax on income earned on export and re-export operations,
- Reduced 5% dividend tax;
- Zero import duties of goods into the Colon Free Trade Zone .
- Reduced Business License tax at a rate of 0.5% where the minimum amount due is US\$100 and the maximum is US\$50,000.

D. Free Trade Zones

Free trade zones are designated areas for companies engaged in the production of goods, services, technology, scientific research, higher education, logistics services, environmental services, and health services, among others. Free trade zones may be private, government-owned or both. Law 32 of 2011 establishes a special legal process that simplifies and promotes the establishment of new free trade zones throughout Panama.

(1) Qualifying Activities

Companies may establish operations within an existing free trade zone or may develop a new free trade zone, subject to government approval. The free trade zone may be developed in any part of Panama in an area of at least two hectares. A minimum investment of \$250,000 is required for its development.

Companies may engage in a wide range of activities within the free trade zones they or others establish, including manufacturing, assembling, producing high-technology services, logistic services, creating research institutions, educational services, aeronautical services and many other industrial services. Companies who seek to act as developers for new free trade zones and those who wish to establish themselves within a free trade zone must obtain a License from the Free Trade Zone Commission. Once the company is authorized, it is required to begin complying with the investment obligations outlined within its license, within a one year period and companies

wishing to establish themselves for operation within a free trade zone must commence operations within two years. Companies who establish themselves in these free trade zones must hire a certain percentage of Panamanian workers, with exceptions made for the hiring of foreign experts, technical personnel and personnel in positions of trust, in compliance with the current labor regulations. In addition, investors/companies must develop technical professional training programs for Panamanian workers, allowing them to reach higher qualifications.

(2) Tax, Labor and Immigration Incentives

Companies that operate within a free trade zone are exempt from all direct and indirect taxes, fees, contributions and charges on the import into the free trade zone of products and raw materials and on services required for their operations, on the export of products or services and on certain operations between companies located within the free trade zone, until January 1, 2016. Beginning that date and thereafter companies will be exempt from all taxes on the aforementioned activities, except for the following taxes:

- Income tax and VAT on leases and subleases.
- Reduced 5% dividend tax, and reduced 2% complementary tax when there has been no distribution of earnings.
- An annual tax of 1% on company's patrimony (net worth), with a minimum amount of US\$100 per year and a maximum amount of US\$50,000 per year.
- Excise tax applicable to certain goods and services.
- FECI, payable with respect to commercial non-exempted bank financing that exceeds US\$5,000 and granted by banks licensed in Panama, except in the case of loans guaranteed with bank deposits.
- Contributions arising out of an employment relationship and those established by the social security legislation.

Companies within free trade zones also benefit from the following labor and immigration incentives:

- Foreigners that have invested at least US\$250,000 in the development of a free trade zone or in a company established in a free trade zone may apply for a permanent resident visa in the Free Trade Zone Investor class.

- Executives, experts, technicians or persons in a position of trust of free trade zone developers or of companies established in a free trade zone may receive a temporary permanent resident visa, which will be valid for the duration of the employment contract.
- Special temporary permits are available to teachers, students and researchers in higher education or scientific research centers.
- Temporary visas for up to nine months for investors that come to Panama to evaluate the possibilities of investing or conducting business in free trade zones.
- Visas are extended to immediate family members of foreign personnel relocating to Panama
- A more flexible labor regime which allows companies to negotiate special vacation and resting days with employees based on seasonal industry demands. Also, fluctuations in market conditions or product demand are considered just-cause for labor contract terminations.

E. Call Centers

Special legislation has also been adopted to further the development of Panama as a preferred jurisdiction for call centers, focused on providing services overseas.

(1) Qualifying Activities

To qualify as a call center and receive the labor and tax benefits established for the same, a company must establish operations in Panama and offer one or more of the following types of telephone assistance activities to foreign customers of Panamanian or foreign companies:

- Sales support
- Product-related and services-related technical or commercial information provision
- Marketing support
- General customer services
- Telemarketing
- Technical support or other specialized business activities

Companies interested in establishing a call center in Panama must obtain a government-issued concession by formally applying to the telecommunications regulator. Once the concession has been granted, companies must register with MICI and the Free Trade Zone Commission.

(2) Tax, Labor and Immigration Incentives

Call centers are exempt from all direct and indirect taxes, fees, contributions and charges with respect to operations related to commercial international calls, except for the following:

- Fees charged by ASEP; and
- Contributions arising out of an employment relationship and those established by the social security legislation.

Call centers also benefit from the following labor and immigration incentives:

- Flexible work schedules, overtime hours and vacations; and
- Flexible employment visas for foreign skilled-labor personnel. Visas are extended to immediate family members of the foreign personnel relocating to Panama.

F. The City of Knowledge

The City of Knowledge is an international center for education, research, and technological innovation intended to promote and facilitate synergy between universities, scientific research centers, businesses, and international governmental and non-governmental organizations. The City of Knowledge is administered by the non-profit City of Knowledge Foundation, a public-private partnership. 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 technologies;

- 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 not be (i) a similar program or activity, or (ii) 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 twenty five-year renewable basis.

(2) Tax, Labor 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 ITBMS (value-added 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 tax on capital and the Business License tax;
- 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.

XI. TRADE AND COMPETITION

A. Import and Export Regulations

(1) Imports

Panama, as a member of the World Trade Organization, follows the guidelines of the General Agreement on Tariffs and Trade, and other ancillary agreements including the Customs Valuation Code. Import tariffs are assessed on an ad valorem basis. Imports into Panama are cleared through the National Customs Authority. Customs declarations and other filings are handled by licensed customs brokers. Importers compute and pay import duties and taxes. The importation of goods into the country must be accompanied, at minimum, by a commercial invoice, a bill of lading or an airway bill, as well as all applicable import licenses. The import, sale or distribution of pharmaceuticals, veterinary products, foods and cosmetics also requires prior approval from the Ministry of Health. Similarly, the import of certain agricultural products may be subject to sanitary permits.

Exemptions to import tariffs and grants of beneficial franchise status are generally achieved through international trade agreements or through special customs or tax registrations, such as those granted to companies established under the free trade zones regimes. Merchandise that has partial or total exemption, unless otherwise stipulated by the exemption, may not be used other than for the purpose for which the exemption was granted.

It is common that goods imported into Panama under a free trade agreement be accompanied by the certificate of origin in order to claim the respective tariff benefits.

The import of certain goods, such as counterfeit or false currency, certain firearms and ammunitions, foreign lottery tickets and certain obscene materials, is forbidden.

(2) Exports

Panama does not levy any direct taxes on exports. Since 1985, all exports from Panama are channeled through the National Foreign Trade Window (“Ventanilla Única de Comercio Exterior”), an office of the Ministry of Commerce and Industry, which coordinates with

other government agencies, including the Ministry of Agricultural Development, the Ministry of Economy and Finance and the Ministry of Health, on all aspects relating to exports.

In general, export requirements vary depending on the product and destination, as well as on other special requirements that may result from free trade agreements. Most free trade agreements establish that exporters must provide a certificate of origin to evidence that the goods meet the relevant rules of origin to claim the favorable tariff treatments contemplated in the agreements.

In 2009, Panama established a Program for the Promotion of the Competitiveness of Agricultural Exports. This is a tax incentive program that seeks to promote the export of non-traditional agricultural goods by lowering costs to exporters in accordance with the WTO's Agreement on Agriculture. Exporters that wish to participate in this program are required to submit applications for Agricultural Exports Promotion Certificates with the Ministry of Commerce and Industry no later than six months after the date of exportation. These certificates may be used for the payment of national taxes. Exporters that already benefit from other export incentives may not participate in this program.

Some Panamanian exports benefit from certain unilateral preferential programs established by other countries, such as the European Union Generalized System of Preferences.

The United States is Panama's largest single trading partner, followed by the European Union as a whole, and then the Central America region. In recent years, Panama has undertaken an aggressive trade agenda that has led to the negotiation and signing of an important number of free trade agreements as discussed in the following section.

B. Free Trade Agreements

Panama has signed and ratified free trade agreements with, among other countries, Nicaragua, Guatemala, Honduras, Costa Rica, El Salvador, Singapore, Peru, Chile, the United States, Canada and Mexico.

In addition, Panama, along with Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua, participated in the negotiation of an association agreement with the European Union.

Furthermore, Panama has more limited trade agreements, or so called “partial scope agreements”, with the Dominican Republic, Mexico, Colombia, Cuba, and Trinidad and Tobago. Recently, Panama and the People's Republic of China concluded the feasibility study prior to the negotiations of the Free Trade Agreement (FTA).

C. Antitrust and Competition

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 two ways. First, these laws identify certain practices, such as price fixing, allocation of markets and bid rigging among competitors, that are absolutely forbidden and illegal, 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 substantial or dominant market power in the relevant market. The former practices, known as absolute monopolistic practices, correspond in general terms to per se violations under U.S. antitrust laws, and the latter practices, known as relative monopolistic practices, have as their closer equivalents those conducts subject to the “rule of reason” under U.S. 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 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 may not 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.

D. Consumer Protection

Panamanian law affords consumers basic protections that include the right to claim certain statutory warranties, the principle that a supplier's publicity with respect to goods and services contractually binds the respective supplier and the principle that certain contractual provisions deemed unconscionable to the consumer be considered null and void or voidable irrespective of the wording of the contract, among others. The law makes the distributors and other intermediaries jointly and severally liable with the manufacturers for the performance of the warranty.

The Superintendency of Banks, in the case of banking services, and the National Public Services Authority, in the case of telecommunications services and electricity, also has the authority to hear complaints from consumers.

XII. PRODUCT LIABILITY

A. General Overview

Panama does not have a specific and comprehensive law related to product liability, as other countries do, and product liability issues have not been widely litigated. Rather, general rules governing the topic can be found in the Civil Code, which states that anyone who, by an act or omission, causes harm to another, whether by fault or negligence, is obligated to repair the damage caused. Furthermore, where the act or omission is imputable to two or more persons, each person shall be jointly and severally liable for the damages caused.

In addition, there are laws that address consumer protection in general and that include the issue of product liability. The consumer protection law states that all consumers have a right to be protected against products that present a risk or danger to life, health or physical safety. Product suppliers are responsible for providing all necessary information to the consumer, including any risk or danger with respect to the use of the product. The consumer protection law also states that if damage or harm to the consumer results from a good or service, or as a result of inadequate or insufficient instructions regarding the good or service, its use or its risks, the supplier or the manufacturer, as the case may be, will be liable, supplier there is intent, fault, negligence or recklessness in the case of the supplier or the manufacturer. Furthermore, in an adhesion contract, a term which exonerates or limits the liability of the party who drafted the contract for bodily harm will be null.

A health authorization certificate is required from the Ministry of Health for importing, distributing and commercializing any drugs, medicated cosmetics, cleaning products, personal hygiene products, disinfectants, antiseptics and pesticides for domestic use and public health. Prior to granting such certificates, products are subject to tests and analysis of the product's sample, label, formula and specifications. A health certificate from the country of origin certifying that the product is registered and safe for commercial use in the country of origin is also required. Failure to observe such regulations may result in criminal responsibility, among other liabilities.

B. Remedies

Suppliers of products that breach provisions regarding consumer protection, which beraches causes or may cause a detriment to human health, are subject to fines of up to US\$50,000, in addition to any civil or criminal liability. The amount of the fine will be determined by ACODECO, taking into account the severity of the harm, the size of the business, the number of infringements by that company and any other circumstances deemed relevant by the authorities. Repeated violations may also result in the suspension of the supplier's business license.

Consumers may take a complaint to the ACODECO, which will initiate a conciliation process. The parties may also undertake ordinary administrative or judicial claims proceedings.

Consumers may also bring civil actions for product liability, either to the ACODECO (for claims of US\$5,000 or less), to the municipal courts (for claims up to US\$10,000), or the courts of commerce of the civil circuit of the Province of Panama for amounts in excess of US\$10,000, and up to US\$30,000 for claims involving motor vehicles. Civil actions for responsibility for a defective product must be initiated within five years, dated from the time that the consumer became aware of the defect.

C. Class Actions

Panamanian law provides for class action lawsuits, which may be brought by a member or members of a group or class of persons that suffer damage or harm from a product or service. The ACODECO, organized consumer associations or any group of consumers who designate a collective representative, are all entitled to bring a class action. The decision made in a class action suit affects all members of the respective class, whether or not they participated in the process.

The procedure also provides for a joinder of claims allowing the judge to consolidate multiple actions filed by different parties in connection with the same event. As to the applicable law, in matters of indemnification, this procedure allows the parties to request that the court apply relevant foreign law, which may lead to the imposition of punitive and other damages permitted by the applicable foreign law.

In addition, the statute of limitations for in personam actions under this procedure is set at 10 years from the moment the damage is manifested, or when such damage is aggravated in a significant manner, or when the identity of the responsible party is known. Additionally, in cases of bad faith or willful misconduct, the statute of limitations is 15 years from the moment the party suffers the damage or from the moment an aggravation is suffered. It has not yet been determined if such a statute of limitations is restricted to international claims based on principles of private international law or if it would extend also to local Panamanian claims.

XIII. TAX CONSIDERATIONS

Panama's taxation system is mainly territorial inasmuch as, generally speaking, only income earned from Panamanian sources or with respect to assets located in Panama is taxed. This territorial principle partially accounts for the successful development of Panama as a base for international operations.

There are two levels of taxation in Panama: the national and municipal. At the national level, the most important taxes relevant to businesses or to their stakeholders are: income tax, value added tax, the dividend tax, the business license tax, the real property tax, the real property transfer tax and the import tax. For individuals, the most relevant tax is the income tax.

DGI has the primary responsibility for the collection of most national taxes.

A. Taxes

(1) Income tax

(a) Corporate income tax

Panama-source income. Panama follows a territorial approach to income tax. Only income that is deemed to be Panama-source income is subject to income tax in Panama. The rules regarding what constitutes Panama-source income vary depending on the type of income. In general terms, income earned from business or commercial activities in Panama is considered Panama-source income. Income earned with respect to property located in Panama is also Panama-source income. Interests and commissions earned on loans and other credit facilities used to finance business operations and other investments in Panama are also deemed to be Panama-source income. And finally, payments for professional services, royalties, licenses and other similar concepts are also deemed to be Panama-source income if the beneficiary of those services is a taxpayer in Panama, and considers such payments as deductible business expenses in its annual tax return.

Panama-source income also includes income that originates from the central government or any autonomous entities or semi-autonomous state entities or mixed, government and private capital or from private entities (corporations) in which the Panamanian government is owner of 51% or more of the company and which perform a public service. Panamanian sourced

income is also income generated by non-profit organizations although this income may be exempt from income tax.

Income earned from activities carried out outside of Panama or generated from assets located outside of Panama is not deemed to constitute Panama-source income. Thus, it is not subject to income tax in Panama. In order to promote the development of Panama as a service center, income earned from certain activities is deemed not to constitute Panama-source income even though these activities are carried out in Panama. In this respect, income earned by trading companies located in Panama invoicing in Panama the sale of merchandise made and completed outside of Panama is considered foreign-source income. Also, income earned by any company that coordinates and directs from Panama business transactions that otherwise are carried out and take effect entirely outside of Panama is considered foreign-source income

Exempted income. Various categories of income that would otherwise qualify as taxable income are expressly exempted by law. Exempted income includes interest paid on savings and time deposit accounts opened with banks licensed to operate in Panama, interest paid on debt securities registered with the Superintendency of Capital Markets that are traded through the Panama stock exchange or another legally organized market, interest and commissions paid by local banks to non-resident financial institutions, and interest payable to non-resident lenders to finance the construction of social interest housing.

Taxable income. Taxable income is gross income of Panama source, minus foreign-source income, non-taxable income and exempted income.

Business expenses. Business expenses and costs necessary for the generation of taxable income or the conservation of its source are proportionately deductible for income tax purposes. Business expenses must be allocated to taxable income, exempt income and foreign-source income, if any. The deductible business expenses may not exceed the proportion that the taxpayer's total taxable income bears to its overall gross income. Exceptionally, certain business expenses may be fully deductible. Business expenses must be properly documented and, as a general rule, are only allowed in the year in which they were incurred.

Losses carried forward. Losses may be carried forward five years, but the loss deduction may not exceed 20% of the total loss in any given year. Special loss regimes may apply to companies engaged in certain regulated sectors, such as mining.

Income tax rates. The corporate income tax rate currently in force is 25%. However, companies whose capital is owned 40% or more by the government will pay income tax at a 30% rate. Companies in agricultural sectors and small businesses benefit from special income tax rates and exemptions.

Calculation of income tax. Corporate income tax is calculated by multiplying the net taxable income by the applicable income tax rate. However, in the case of corporate taxpayers whose taxable income exceeds US\$1,500,000, the income tax is the applicable income tax rate multiplied by the higher of (i) the traditional net taxable income described above and (ii) the alternative minimum taxable income resulting from multiplying the company's total taxable income by 4.67%.

Annual income tax returns. Companies must file income tax returns within the three months following the expiration of the fiscal year. The fiscal year generally matches the calendar year, but the law allows that a taxpayer request from the DGI the approval of a special fiscal year, if certain conditions are met. As part of the income tax return, taxpayers report an estimate of the income that will be obtained in the following fiscal year, which, generally speaking, may not be lower than the income reported in the current fiscal year.

Payment of income tax. Payment of income tax is made according to the estimated income tax reported, either in a full payment or in three equal instalments in June, September and December. At the end of the fiscal year, and upon the filing of the annual tax return, the juridical person must pay only the difference between the income tax determined, as described in the preceding paragraphs, and the aggregate amount of estimated income tax paid during that year. This payment must be made during the first three months following the expiration of the fiscal year. If the estimated income tax payments exceed the amount of income tax due, the resulting credit will be applied to future estimated income tax payments.

(b) Personal Income Tax

Income tax rates. The progressive income tax rates applicable to individuals and trusts are set out in the table below:

Income Tax for Individuals			
Annual Taxable Income		Rate	Maximum Tax per Bracket
From	To		
US\$0	US\$11,000	0%	US\$0
US\$11,001	US\$50,000	15%	US\$5,850
US\$50,001		25%	US\$5,850 plus 25% of the excess of US\$50,000

Special compensations which constitute allowances for business expenses (“gastos de representación”) are subject to a special 10% withholding over the first \$25,000 paid in this category and to a 15% withholding with respect to any amount paid in excess thereof.

Employers act as withholding agents for income tax purposes with respect to the compensation paid to their employees.

Personal deductions. Individuals are entitled to certain deductions such as an US\$800 basic deduction when submitting joint annual tax returns with their spouse, interest payments in relation to certain trusts that hold real estate and guarantee a loan for the person’s main residence, mortgage interest payments, contributions to private retirement plans up to certain amounts, and certain medical expenses.

Residency rules. Permanent residents as well as foreign nationals who stay in the Republic of Panama more than 183 consecutive or alternate days during the fiscal year or the immediately preceding year qualify as tax residents. Foreign nationals who have established a permanent residence and a “center of vital interests” in Panama will also qualify as Panama tax residents. Tax residents that receive or earn income subject to tax will be taxed at the same rates and will have the same compliance requirements as national individual taxpayers.

Annual tax returns. In the case of individuals, the tax return for a given fiscal year must be filed before March 15 of the following fiscal year. Taxpayers whose sole source of

income corresponds to a single salary, including “gastos de representación”, if applicable, are exempted from the obligation to file an income tax return.

Social security contributions and other charges. The social security contribution is borne by the employer and the employee, and is calculated based on certain percentages of the employee’s salary and its payment. The allocation of social security charges in 2018 is 12.25% for employers and 9.75% for employees. An employer is obligated to withhold from the employee’s salary not only the employee’s corresponding income tax but also the employee’s share of the social security contribution. This is in addition to the employer’s own obligation to contribute its share of the social security quota, as indicated above. Failure by the employer to withhold and/or to make timely payments of social security contributions to the Social Security Administration triggers surcharges and fines and may lead to criminal prosecution.

Employers are also responsible for withholding and paying (i) the so called “educational tax”, equivalent to 2.75% of the employee’s salary, which, as is the case with social security contributions, is shared between the employer (1.50%) and the employee (1.25%); and (ii) women’s compensation premium, payable to the Social Security Administration, which corresponds to a percentage of the employee’s salary depending on the perceived risk of the employer’s labor related activity.

(c) Income Tax of Non-residents

For non-residents, whether natural or juridical persons that have obtained Panama-source income, the general rule is that the income tax obligations are satisfied by way of withholding to be made by the Panamanian domiciled payor. Payments for services rendered by non-resident natural or juridical persons to natural or juridical persons in Panama will be subject to a withholding of the applicable income tax rate on 50% of the gross payment, whether the services are provided in Panama or from abroad. This assumes that the services so provided impact on or are related to the production of Panama-source income and said payments are considered deductible expenses by the payor in Panama. For 2018, the effective income tax withholding rate for payments to non-resident juridical persons is 12.5%. Additional rules exist for calculating the income tax withholding in the case of non-resident individuals because they would be subject to progressive rates. Notwithstanding, non-resident taxpayers, whether natural or juridical, in a state of insolvency are subject to deductions of the applicable income tax. The withheld amounts must be reported and paid by the local entity to the DGI within ten business days following the date of withholding.

Interest payments made by local entities to a non-resident financial institution, where the proceeds of the loan are used in Panama, as well as royalty payments made by the same persons to a non-resident, are subject to the same rule stated in the preceding paragraph. A tax treaty entered into by Panama may set out reduced tax rates for these withholdings.

In the case where the natural or juridical person has a permanent establishment in Panama, these withholding tax rules do not apply with respect to the Panama-source income attributable to such permanent establishment.

(2) Business License tax

Persons that have obtained a Notice of Operation (“Aviso de Operación”) to engage in business, commercial or industrial activities in Panama are subject to an annual tax equal to 2% of the company’s net worth, with a cap of US\$60,000. Companies operating under special economic or free trade zone regimes generally pay this tax at the rate of 1% of the company’s net worth, with a cap of US\$50,000.

(3) Dividend tax

Dividend payments made by a juridical person that has an operations permit or that otherwise has obtained Panama-source income that is not exempt from Panama income tax to holders of registered shares or quotas, are subject to a 10% dividend tax, if the earnings distributed are derived from Panama source income, and to a 5% dividend tax, if the earnings arose out of foreign-source income, export-related income and certain exempted income. In the case of companies established within free trade zones, the dividend tax is 5% regardless of the ultimate source of the earnings to be distributed.

The juridical person that makes the distribution must withhold the applicable dividend tax and pay such amounts to the DGI. The dividends so distributed are not subject to further taxes in Panama and, therefore, the recipient does not need to pay further income tax on such income. A tax treaty entered into by Panama may set out different rules for the payment of this tax.

The dividend tax is 20%, in all cases, if the dividend is paid to holders of bearer shares.

The dividend tax must also be withheld on loans or credits granted by the juridical entity to its shareholders at a rate of 10%, including in cases where the applicable dividend tax rate on the dividend payments is 5%. However, if the shareholder holds bearer shares, the loan or credit is subject to dividend tax at the 20% rate. In case the loan is repaid by the shareholder to the company, such amount would not be subject to the dividend tax withholding once it is effectively distributed to the shareholders as dividends.

The juridical person's capital may be reduced without a tax consequence only after the juridical entity has distributed the totality of its taxable retained earnings and paid the totality of the corresponding dividend tax that may apply.

(4) Retained Earnings Tax

Juridical persons earning Panama source income that, in any given fiscal year, do not distribute any dividends or distribute dividends for less than:

- 40% of their current after tax earnings originating from Panama-source income, must pay a 10% tax on the difference between the dividends actually distributed, if any, and 40% of their total after tax current earnings; and
- 20% of their current earnings originating from foreign-source income or certain exempted income, must pay a 10% tax on the difference between the dividends actually distributed, if any, and 20% of their total current earnings.

The amount paid of this tax, known as the complementary tax (“impuesto complementario”), is credited towards the dividend tax when the respective earnings are finally distributed as dividends. In this respect, the complementary tax could be seen as an advance the dividend tax with respect to 40% or 20%, as applicable, of the current earnings.

Registered branches of foreign corporations pay the complementary tax on their total current Panama taxable earnings, whether or not any distribution has been declared or made, in other words, as a branch profits tax.

(5) Value Added Tax or Sales Tax

The value added tax, known in Panama for its acronym as the “ITBMS”, applies to the importation of goods into or to the sale of tangible chattel property within Panama and to the rendering of services in Panama, including rentals on real estate leases. The taxpayer is the person or entity that imports into or sells the tangible chattel property in Panama, as well as the person that renders the services in Panama. The general ITBMS rate is 7%. However, the transfer within or the importation into Panama of certain tangible chattel properties, such as alcoholic beverages, tobacco related products or the rendering of certain services in Panama, such as hotel or housing services, are subject to higher rates.

The ITBMS applies, in the case of transfers of tangible chattel properties, to the purchase price and ancillary charges, in the case of services, to the fees and commissions charged to the client, excluding expenses, and in the case of imports, to the CIF value plus all customs duties and fees applicable to the imported good.

There are various activities that are exempted from this tax including: transfers of tangible chattel properties within free trade zones; certain services provided within free trade zones; water supply services provided by the state-owned company; health services and sales of pharmaceutical products; power generation, transmission and distribution services; cargo transportation services whether by air, sea or land, and passenger transportation services whether by sea or land; and insurance and reinsurance .

The ITBMS is reported and paid on a monthly basis based on a credit and debit system under which the relevant ITBMS taxpayer only pays the difference between the ITBMS it collected during the immediately preceding month as a result of performing the taxable activities, and the ITBMS that such person was, in turn, charged by third parties, during the same period.

(6) Real Property Tax

(a) Property Tax

Property tax is applied to the total value of the land plus the value of any registered improvements made to it. Generally speaking, the applicable property tax will be determined by two different systems, each with its own criteria. The real property tax regime has been substantially modified to establish lower rates for all real properties and to provide special benefits

for properties' that are the homeowner's main residence. These new rules will enter into force in 2019.

2018 Regime

During 2018, the applicable regulations continue to be as described below. The real property tax currently is determined pursuant to two sets of rates, based mainly on the year when the property was built.

Combined progressive rate. The combined progressive rate is the standard property tax applicable to properties that do not meet the alternative rate criteria as described in the section below.

Combined Progressive Rate				
Land + Improvements		Rate	Maximum per tax bracket	Accrued tax per bracket
From	To			
\$ -	\$ 30,000	0%	Exempt	
\$ 30,000	\$ 50,000	1.75%	\$ 350.00	\$ 350.00
\$ 50,000	\$ 75,000	1.95%	\$ 487.50	\$ 837.50
\$ 75,000		2.10%		

Combined progressive alternate rate. For existing properties, the combined progressive alternate rate shall be applied to the total value of the land plus the value of improvements, provided that the property is in good standing in payment of the property tax and the taxpayer submits a sworn statement for the new value of the property, duly certified by an appraisal company.

For new properties, the combined progressive alternate rate shall apply provided that the improvements are registered at the Public Registry no later than one year after the occupation permit is issued. In addition, the land value should be updated if the last appraisal for it was conducted more than five years from the time of registration of the improvements.

Combined Progressive Alternative Rate		
Land + Improvements		Rate
From	To	
\$ -	\$ 30,000	0%
\$ 30,000	\$ 100,000	0.75%
\$ 100,000		1.00%

Under both systems, properties with a registered value not exceeding US\$30,000 are exempt from property taxes. In addition, improvements to the land enjoy property tax exemptions during a period of time ranging between 5 to 20 years (depending on the value, the type of the improvement, and the year of construction) from the date of registration of the improvement or issuance of the occupation permit. However, the real property tax exemption on properties with a registered value not exceeding US\$30,000 does not apply to plots of lands incorporated under the condominium regime (“Regimen de Propiedad Horizontal”) while the improvements to the land enjoy property tax exemptions. These plots of land shall be taxed at the rate of 1% while the improvement exemption is in force.

These exemptions to the improvements to the land as well as the special rules for condominium regimes will continue in force until their expiration and afterwards such properties will be subject to the new real property tax regime that enters into force on January 1st, 2019.

Regime Applicable from January 1st, 2019 onwards

Generally speaking, the applicable property tax will be determined by two different systems, each with its own criteria, based mainly on the use of the property.

Rate applicable to the main residence or “family estate for tax purposes”. This rate applies to real property that can be qualified as the main home or as the “family estate for tax purposes”.

Combined Progressive Rate		
Land + Improvements		Rate
From	To	
\$ -	\$ 120,000.00	Exempt
\$ 120,000.00	\$ 700,000.00	0.50%
\$ 700,000.00	\$ -	0.70%

Both concepts of “main residence” and “family estate for tax purposes” cover the proprietor’s permanent home, in order to exclude secondary or leisure properties or properties held for other purposes. To qualify for these rates, an application must be submitted to the Tax Authority, which must approve or deny the benefit within three months. The precise requirements to evidence that the real property qualifies for the benefit will be published during the course of 2018. The benefit applies even if the property is owned directly by an individual or through a legal entity, such as a corporation or Private Interest Foundation.

Combined progressive rate. The combined progressive rate is the standard property tax applicable to land, commercial real estate, and all other properties that do not qualify as main residence or family estate for tax purposes:

Combined Progressive Rate		
Land + Improvements		Rate
From	To	
\$ 0	\$ 30,000.00	Exempt
\$ 30,000.00	\$ 250,000.00	0.60%
\$ 250,000.00	\$ 500,000.00	0.80%
\$ 500,000.00	\$ -	1.00%

(b) Real Property Transfer Tax

The transfer of real property incurs a 2% tax, levied on the greater of the total purchase price stated in the transfer documents, or the registered value of the land plus the value of its improvements. This registered value increases by an amount equivalent to 5% for each year from the acquisition of the land or of construction of the improvement up to the date of the sale.

(7) Capital Gains Tax

The capital gains tax rate depends on the type of asset to be transferred. In general, the transfer of chattel properties located in Panama is subject to a 10% capital gains tax levied on the gain realized on the sale. The transfer of property located outside of Panama, owned by a Panamanian taxpayer, is generally not subject to this tax.

In the case of direct or indirect transfers of shares or quotas of a juridical person that has obtained taxable Panama-source income or of a juridical person that is deemed to own directly or indirectly securities invested in Panama, the capital gains derived is subject to income tax at a rate of 10%. However, the law obligates the purchaser to withhold 5% of the total consideration payable to the seller and to tender such amount to the tax authorities within the 10 business days following the transfer, as an advance on the seller's capital gains tax. The seller has the option to consider the amount so withheld by the purchaser as its definitive capital gains tax. Alternatively, in the event said amount exceeds 10% of the capital gain actually realized on the sale, the seller has the option to file, within the same fiscal year in which the transaction occurred, a sworn declaration with the tax authorities claiming either a non-assignable tax credit for the amounts paid in excess, or the return of said amounts. The juridical person whose shares are transferred is jointly and severally liable for the payment of the seller's capital gains tax. The gain realized on the disposition of the shares of a company incorporated in Panama that has obtained exclusively income not subject to tax in Panama (such as income derived from activities carried out exclusively outside of Panama) does not incur any capital gains tax. Apportionment rules apply if the juridical person has obtained both taxable and non-taxable income.

The transfer of shares or quotas of companies whose shares have been previously registered with the SCM may be exempted from the capital gains tax if certain conditions are met.

The capital gains tax levied on the transfer of real property located in Panama depends on whether or not the person that transfers the property is deemed to be engaged in the business of selling and/or purchasing real property. For persons not deemed to be engaged in such business, the capital gains tax is 10% of the gain realized on the sale, but the taxpayer is obligated to pay to the tax authorities, prior to the recordation of the transfer deed, 3% of the greater of the total consideration agreed upon for the sale, or the registered value of the real property, as an advance of the seller's capital gains tax. The seller has the option to consider the advance payment as its definitive capital gains tax, or, if the advance payment exceeds 10% of the gain actually realized on the sale, either a tax credit for the amounts paid in excess or the return of said amounts. The seller may use the tax credit to pay other taxes, or transfer such credit to a third party.

On the other hand, a person or juridical entity will be deemed professionally engaged in the real estate business if it has sold more than 10 properties within the year when the

sale takes place or during the previous year. In this case, the person or juridical entity will be subject to a different capital gains tax structure depending on whether or not the property being transferred is new.

(8) Import Tariffs

The importation of goods not otherwise exempted under internal legislation or pursuant to free trade agreements to which Panama is a party is subject to the payment of import tariffs and the ITBMS. Import tariffs vary depending on the product and are established on a tariff line basis.

(9) Other National Taxes

In addition to the above, other taxes that may be applicable in particular cases are: stamp taxes, which are generally levied on the value stated in certain types of documents, including agreements and contracts; an annual tax payable by banks and certain other financial institutions licensed in Panama, the amounts of which may vary, depending either on the type of institution or the total assets of the respective bank; and taxes payable in connection with the issuance of certain insurance policies, among others.

In the case of regulated sectors, such as telecommunications, broadcast and subscriber paid television, power generation and distribution, banking, insurance and reinsurance and securities, each licensed entity must pay to its respective regulator an annual supervisory rate (“tasas”), at a rate or amount normally established in the law or in the applicable administrative regulations.

(10) Municipal Taxes

Municipal taxes vary from municipality to municipality and, in general, are not substantial.

B. Transfer Pricing Regulations

Panama has adopted transfer pricing rules based on the arm's length principle. The OECD Transfer Pricing Guidelines are applicable as a technical reference for the interpretation of the rules established in the Tax Code.

Pursuant to Panama's Tax Code, transfer pricing rules apply only to transactions between Panama companies that are taxpayers in Panama and related entities in other jurisdictions (not to transactions between related parties in Panama). The transfer pricing rules will apply to operations between such entities to the extent that the operations result in income, costs, or deductions that are taken into account for the determination of the taxable basis in Panama.

Companies subject to transfer pricing rules are required to prepare and file with the DGI, within the six months following the end of the fiscal year, an informative return reporting operations conducted with related parties. Failure to file this return in a timely manner will result in fines of 1% of the total amount of the operations with related entities. In addition, companies must prepare and maintain supporting transfer pricing documentation that must include certain minimum requirements. Nonetheless, such documentation should be filed before the DGI only following a formal request by the DGI.

Panamanian entities that are not taxpayers in Panama because they only carry out activities outside of Panama or do not produce Panama taxable income or profits are not subject to transfer pricing rules and reporting requirements.

C. Special Tax Incentives and Regimes

Certain activities or sectors are subject to either special tax rules or incentives. Among the activities or sectors that benefit from favorable tax treatment are: mining, tourism, export of non-traditional goods, agriculture, power generation through clean and renewable sources, construction and operation of administrative concessions, storage and processing of oil and oil-related products, manufacturing industries, as well as maritime and reforestation activities. In addition to the sector specific incentives, tax, labor and immigration benefits are available to companies that establish businesses in any of the various free trade zones, as more fully discussed in the relevant section included in this guide.

Apart from sector-specific incentives and the special free trade zone regimes, a person that commits to invest US\$2,000,000 or more in certain activities and fulfils other requirements may file with MICI a petition to register such investment with the Registry of Investments. If the registration is granted, the investor is entitled to stability in its tax, labor, customs and investment regimes for up to 10 years. The activities or sectors that qualify for the stability regime include: free zones, tourism, industry, export activities, telecommunications, ports, railroad and power generation.

D. Double Taxation Treaties

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, Bahrein, the United Arab Emirates, Israel, the United Kingdom, and Vietnam. Panama has tax treaties that are currently in force with: Mexico, Barbados, Qatar, Spain, Luxembourg, The Netherlands, Singapore, France, South Korea, Portugal, Ireland, the Czech Republic, United Arab Emirates, the United Kingdom, Italy, Israel and Vietnam.

Panama also has tax information exchange agreements in force with: the United States, Iceland, Canada, Finland, Norway, Sweden, Greenland, the Faroe Islands, Denmark, and Japan.

Panama is a party to the Convention on Mutual Administrative Assistance in Tax Matters.

XIV. GOVERNMENT CONTRACTS AND CONCESSIONS

A. Government Procurement

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 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: (i) by the DGPP if the contract amount is below US\$300,000), (ii) by the National Economic Council (if the contract amount exceeds US\$300,000 but is below US\$3,000,000) or (iii) by the Council of Ministers (if the contract amount is above US\$3,000,000).

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 submits the best bid in accordance with the tender documents. Tender documents require that bidders post a bid bond of up to 10% 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 a final contract in the form prescribed by the tender documents. This contract must then be counter-signed by the Comptroller General of Panama.

As a matter of public policy, most government contracts to be performed in Panama must be executed in Spanish; be governed by the laws of Panama; provide for all disputes to be litigated in special courts in Panama, with an appeal possible only to the Panama Supreme Court; permit the government agency to terminate the contract at any time by paying proper compensation indemnification as provided in the contract; and contain a waiver of diplomatic claims in the case of foreign investors, except in the case of denial of justice.

The ACP, Tocumen International Airport and other agencies, have their own regulations governing the procurement of goods and services.

B. Concession Agreements

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 Council of Ministers has the authority to declare that any particular infrastructure project be awarded in accordance with the special infrastructure concessions law. The special infrastructure concessions law grants certain benefits for the concessionaries.

As with government procurement contracts, concession agreements must be executed in Spanish; be governed by the laws of Panama; provide for all disputes to be litigated in the courts in Panama, with an appeal possible only to the Panama Supreme Court; permit the government agency to terminate the contract at any time by paying proper compensation as provided for in the contract; and include a waiver of diplomatic claims in the case of foreign investors, except in the case of denial of justice .

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

C. Contract-Laws

Very large infrastructure projects and concessions that have required special tax, labor, immigration and other rules not otherwise available under existing laws and regulations, have been awarded by means of a contract-law. A contract-law is an agreement negotiated and signed by the Executive Branch of the government with a private company and then submitted to the National Assembly for approval and authorized or approved 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 government tends to reserve this type of contract for projects of particular national interest which require this type of contract.

XV. REAL ESTATE

A. Holding Title to Real Estate

(1) Who May Hold Title

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

(2) 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 which identifies it. The information registered includes: name of owner, registered value, area, metes and boundaries and any liens registered on the property.

A person interested in acquiring titled property in Panama may verify title to the property in the Public Registry of Panama. Then, through registration in the Public Registry of a public deed containing the terms of the purchase and sale, giving in exchange, donation or other transfer contract for the property, the buyer registers the title to his or her name. In addition, possessory rights in some areas of the country may also be recognized through a titling process regulated by ANATI. However the process of titling property held through possessory rights can be difficult and lengthy.

(3) Horizontal Property

Panama has a horizontal property regime to which buildings and projects that wish to be regulated in a condominium-style format may 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 MIVIOT 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 minutes record and conduct audits of the financial statements. The horizontal property regime law provides that the regulations may only be amended by the vote of a supermajority of the property owners and grants juridical status to the assembly of property owners once the regulations are registered in the Public Registry. The regulations are usually not registered until a certain percentage of the building or project has been constructed.

B. Transferring Real Estate

(1) Recordation of Transfer

All transfers of real property must be registered in Panama's Public Registry to be effective against third parties. Any document that is registered in the Public Registry 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 formalized 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.

(2) 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. Registration of the title deed in the Public Registry is essential to perfect the transfer of title to the purchaser.

C. Financing Real Estate Acquisitions

Real estate acquisitions in Panama may 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 to perfect the security interest.

D. Lease of Real Estate

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

(1) 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 Law on Leases 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 may not be increased by the lessor without prior approval of MIVIOT.

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 Law on leases.

(2) 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.
- 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. Leases, both residential and commercial, may be recorded at the Public Registry 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 Law on leases, 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.

E. Construction

Any investor planning to build in Panama will be required to have the necessary construction plans approved by the DMCW. The plans must be signed by professionals duly licensed by the TBEA. Once the construction is finished and prior to occupation of the building, an application for an occupation permit must be submitted to the DMCW. To apply for the occupation permit, the following permits must have already been obtained in respect of the construction: permit issued by the SOFD, the previously mentioned construction permit, an electricity permit and a permit for installation of air conditioners (when applicable).

XVI. SHIPPING

A. Ship Registration

(1) Overview

Panama is the largest registry in the world and accounts for over 18% of the world's fleet, in excess of 8,000 vessels, which represent almost 218 million gross registered tonnage (GRT) . As an open registry, Panama imposes no restrictions on the nationality of owners, which may be foreign individuals or entities.

Likewise, the concept of vessel for registration purposes is quite broad, which has allowed for the registration and financing of offshore structures under the Panamanian flag, such as Mobile Offshore Drilling Units (MODU), Mobile Offshore Production Units (MOPU), Floating Storage Units (FSU) and Floating Production Storage and Offloading (FPSO) units, which may not be considered vessels in other jurisdictions .

The affairs pertaining to the maritime sector are under the competence of the PMA. The PMA acts through its board of directors, while the administrator and sub-administrator carry out the day-to-day functions.

The PMA comprises four major General Directorates, as follows:

- Merchant Marine
- Seafarers
- Ports and Auxiliary Industries
- Public Registry of Property of Vessels

In November 2008, the DGMM was certified under ISO 9001:2000 as a quality management system, conferred by Lloyd's Register Quality Assurance. This certificate was renewed in 2014 and it remains valid to date.

The DGMM is in charge of all matters pertaining to the registrations of vessels under the Panamanian flag, including regulating technical certifications and maritime safety.

Decisions from the DGMM are subject to appeal before the administrator of the PMA and, ultimately, before its board of directors.

The DGMM has delegated the issuance of technical certificates required mainly pursuant to SOLAS on behalf of the Panamanian Administration to classification societies, except for documents reserved to the Administration, such as the Continuous Synopsis Record, full term International Ship Safety Certificate, Certificate of Inspection of Crew Accommodation and Minimum Safe Manning Certificate.

The DGMM is also supported by a worldwide network of consulates with delegated authority to process applications pertaining to vessels flying the Panamanian flag and other services related to the merchant Marine, as well as registrations of ownership documents and naval mortgages (along with amendments, assignments and releases thereof), but only on a preliminary basis .

(2) Registration Procedure

(a) Applying for Navigation Documents

The law provides broadly for the registration of vessels: 1) those engaged in international service, which involves vessels operating outside of Panamanian waters and 2) those engaged in navigation within jurisdictional waters of Panama, which involves vessels engaged in coastal trading in Panama. Generally, all vessels must have a legal representative, which must be a qualified lawyer or law firm to file relevant applications related to the registration.

Once the application is processed, a provisional patent, along with a radio permit, where applicable, are issued, which are valid for six months. It is possible to extend the provisional navigation documents by the payment of a late application fee of US\$500.00 and US\$50.00 per month, in respect to the License and US\$150.00 per quarterly extension in respect to the radio permit.

Prior to the expiration of the provisional registration, an application must be submitted in order to obtain a regulation patent and a radio permit, if applicable, for a period of five years from the date they are issued. To do so, all documents and information related to the vessel must have been filed or be included with the application for the corresponding full-term document.

In the event of changes to the registration information, such as name, owner, radio accounting authority, or tonnages and measurements, it is necessary to first obtain a new set of provisional navigation documents, to be followed by full-term documents.

(b) Public Registry of Property of Vessels

The Public Registry of Property of Vessels is the entity under which ownership documents and naval mortgages, as well as their cancellation, amendments or assignments, and other recordable encumbrances, may be registered.

Documents may be issued in any language and by private instrument, but eventually must be translated into Spanish for the purposes of registration. Documents must be notarized and, if executed outside of Panama, either legalized by Panamanian Consul or Apostilled, in order to be recordable in the Public Registry of Property of Vessels. The notary maintains the original documents and, in the case of documents issued in a language other than Spanish, the deed will contain a declaration made before the notary as to the nature and contents of the documents, followed by a transcription of the official Spanish translation of the document. However, if the document is issued in English, an extract of such document may be executed and thereafter translated to Spanish for registration, while the underlying document may be recorded by transcribing the same as it is, in English. In any event, in case of a legal dispute, the document in its original language should be produced as evidence to clarify its true intent and meaning.

The law provides for a process of preliminary registration, which is done by filing the documents as originally executed together with an application, giving the underlying document full effects for purposes of enforcement, the translation is also incorporated into the notarial deed. Once the notarial deed is registered at the Public Registry of Property of Vessels, it preserves the effects and relates back to the time and date of the preliminary registration.

(c) Government Fees and Taxes

At the time of the provisional registration, various taxes and charges must be paid, including the first year's annual tax and the fees or rates of the vessel, except for pleasure yachts, which are subject to a special fee. These depend on the gross and net tonnage and the type of service of the vessel. The next payment of taxes and fees covers the period from the conclusion of the first year of registration until December 31 of that year. Thereafter, payments are made to cover

the calendar year. Payments must be made before January 31 of the current year. Late payments are subject to a 10% surcharge and a 1% per month overdue interest.

There are various incentives for vessels of new construction, for vessels of short age that transfer from another registry, vessels entering the registry as a group, new vessels belonging to a registered group and those that maintain a good track record . The DGMM has also implemented certain dispensations for laid up vessels.

Pleasure boats pay only a biennial registration fee instead of all of the above charges.

(d) Standard Documentation to be submitted

(i) At the time of provisional registration or, upon request within 30 days thereafter, the following documents must be submitted to the DGMM and, in some cases, the documents must be properly notarized and further apostilled or authenticated by a Panamanian consul:

- A power of attorney designating the legal representative.
- Certificate of Deletion from the previous registry, unless the vessel is registered as a new construction without previous registry.
- A Builder's Certificate, in case of new constructions.
- Title documents, which may be, for instance:
 - A bill of sale from the seller or Builder's Certificate from the shipyard which must include the sales price and acceptance of sale from the buyer, in case of a sale.
 - When the vessel is changed to the Panamanian registry under the same owner of a former registry, the Certificate of Deletion showing such owners as the last owners of record.
 - A certified copy of the judgment confirming the final adjudication of title to the property, in case of acquisition through a judicial sale.
- A radio permit application.

(ii) Vessels of internal service or coastal trading in Panama are required to undergo special measurement and appraisal, which must be requested from the DGMM. In addition, evidence of the payment of import duties, or exemption thereof, if applicable, is required. Both of these are required prior to the issuance of provisional navigation documents.

(e) Special Technical Requirements and Certificates

A vessel registered in Panama must have all of the technical certificates pursuant to SOLAS, including the provisions of the International Safety Management (ISM) and the International Ship and Port Facility Security (ISPS) Codes and MARPOL as amended by some of their protocols, ITC '69.

For vessels coming from a foreign registry, at the time of provisional registration copies of such technical or special documentation must be provided for assessment and evaluation. Before the full-term navigation documents may be issued, such technical documents must be issued under the Panamanian Registry.

(3) Special Registrations

(a) By Assignment in Case of New Constructions

In case of vessels of new construction, it is possible to obtain, prior to the provisional flagging, the assignment of a registration number, call signs and Maritime Mobile Service Identity (MMSI), as required, since certain technical certificates may be issued and radio equipment programmed before the vessel is actually delivered to the owner. This would require the filing of power of attorney in favor of the legal representative, evidence of the status of the vessel as “under construction” and payment of the registration fee. This type of registration is ideal for the financing of vessels under construction.

(b) Yachts and Other Pleasure Boats

Pleasure boats need not provide technical certifications. Instead, a Declaration of No Commercial Use, duly notarized and legalized, is required to confirm such status. Documents for pleasure boats are valid for a two-year term, and registration fees for those two years are payable for this type of vessel.

(c) Fishing Vessels

The registration process required for fishing vessels or fishing support vessels is the same as that for other commercial vessels, except that prior to filing the application for provisional registration of the vessel with the DGMM, ARAP must issue a fishing license for international service vessels or a license for fishing support vessel. The license is valid for renewable one-year periods. The fees for issuance are as follows:

- Fishing license for vessels that fish with purse-seines shall pay US\$10.00 for every gross registry ton.
- Fishing license for vessels that fish with other fishing arts shall pay US\$5,000.
- License for fishing support vessel shall pay US\$5,000.

(d) Bareboat Charter Registries

(i) Foreign Vessel to the Panamanian Registry

Vessels of a foreign registry may be registered in Panama under a bareboat charter registry, in which case the bareboat charter-party must be registered. The bareboat owner is then issued special navigation documents. Such vessels pay regular fees and an additional fee of US\$150.00, plus US\$0.20 per gross/TON, for the filing of the bareboat charter-party with the DGMM.

(ii) Panamanian Vessel into a Foreign Registry

Panama also allows vessels of Panamanian nationality to be registered in a foreign bareboat charter registry.

(e) Special Three Month Temporary Registration

Panamanian law provides that vessels which may be engaged in voyages for delivery, scrapping and other scenarios of temporary international navigation may be registered under a temporary registry in Panama.

(4) Seafarers and Licensing

Crew licensing is generally subject to the Standards of Training, Certifications and Watch-keeping (1995). Panama is also a party to the Maritime Labor Convention (2006), and special laws regarding labor on board vessels of Panamanian registry apply as a matter of public order.

All persons employed on board vessels of Panamanian registry must have a Panamanian license or permit. The Directorate General of Seafarers is primarily responsible for crew licenses and other technical personnel permits. Certain Panamanian consulates, through special delegation of authority, are allowed to handle temporary licenses and permits, while waiting for full-term licenses to be issued.

B. Ship Financing

(1) Naval Mortgages

(a) General Aspects

Mortgages on a Panamanian vessel may be granted once it is registered provisionally in Panama and title has passed to the mortgagor. The mortgage document may be in any form or language and it may contain any lawful covenant, term or condition, provided that the mortgage contains the following minimum information:

- Names and domiciles of the mortgagor and mortgagee.
- The fixed or maximum amount of the principal or of the obligation secured.
- The dates of payment of the principal obligation or of compliance with the obligations secured, and of interest, or the method to determine such dates, except when the obligation secured is payable on demand or is a conditional or a future obligation.
- If subject to interest, the agreed rate or the method for computing the interest must be stated. The rate may be stated with reference to a specific market, costs of funding, fluctuating elements or floating formulas.
- A description of the mortgaged vessel, in terms of its navigation registration or license number, radio call signs, if so assigned, and registered tonnages (GRT and NRT) and measurements (length, width and depth).

A Panamanian naval mortgage may secure any type of obligation, including existing, simple, conditional or even future obligations. For instance, un-advanced tranches, rotating credit facilities, obligations subject to alternative currency or multi-currency clauses and other types of complex financing, are permitted, generally without the need to execute or register supplementary deeds when the conditions occur or the future obligation is perfected.

Remedial provisions may include the right of out-of-court sale by the mortgagee, and rights of possession and management of the vessel and of collection of earnings and proceeds and their application in satisfaction of the secured debt. In the case of an out-of-court sale, the law does require 20 days prior notice to the owner and to other registered mortgagees.

By law, the following liens or privileges have priority over the naval mortgage:

- Judicial costs incurred in the common interest of maritime creditors;
- Expenses, indemnities and wages for aid and salvage due from the last voyage;
- Wages, compensations and indemnities of the master and crew members ;

The mortgage may be preliminarily registered, prior to its definitive registration at the Public Registry of Property of Vessels. The registration of title to property must be effected prior to or simultaneously with the mortgage, both on a preliminary basis. The preliminary registrations may be processed through consulates. It is also possible to process preliminary registrations of amendments, assignments and releases or cancellations of naval mortgages prior to their definitive registrations.

In the particular case of the naval mortgage, the law provides that, instead of the whole mortgage agreement having to be processed for definitive registration, after the preliminary registration takes place, it is possible for the parties to execute an extract, containing only basic and essential information of the actual mortgage agreement. Then, only the extract would need to be translated and notarized for definitive registration of the mortgage, although both the mortgage, as preliminarily registered, and the extract would have to be filed with the Panamanian notary that issues the corresponding deed.

Government fees for the preliminary registration of a naval mortgage are US\$450.00 for the first US\$2 million of principal amount secured, and US\$150.00 for each additional million up to a maximum of US\$1,200.00. The definite registration fees are based on the NRT at the rate of US\$0.12 per ton up to a maximum of US\$600.00. There are no preliminary or definite title registration fees. In addition, translation charges, notarial paper and notarial fees will be assessed, the precise amount of which depends on the volume of the documents.

(2) Mortgage of Vessel under Construction

A vessel may be mortgaged while under construction, as soon as it may be registered by assignation. Title registration for the purposes of creating a mortgage over a vessel under construction may be based on a certification or statement from the builder (notarized and legalized), containing the following information:

- Name of the party for which the vessel is being built;
- The registration number and call signs assigned (implies registration by assignation);
- Dimensions (tonnages and measures) and type or service of the vessel;
- Place, name and address of the builder;

- Confirmation of the intention of the builder to transfer ownership to the party for whom the vessel is being built;
- The purchase price, together with the acceptance of sale from the purported or intended owner.

There is no minimum level of completion of the construction for the vessel to be mortgaged while under construction. However, for the purposes of title, upon which the mortgage becomes effective, the terms of the shipbuilding contract will indicate when during construction process will the transfer in ownership take place. For example, if the shipbuilding contract provides for the progressive passing of title as the vessel is being built, then it would be possible to draft the Builder's Certification accordingly, thus allowing the mortgage to affect the vessel for as much as the owner keeps acquiring it, up to its formal delivery. As such, if the owner never acquires title over the vessel, or part of it, while construction is taking place, then it would not be possible for the vessel to be validly or effectively mortgaged until its completion and delivering to the buyer.

(3) Enforcement before the Maritime Court

The judicial procedure for the enforcement of naval mortgages is outlined in the Code of Maritime Procedure, and includes, among others, the following steps:

- The complaint must be accompanied by prima facie evidence of the claim, in particular:
 - Confirmation of the registration of the vessel and the naval mortgage affecting it, such as an extract from the corresponding vessel's registry; and
 - The amount outstanding and computation thereof. Such evidence must not have an issuance date of more than 30 days prior to the date that the complaint is actually filed with the court.
- Once the arrest of the vessel takes place with the consequent service of process, the complaint must be answered within 30 days. All defenses and exceptions must be asserted in the answer to the complaint.
- After the answer to the complaint is submitted and admitted, the judge shall call for a hearing to review the matter and render judgment. Thereupon, the notification, right to appeal and enforcement would apply under the rules of ordinary proceedings.
- If the complaint is not answered, the judge must order the judicial sale of the vessel, although the affected party/ship-owner may intervene thereafter without prejudice to the stages of the proceedings that already have taken place.
- At the same time, the actual sales procedure and the possible intervention of other creditors of the vessel are maintained.

XVII. PORTS AND LOGISTICS

A. Overview

The National Port System is made up of all of the ports, marines, docks and other port installations, with the exception of the areas under the administration of the ACP. The National Port System is overseen by the PMA through the General Directorate of Ports and Auxiliary Industries. The PMA may grant concessions for the administration and operation of ports to third parties, as well as licenses of operation for businesses interested in carrying out commercial activities within the ports.

B. Concessions and Licenses of Operation

Persons interested in carrying out activities in the ports must present an application to the General Directorate of Ports and Auxiliary Industries. Proposals must include a description of the area to be covered by the concession, the initial investment, the timeframe for beginning and executing the project, the type of activity to be carried out, and an outline of the environmental impact assessment. In addition, any plans that include the use of areas under the operation of the Panama Canal will require authorization from the ACP prior to applying for a concession or contract from the General Directorate of Ports and Auxiliary Industries.

The execution of projects, leasing of goods, provision of services, operation or administration of goods and the management of administrative functions must all be carried out according to the rules and regulations that govern public contracts (for more information please see the Government Contracts and Concessions section of this guide) .

(1) Concessions

Concessions for the operation of ports are granted by contract, while licenses of operation are granted through administrative resolutions. The state retains ownership over all goods granted in a concession; as such, the concessionaire only receives the right to use the goods and may not dispose of the goods in any way. Concessions are granted for an initial term of up to 20 years, which may later be extended for the same length of time as the original contract. Concession contracts for the administration of port facilities may only be regulated by Panamanian law, and disputes may only be subject to arbitration if an express clause permitting arbitration is included in the contract.

Concessionaires are required to guarantee their performance of obligations contained in the contract through a deposit in an amount determined by the PMA's executive committee. They are also required to fulfill any labor obligations to their workers in the case of a termination of the concession contract. Furthermore, concessionaires must grant access to the ports to duly authorized license of operation holders.

(2) Licenses of Operation

Licenses of operation are granted to persons who wish to provide services to ships, cargoes or persons within the ports. Licenses are granted for an initial term of up to 10 years, which are renewable for equal periods of time provided that the service provider has complied with all its legal obligations and made all of its corresponding payments to the State, including the inspection fee determined by the PMA based on the fee established for each service. After being granted their license of operation, service providers must apply for an operations permit from MICI.

Applications for licenses of operation for activities such as underwater welding or disposal of waste or contaminating substances, as defined in the International Maritime Organization's International Dangerous Goods Code, are required to submit complete plans for the management and treatment of such materials. In the case of companies planning to transport or store fuel and/or petroleum derivatives, a contingency plan must be submitted for approval to the Department of Pollution Control and Prevention.

Where licensees intend to carry out their activities in a port that is operated by a third party concessionaire, the licensee must carry out its activities without interfering with the operation of the port and comply with all applicable security measures and standards of quality for the port.

All licensees are required to provide a performance guarantee to the PMA, which is equivalent to three monthly tariff fees. They must also have an insurance policy that covers any damages to persons or property, including risk of contamination. Finally, licensees engaged in the transportation, storage or disposal of fuel, petroleum derivatives or any other dangerous substance must have insurance to cover fuel spills, including pollution, explosions or any other risk inherent to the operations.

(3) Tariffs and Taxes

The tariffs applied to concession contracts and, in addition to the inspection fee mentioned in the previous subsection on Licenses of Operation, to these licenses are determined by the PMA based on a number of factors, including: amount of investment, areas of operation, activities to be carried out, the value of the goods granted in the concession, the profitability of the project, the benefit to the State, and the length of the concession. The PMA may also levy additional tariffs for activities such as the movement of cargo, handling bulk cargo, and docking, among others.

Port operators are required to pay a tariff to the National Treasury in lieu of income tax for each local cargo movement. Concessionaires and service providers are also subject to local municipal taxes.

XVIII. MINING

A. The Minerals Code and the Concession System

Title to all mineral assets in Panamanian soil is vested in 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 transportation activities, regardless of such persons' nationality or form of corporate organization . 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 sub-surface (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 concessions, the exploration concession and the 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”).

B. The General Directorate of Mineral Resources

The DGRM is a governmental bureau within the 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 MICI, representing the Republic of Panama. In the case of construction materials, extraction concessions will not require approval by the Council of Ministers. All mineral concessions contracts will also have to be countersigned by the Comptroller General of the Republic. The concession’s term will start on the date the fully signed contract is published in Panama’s Official Gazette.

C. Prospecting Permits

The prospecting permit allows the permit holder the right to engage in preliminary geological surveying on a non-exclusive basis within the specific area delineated by the relevant permit for an initial period of six years. Prospecting permits are granted by the DGRM. In practice, the DGRM has proved quite flexible in defining the minerals and areas covered by prospecting permits. Because of the expeditious and inexpensive procedure involved in obtaining such permits, they have become a preferred tool for geologists who want to survey potential areas of interest for mining companies. Aside from an initial nominal application fee, holders of prospecting permits are not required to make any payments by way of surface taxes or production royalties.

D. Exploration Concessions

Exploration concessions grant the concessionaire: (i) the right to engage in preliminary geological work (as would also be conferred by a prospecting permit), (ii) the exclusive right to engage in all necessary exploration and related activities with respect to specific types of minerals within the zone constituting the concession, and (iii) the exclusive right to be awarded an extraction concession over the relevant area if commercial quantities of minerals are discovered during exploration activities .

Exploration concessions are available for initial periods of four years, subject to two discretionary extension periods of two years each. Exploration concessions may cover a maximum of 25,000 hectares during the initial four year period, although there is no aggregate limit on the number of concessions held by any one party. If an exploration concession is extended for either or both of the two-year renewal periods, the area covered may be reduced by at least 15% from that previously in effect, if at the time of each extension the concessionaire does not accept the terms and conditions then applicable to exploration concessions . Every holder of an exploration concession must begin prospecting work, if applicable, within 90 days from the effective date of the award of the concession, and actual exploration work within one year from such effective date. In the case of concessions relating to minerals used in the construction industry, exploration concessions may cover an area of 2,000 hectares and have an initial duration of two years, with the possibility of being extended for additional periods of two years.

The application process for an exploration concession involves the submission to the DGRM of information on the legal, financial and technical status of the applicant, maps, mining

plans and budgets for at least four years, a nominal application fee, and a preliminary report on the environmental aspects of the proposed exploration activities, as prepared by an independent Panamanian environmental engineer or consultant. Proof of an applicant's economic wherewithal may include a letter of comfort or support from an applicant's parent company or evidence that a certain balance (usually in the mid five figures) is standing to the credit of a bank account maintained in Panama by the applicant. An applicant's technical abilities may be proved by evidence of the mining company's expertise in similar projects throughout the world and by undertakings of assistance from a competent Panamanian geologist. Holders of exploration concessions must additionally post guarantee bonds in favor of the Government of Panama, the value of which will be calculated per hectare in the concession depending of the class of minerals.

With one exception, the sole ongoing payment obligation of exploration concession holders consists of a fixed annual surface tax, ranging between US\$1.00 and US\$3.00 per hectare, with the amount increasing with the length of the concession. In addition, even though the relevant company's mining operations may be confined to purely exploratory activities, because the Minerals Code deems it possible that exploration for alluvial precious metals may take into account actual exploitation of those metals, a royalty must be paid in the amount of 2% of the gross value of all metals actually extracted for as long as the exploration concession remains in effect. Mining companies are entitled to deduct exploration expenses for any year that an exploration concession is in effect against as much as 75% of amounts paid by way of surface tax for that year.

E. Extraction Concessions

A holder of a valid exploration concession benefits from the exclusive right to apply for an extraction concession on the same area. The Minerals Code also provides for the award of extraction concessions over minerals not then subject to exploration activities. Extraction concessions are granted for an initial period of 25 years and for a maximum area of 5,000 hectares for base metals, an initial period of 10 years and for a maximum area of 3,000 hectares for alluvial precious metals and an initial period of 20 years and a maximum area of 5,000 hectares for non-alluvial precious metals. In the case of concessions relating to minerals used in the construction industry, such concessions are granted for an initial period of 10 years and a maximum area of 500 hectares. Extraction concessions may be extended, at the discretion of the Executive Branch, for three different periods of 10, 5 and 5 years, respectively. For minerals used in the construction industry, such concessions may be extended for periods of time of up to 10 years. As is the case

with exploration concessions, the granting of any renewal to an extraction concession may entail the reduction of the area then subject to the concession by at least 20%, if at the time of each extension the concessionaire does not accept the terms and conditions then applicable to extraction concessions. The application fees for extraction concessions are nominal. In addition, holders of extraction concessions must post guarantee bonds in favor of the government of Panama, the value of which shall be calculated on the basis of US\$0.25 per hectare in the concession, depending of the class of minerals.

To the extent minerals are found in commercial quantities in an extraction concession, the concessionaire is required to commence actual and continuous mining operations as soon as practicable thereafter (and in any event within three years of the granting of the extraction concession) . The Minerals Code also provides for the cancellation of an extraction concession within two years after the cessation of mining operations.

A holder of an extraction concession benefits from the following rights, all of which are granted on an exclusive basis: the right to engage in, first, any necessary supplemental prospecting or other geological work in the concession zone with respect to the minerals covered by the concession; second, all extraction activities relating to such minerals; third, processing the minerals extracted (together with all incidental work); fourth, transporting the extracted minerals to the port or railhead as permitted in the terms granting the concession; and fifth, storing, exporting and selling the relevant mine output.

Holders of extraction concessions must pay surface taxes as well as production royalties during the periods that such concessions may be in effect. Unlike the surface taxes in effect for exploration concessions, the surface taxes for extraction concessions vary according to the type of substance mined. For example, for base metals and precious metals found in alluvial regions, the amount of surface tax ranges from US\$1.50 to US\$7.00 per hectare per year . The surface tax on precious metals found in non-alluvial zones is assessed at a rate between US\$2.00 per hectare and US\$7.00 per hectare per year. In addition, the Minerals Code requires the payment of royalties in the amount of 5% of the gross production value of base metals and non-alluvial precious metals and 8% of the gross production value of precious metals from alluvial zones . In addition, in the case of minerals used in the construction industry, concessionaires must pay to the municipalities in which the materials are extracted, extraction duties on each cubic meter of

material extracted. The rates for such extraction duties vary depending on the type of material and range between US\$0.13 and US\$3.00 per cubic meter.

F. Transportation and Processing Concessions

Transportation and processing concessions enable the holders thereof to transport and process, respectively, minerals on behalf of a mining operator legally entitled to extract those minerals. Each such concession may be granted for an initial period of 25 years, subject to three renewal periods of 10, 5 and 5 years, respectively. Holders of extraction concessions engaged in the ordinary course of digging for and selling mineral output are not required to obtain these supplemental concessions. Application fees for transportation and processing concessions are also nominal. Moreover, those awarded transportation and processing concessions must procure the issuance of guarantee bonds in favor of the State based on an amount equal to 1% of the proposed investment in their operations in Panama, but in any event at a minimum of US\$500.

G. Concerning Concessions Generally

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 State, 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 a financing, as long as MICI is satisfied with the technical and financial standing of the potential assignee. In the case of a 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 the same to be valid. In addition, MICI's prior approval may also be necessary in case 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.

The Minerals Code allows holders of both exploration and extraction concessions reasonable rights of access and use to the water, timber and soil overlying those concessions, subject to permission from the owner of the surface estate and/or the Ministry of Environment. In case the surface owner and the concessionaire should fail to come to an agreement as to the scope of the concessionaire's rights, the Minerals Code establishes a procedure for the expropriation of all lands necessary for mining operations, or the creation of an appropriate easement in favor of the concessionaire, upon payment of just compensation and costs to the surface owner. In such a case, the title to all surface land so taken will vest in the Republic of Panama, with all necessary rights of use inuring to the concessionaire. The Minerals Code does not, however, address the situation in which a concession holder may need rights of access or use to adjacent sub-surface estates.

Mineral concessions may be cancelled if the concessionaire defaults in its obligations under the concession contract or breaches relevant legal provisions in the Minerals Code and other applicable laws. In addition, mineral concessions may be cancelled if the concessionaire is declared bankrupt or insolvent. The Minerals Code allows a grace period of one year for payment of defaults by miners and provides that the relevant concession will not be revoked in the absence of overt and repeated refusal to submit required reports or comply with inspection requests from government officials. A concession will, moreover, be considered abandoned if mining operations cease for an entire year, in the absence of any force majeure event. The Minerals Code imposes monetary sanctions for violations of most of its various provisions, except that mining operators not holding a valid concession may have their output seized by the government in case the value of such output is in excess of the maximum fine permitted to be assessed under the Minerals Code.

XIX. ELECTRONIC COMMERCE

A. Electronic Signatures

Electronic documents, including contracts, are considered valid in Panama. Electronic documents may also constitute valid evidence, and have the same evidentiary value as other documents granted by the Judicial Code. In any case, the evidentiary value of an electronic document will depend on the way in which it was generated, stored or communicated, and on the reliability and the integrity of information.

Moreover, electronic signatures are considered valid proof of civil and commercial obligations and are given the same consideration as written signatures, provided that: (i) a method to identify the originator of the data message indicates the content for approval; (ii) the method is reliable and appropriate for the purpose for which the message was generated or communicated. However, if a legal provision requires that a signature be recognized or made under oath, a qualified electronic signature must be used. Moreover, if a legal provision requires that a signature be notarized, ratified or made under oath before a notary or public official, the qualified electronic signature must be accompanied by the electronic signature of that notary or official.

A qualified electronic signature is supported by a qualified electronic certificate, which is an electronic certificate issued by a registered provider of such certificates that links the verification data of an electronic signature to a signatory and is created on a secure device. Certificates issued by foreign certification providers may also be recognized in certain circumstances.

B. Electronic Commerce

Companies offering goods and services over the internet do not require prior authorization. A company that sells goods or services over the internet is considered to be established in Panama, and is thus subject to the applicable Panamanian laws if: (i) it is domiciled in Panama and maintains in Panama a centralized management of the company and/or (ii) one of its branches that engages in the sale of goods and services in Panama has obtained a commercial or industrial license or a notice of operation. A company not located in Panama that provides services in the country over the internet is free to conduct business without prior authorization. However, if

it promotes its services or carries out commercial transactions in Panama, it is bound to comply with Panamanian laws.

Any publicity material, including offers, discounts, and prizes, sent to consumers through electronic mail must be clearly identified as such and must include an option for the receiver to unsubscribe from future communications. Furthermore, businesses engaged in commercial transactions and online information providers that require the consumer to provide an electronic mail address must provide certain disclosures and opt-out provisions.

C. Data Protection

(1) Confidentiality

A number of laws in Panama, including the Constitution, provide for the protection of personal data. The Code of Commerce imposes a general obligation on merchants to preserve the confidentiality of commercial books, records and documents, and only disclose such information when requested by competent Panamanian authorities. The Criminal Code punishes the misuse of client information that has been stored in databases or elsewhere and specifically defines several crimes for this purpose. Furthermore, the electronic commerce law states that providers of electronic document storage must guarantee the protection, reliability and proper use of information and data stored on behalf of their customers. The Tax Code also requires tax authorities to maintain the confidentiality of tax information and to refrain from using such information for any purpose other than tax-related investigations.

In addition, there are a number of sector-specific data protection laws. For example, banking laws specifically impose an obligation on banks to keep client information strictly confidential. Release of this information is only possible with the prior consent of the client, or at the request of a competent authority in connection with a criminal proceeding or credit reporting. Financial information is also protected by various laws regulating credit agencies, trusts, credit card issuers and capital markets.

The telecommunications industry, including internet, telephone, and mobile phone providers, are also required to preserve the data collected on consumers, and to provide said data when requested by the relevant authorities.

(2) Document Storage

Panamanian legislation regulates the storage of electronic documents in cloud or other technological storage systems. The document storage system may be located in Panama or overseas. The storage of electronic documents in cloud or other technological storage systems based in Panama does not require any kind of notification or retention of records. Additionally, the companies that provide this service should register before the National Directorate of Electronic Commerce. Nevertheless, no storage service providers (from Panama or abroad) have registered before the National Directorate of Electronic Commerce, given that up to date the registry has been established as optional.

(3) Cross-Border Transfer of Data

Electronic documents and data stored in foreign jurisdictions may be recognized under Panamanian law provided that there is an agreement between Panama and the country in which they are stored. Alternatively, the documents must be stored by data storage providers duly certified in their home country, verified by a Panamanian consul, or issued by a service provider that meets the minimum standards of the General Electronic Commerce Directorate.

Panamanian law also establishes a special regime to ensure the confidentiality of information stored in databases in Panama in support of operations performed in foreign countries or jurisdictions by private and public companies, including state and international agencies. Database providers in Panama may offer these services to foreign clients, and foreign companies may open a branch or subsidiary in Panama for the sole purpose of operating such a database.

XX. INTELLECTUAL PROPERTY

A. Trademark

(1) Registration

Persons planning to carry out business in Panama should consider the registration of the trademark of the products and/or services to be marketed in the country with the Industrial Property Office of MICI. In order to carry out this registration the following preliminary steps should be taken:

- A distinctive mark should be chosen, such as a word, design, or combination thereof, which should not be generic or descriptive of the goods or services to be represented by the mark.
- A search of the availability of the proposed trademark may be conducted at the Industrial Property Registry, in order to determine the prior existence of any identical or similar mark which may prevent its registration before said authorities.

Once it has been determined that the selected trademark is available, it is possible to file an application to secure its registration for a 10-year term. In addition, Panama has adopted the multi-class system of trademarks, making multi-class registration an option.

(a) Requirements for Registration

To register a trademark at the Industrial Property Office of Panama, an application indicating the applicant's name, nationality and address must be filed together with the following documents and information:

(i). Power of attorney. A power of attorney should be granted by the applicant, establishing a lawyer or law firm as its agent, duly signed by an officer of the corporation. This document does not need to be notarized or legalized. An application may be filed without a power of attorney by posting a surety bond to guarantee that such a document will be filed within a period of two months, beginning on the date of the filing.

(ii). Information on use of the trademark. The agent must be informed as to whether the mark is already being used in the commerce in Panama, so as to determine if the application must be filed on a use or on an intent-to-use basis.

(iii). Spanish translation of the mark. Should the applicant wish to register a trademark containing terms in a language, other than Spanish, a translation of said terms must be provided. However, if the trademark contains a distinctive term, the application may indicate that the trademark is a coined word without meaning in Spanish language.

(iv). A label of the mark must be provided, if the feature to be registered is that other than a word.

In the case of a priority claim based on the Paris Convention, in addition to the documents and information listed previously, the application must indicate the country, date and number of the application that is to serve as the priority document. A certified copy of the priority document must be sent to the agent within a period of six (6) months, beginning on the date of the Panamanian application filing. This document does not require authentication by a Panamanian consul or Apostille.

(b) Registration procedure

The registration of a trademark takes around one year or less. This term includes the examination process for the trademark, including a review of any prior rights and the distinctiveness of the mark. Once the trademark has been reviewed and accepted for publication in the Industrial Property Bulletin of MICI, it will be published for a period of two (2) months, allowing any interested parties the opportunity to oppose said trademark application. Upon expiration of the aforesaid term, if no opposition suit is filed against the mark, the Industrial Property Office will issue the corresponding Certificate of Registration.

(2) Renewal

The term of validity of a trademark registration may be extended indefinitely for equal periods of time, provided that the renewal application is filed within one year before the date of expiry of the Panamanian registration, or up to six months after such date (grace period). The formalities detailed below are required to proceed with a registration renewal:

(a) Requirements for Renewal

A power of attorney from the applicant should be granted to a lawyer or law firm to act as the agent; alternatively, an application may be filed without a power of attorney by posting a surety bond to guarantee that said document will be duly filed within a period of two months, beginning on the renewal filing date. However, if the original agent appears as the correspondent for the Panamanian registration, the agent only needs to receive the client's renewal instructions.

(b) Renewal Procedure

The renewal of a trademark registration takes from two to three months to be issued. Within the renewal procedure, Panamanian law does not require the provision of any specific document or real merchandise as proof of use of a mark.

(3) License Agreement

License agreements may be registered in order to protect the owner of the trademark. With a license agreement, the licensor may successfully assert proof of use in Panama, in defense of a non-use action, safeguarding the rights of the licensor's trademark in case of an opposition or a nullity action and serving as a basis for any infringement actions the licensor wishes to present.

Panamanian law recognizes the concept of sublicensing, but the specific authorization granting permission to execute a sublicense agreement must be established in the original license agreement.

B. Trade Names

The requirements and procedure for the registration and renewal of trademarks is also applicable to trade names. Nevertheless, according to article 145 of Law No.35 of May 10, 1996 "Whereby provisions on the Industrial Property are Adopted", modified by Law 61 of October 5, 2012, the trade name of a business or industrial, commercial, or service establishment and the right to its exclusive use shall be protected without need to be registered at the Industrial Property Office. Therefore, there is no need to register the Trade Name or Commercial Name; nonetheless, we always recommend its registration, in order to have an effective way to prevent its use by third parties.

C. Patents of Inventions and Utility Models

(1) Registration

To be registered, an invention must be innovative within the market, the result of a creative activity, and must have an industrial application. The invention may be a product, a process, or both, having a special use or a non-obvious use.

The following, among others, are not deemed inventions: theoretical or scientific principles; discoveries of something already existing in nature; economic or business plans, principles or methods; esthetic creations and artistic or literary works; software programs per se; data presentation formats; methods for surgical, therapeutic or diagnostic treatment; the juxtaposition of known processes or the mixing of known products; and inventions whose use or creation are contrary to the laws of Panama.

(2) Procedure

Once the patent application is filed, the examiners will review whether or not the invention is new, has an industrial use, and is the result of a creative activity. When they verify that the invention meets those requirements, the petitioner must request the study of the state of the art information during the 14 month period following the filing of the Panamanian application or the priority claim. Once the report of the state of the art information has been conducted, upon payment of the publication, the application will be published in the Industrial Property Bulletin for two months, and anyone may file observations to the application.

After this publication period, if no observations have been filed and upon petitioners request, the Industrial Property Office must proceed to conduct a substantive examination of the patent of the invention; for this purpose, the Industrial Property Office will request that international authorities provide them with the results of any international investigations or examinations carried out on the corresponding patent application. Also, the Panamanian authorities may request that the applicant present them with foreign international search and examination results in the case that clarifications or voluntary amendments to the claims of the patent are requested.

Be advised that In the case of a priority claim, in addition to the above, the application must indicate the country, date and number of the application that is to serve as the priority document. A certified copy of the priority document must be sent to the agent within a period of six months, beginning on the date of the Panamanian application filing. This document does not require authentication by a Panamanian consul or by Apostille.

Once the substantive examination has been completed and accepted, the Industrial Property Office will issue the Panamanian Letters Patent.

It should be noted that a patent application is not subject to an opposition suit. However, once the Panamanian Letters Patent is granted, an annulment and/or cancellation action could be filed by third parties, at the Panamanian civil courts. This action has a statute of limitations of eight years, a period which begins from the time of the patent's concession.

Moreover, the procedure described above also applies to utility models, which only need to be new and have an industrial application for their registration to be granted for a 10-year term.

Furthermore, the government of Panama presented the country's instrument of accession to the Patent Cooperation Treaty (PCT) at the World Intellectual Property Organization on June 7, 2012, and said treaty entered into effect on September 7, 2012. Therefore, since March 7, 2014, the Republic of Panama is receiving PCT applications as well.

(3) Requirements

- Application made through a lawyer, in the form provided by the Industrial Property Office.
- Description, claims, and abstract.
- Formal Drawings.
- Name and address of applicant and inventors.
- Deed of assignment if applicable.
- Power of Attorney. A power of attorney should be granted by the applicant, establishing a lawyer or law firm as its agent, duly signed by an officer of the corporation. This document must be duly acknowledged by a notary public and thereafter, legalized by a Panamanian consul or by Apostille. A surety bond can be posted at the moment of the application, which grants a two-month term for submitting the PoA. This term can be extended for two additional months.

D. Compulsory License

Panamanian law establishes the possibility of compulsory license agreements of an invention patent or utility model.

E. Industrial Models or Designs

In Panama, an industrial design is defined as any two or three-dimensional design that, if applied to a particular item, gives the item a special appearance and is suitable for use as a manufacturing model. Panamanian law provides protection for industrial designs in two ways:

(1) Protection without Registration

Industrial designs enjoy protection automatically, without registration, for the first three years from their first disclosure in Panama. During this period, the owner will have the right to prevent third parties from exploiting an identical or similar design.

(2) Protection under Registration

Industrial designs may be registered as a means of protection. This registration process requires the following formalities:

(a) Requirements

- An application, indicating the name, nationality, and address of the petitioner and of the creator, must be filed together with the following documents:
- A power of attorney or a power of attorney with an assignment provision from the creator(s). Said document, once executed, must be delivered to the petitioner's agent and duly acknowledged by a notary public and thereafter, legalized by a Panamanian consul or by Apostille.
- If the applicant is a corporation, the agent must be provided with a certified copy of the Certificate of Incorporation (Certificate of Good Standing) reflecting the existence of the corporation, duly legalized by a Panamanian consul or by Apostille. This document is only valid for a period of one year from its date of issuance.
- An application may be filed without the above-mentioned documents by posting a surety bond to guarantee that said documents will be filed within a period of two months following the filing date.
- A certified copy of the priority document, upon which the design application will be based, to be presented within a period of six months from the Panamanian application filing date.
- An article explaining the design subject to the registration and the use thereof, containing:

- A statement explaining the characteristics of the design which provides originality and novelty; and
- A graphic representation of the design. This representation must include a frontal and lateral view of the designs, as well as an elevated, grounded and isometric view thereof.

(b) Procedure

Once the examiners review the application and if they consider that the design meets its registration requirements, the petitioner must request the novelty report. Once the report is rendered, the application will be published in the Industrial Property Bulletin for two months. If no comments or observations are filed against this application, the Industrial Property Office will issue the corresponding Panamanian registration.

(3) Duration

A Panamanian design registration is valid for 10 years, which term may be extended for a period of 5 years, upon request.

F. Registration of Industrial Property Rights at the Customs Office and the Colon Free Trade Zone

Trademarks, trade names, invention patents, utility models, industrial designs and copyrights may also be registered at the Customs Office of Panama, as well as in the Colon Free Trade Zone. These registrations will enable the authorities to inspect or withhold merchandise that is suspected of infringing industrial property rights. .

G. Copyrights

Although the author of any work resulting from an intellectual creation is automatically recognized as having a copyright to the same, this copyright may be registered with the copyright authority in MICI. Among works protected by law are any literary, artistic, educational, or scientific works, as well as computer programs, audiovisual and photographic work, paintings, drawings, architectural designs and particular expressions of folklore.

The author of a copyright is the original owner of the moral and economic rights to the work as recognized by Panamanian law. A copyright registration is granted by MICI for the life of its author, plus 70 years thereafter. The aforementioned economic rights of the work may be transferred to a natural person or legal entity, but such transference must be in writing.

H. Domain Names

Domain names are registered for renewable two-year or maximum five-year terms at NIC-Panama, which is administered by the Technological University of Panama. The country code top-level domain name is: .pa, and sub-domains are: .abo.pa; .ac.pa; .com.pa; .edu.pa; .gob.pa; .ing.pa; .med.pa; .org.pa; .net.pa; .nom.pa; and sld.pa. Applicants for domain names may be any foreign or national individuals and legal entities.

I. Intellectual Property Litigation

All of the intellectual property rights listed above may be challenged or defended by litigation in civil and criminal courts.

XXI. LABOR AND EMPLOYMENT

A. Formation and Proof of Employment Relationships

In Panama all employment relationships must be subject to a written agreement between the parties, except in a few special cases. However, the omission of establishing a written contract does not allow a labor relationship to escape the application of the applicable legislation. An employment relationship is understood to exist based on the mere rendering of services by one person in favor of another under the condition of either subordination to a superior in relation to the carrying out of the service, or economic dependence upon the income received from the activity. Therefore an employment relationship may exist whether or not there is a written agreement.

In the absence of a written agreement, facts or circumstances alleged by the employee, which should have been established in a written agreement, will be presumed to be true. These allegations may only be refuted by the employer through the presentation of evidence that disproves the allegation beyond a reasonable doubt.

B. Duration of Employment Contracts

In general, employment contracts should be entered into for an indefinite period; however, in some particular circumstances employment contracts may be for a limited period of time, or for a specific task or project.

Employment agreements entered into for a limited period of time may not exceed one year. However, in the case of services that require special technical skills, the duration of the contract may be stipulated for up to a maximum of three years. These agreements cannot be used to temporarily fill an employment vacancy which is permanent in nature.

In cases where the services to be rendered require certain special skills or dexterity, it is possible to establish a clause, within a written contract, whereby the employment relationship will be subject to a probation period of up to three months. During such period, either of the parties can terminate the labor relationship without liability.

C. Working Hours

The labor code divides the day into the following working periods:

- Daytime work period: from 6 a.m. to 6 p.m.
- Nighttime work period: from 6 p.m. to 6 a.m.

Hours of work within the above-mentioned work periods shall be classified as day shifts (within the daytime period) and night shifts (within the nighttime period), respectively. A shift comprising of more than three hours within the nighttime work period is considered a night shift.

A mixed shift includes hours from both work periods, provided that the hours during the nighttime period be no more than three. If a shift is composed of hours from both work periods and the time worked within the nighttime period is more than three hours, the shift is considered as occurring during the nighttime period.

The maximum time a day shift may last is eight hours and the corresponding work week may only add up to 48 hours. The maximum time a night shift may last is seven hours and the corresponding work week may only add up to 42 hours. The maximum duration of the mixed shift shall be seven hours and thirty minutes, and the corresponding work week should only add up to 45 hours.

Time worked exceeding the limits set forth in the preceding paragraph, or exceeding lower limits established by contract or special legal exceptions, constitute overtime and must be paid as follows:

- 25% surcharge over the ordinary hourly rate when work is performed during the daytime period;
- 50% surcharge over the ordinary hourly rate when work is performed during the nighttime period or when the overtime is an extension of a mixed shift which had originally started during the hours of the daytime period;
- 75% surcharge over the ordinary hourly rate when the overtime is an extension of a night shift or of a mixed shift which had started during the nighttime period.

D. Wages

Wages can be fixed by unit of time (month, fortnight, week, day or hour), task, or by piece of work. In no case may the base salary be less than the legal minimum. In December of 2017, the Government published new minimum wages by the Executive Decree 75 of December 26, 2017, effective on January 1, 2018.

Bonuses, productivity bonuses and gratuities may be considered as wages only for the purposes of the calculation of annual leave, maternity leave and the seniority premium. Said payments do not create vested rights, and therefore, the employer has no obligation to continue granting them.

As a general rule, payments made to employees in the course of the employment relationship are subject to social security contributions and educational insurance, unless specifically exempted in the Labor Code or in the general law of the social security system.

E. Income Tax

Wages paid to employees rendering services which benefit the employer within the Republic of Panama are subject to income tax, regardless of the place where such payment is made or received or of the nationality, domicile or residence of the employee.

F. Paid Holidays and Vacations

All workers are entitled to the day off with full pay on days which have been declared national days of mourning and during the following holidays: New Year's Day (January 1), Martyrs' Day (January 9), Carnival Tuesday (not a fixed date), Good Friday (not a fixed date); Labor Day (May 1), Independence from Colombia Day (November 3 and 5), First Call for Independence (November 10), Independence from Spain Day (November 28), Mother's Day (December 8), Christmas (December 25). Work on a holiday must be paid with a 150% surcharge.

Workers are also entitled to one day off each week as a compulsory weekly rest period (normally Sunday). Workers are not entitled to wages during the weekly rest period.

Workers who are required to work during their usual weekly rest period are entitled to be compensated with another rest day, and such workers will be entitled to receive a 50% increase of their salary for that day.

There is also a right to a remunerated annual leave (vacation), which consists of 30 days after each 11 continuous months of work.

There is a maternity leave which covers an expecting working woman a paid rest during the six weeks that precede the birth and the eight weeks that follow the birth. The total rest period cannot be less than fourteen weeks.

There is also a paternity leave, which concedes a license of 3 working days to male workers right after the birth of his child.

G. Thirteenth Month

All employers must pay their employees a special bonus called the "thirteenth month", which is equivalent to one month of salary per each year of service. This bonus is computed at one day's wages for every 11 days of work and the same must be paid in three equal installments, as follows: on April 15, August 15, and December 15 of every year.

H. Social Security System

All employees working for the government, individuals or companies operating in the Republic of Panama, including foreigners, are subject to mandatory membership in and payments to the national social security system. This system provides certain benefits to the insured and their dependents including coverage of the following: (i) medical, dental and hospitalization benefits; (ii) disability subsidy; (iii) maternity leave; (iv) retirement pension; (v) death benefits; (vi) funeral subsidy; and (vii) workers' compensation.

I. Workers' Compensation

As indicated above, workers' compensation is provided by the social security system in case of an occupational accident or illness. The contributions that must be paid by the

employer as premiums for such risk coverage are set in proportion to the salaries paid and to the risks presented by the activities carried out by the employer.

The law provides that once the Social Security Administration grants an injured or ill employee the benefits provided for under the workers compensation system, the employer is released from liability with regards to the occupational illness or accident suffered by the employee, except in those cases where the occupational hazard has occurred due to negligence or fault on the part of the employer, in which case additional tort liabilities may arise.

J. Foreign Personnel

At least 90% of the ordinary employees of an employer must be Panamanians or foreigners who are either married to Panamanian citizens or who have had Panamanian residency for at least ten years. However, employers may employ expert or technical foreign personnel as long as it does not account for more than 15% of the total number of workers. In special cases, with the authorization of the Ministry of Labor and Workforce Development, foreign experts or technicians contracted for a definitive period may make up a larger portion of the overall body of employees. With this authorization, a work permit will be given for one-year periods for up to a maximum of five years.

Notwithstanding the above, immigration regulations allow for the employment of foreign personnel to act as executives or what is defined as personnel “in a position of trust” in a proportion not exceeding 15% of the total number of workers. This limit also applies to the percentage of wages or remuneration received by this employment group in relation to all other employees.

There is also a special temporary visa available that allows the employment of foreign personnel of overseas companies with representation in Panama, exempt from the restrictions imposed by the Labor Code as to the number of foreign workers and their wages or remuneration. This visa is issued by the Immigration Department to all foreign executives whose salary is not paid from Panamanian sources. The persons to whom these special temporary visas are granted may not represent the overseas company in any of its local activities. Foreign employees that obtain this special type of visa are exempt from paying income tax and social security contributions.

The Ministry of Labor can penalize companies which commit infractions of foreign labor policy on limits to the hiring of foreign personnel, and which give false information concerning their foreign workers, as follows:

1. First time, 500 USD for each foreign worker without labor authorization.
2. Second time, 1,000 USD for each foreign worker without labor authorization.
3. Third time, 10,000 USD without considering the number of foreign workers, together with suspension of the Notice of Operations.
4. Fourth time, definitive cancellation of the Notice of Operation, and the termination and of the foreign workers.

The penalties will be doubled for companies who incur in infringements of ten or more workers. The names of these companies will be published in a list through the website of the Ministry of Labor and Labor Development.

K. Termination of Employment Relations

Employment relations may be terminated by either: 1) the employer's unilateral decision; 2) mutual agreement; 3) expiration of the employment term; or 4) the resignation of the employee. Following is a brief explanation of the requirements involved in each circumstance and the payments that must be made.

(1) By the employer's unilateral decision

Employees who have less than two years of continuous service can be dismissed without cause. If dismissed without a legally established just cause, the employer must give notice of the dismissal to the worker 30 days in advance, or pay a sum equivalent to 30 days of salary in order to make the dismissal effective immediately. The employer is also required to pay the former employee an indemnification for unjustified dismissal equivalent to 3.4 weeks of wages for each year of service.

Employees who have more than two years of continuous service can only be dismissed if there is a just cause for dismissal, as provided for by law. If an employer wishes to terminate an employee with more than two years of services, without cause, the employer will normally try to negotiate a mutual termination agreement, in which compensation similar to that

applicable to employees with less than two years of service described above will be offered to the employee; however any sum of money may be paid to the employee through the mutual termination, as long as both parties agree to the sum.

There are three types of causes which empower the employer to terminate the employment relationship without indemnification.

First, the Labor Code sets forth 16 causes of a disciplinary nature. This group includes, among others, the following: (i) if, while on duty, the employee engages in acts of violence, threats or ill treatment against the employer, his/her family, members of the business' management team, or the employee's coworkers, except in cases of self-defense; (ii) if the employee, without the authorization of the employer, discloses technical, commercial or industrial secrets or other information of a confidential nature which may cause damage to the employer; (iii) if the employee, while on duty, commits serious, dishonest or dishonorable actions or criminal acts against property to the detriment of the employer; (iv) if the employee fails to show up for work, without permission from the employer or without cause, two Mondays during the course of a given month, six in a given year or three consecutive days or alternate days in a one month period.

The second group of causes for termination by the employer contemplates situations of a non-imputable nature, notably the following: (i) properly verified mental or physical disability of the employee which makes it impossible for him/her to perform his/her functions at work; (ii) if the employer is incapacitated such that the termination of the contract is a necessary consequence; (iii) force majeure or acts of god which involve as a necessary, immediate and direct consequence, the definitive halt to the employer's activities.

The third group consists of causes of an economic nature, namely the following: i) insolvency or bankruptcy of the employer; ii) the closing of the business or definitive reduction of work because of the well-known and evident unprofitability of the business; and iii) a definitive suspension of the activities inherent to the worker's contract. Evident reduction of the employers' activities may be due to a serious economic crisis, partial failure to meet operating costs due to an evidenced decrease in production, innovations in the industrial process, revocation or lapse of an administrative concession, substantial cancellation or decrease in sales orders, or any other similar cause duly verified by the competent authorities.

Notice of termination must always be in writing and must specify the reasons for termination. In the case of termination for economic reasons, the employer must obtain authorization from the Ministry of Labor and Workforce Development and prove, prima facie, the valid economic reasons for termination. However, if, after 60 calendar days from the date on which the authorization is requested, the Ministry of Labor and Workforce Development has not ruled on the petition, the employer can proceed to execute the dismissals. In this instance, the employer shall be required to pay indemnification to the dismissed employees.

(2) By mutual agreement

The employment relationship may be terminated by mutual consent provided it is expressed in writing and does not involve a waiver by the employee of his/her legally acquired employment entitlements rights.

(3) By expiration of the term of the contract

In this case, the employment relationship will be terminated provided the employment contract has been validly established for a definite period of time.

(4) By resignation of the employee

The employee may terminate the employment relationship by delivering a written resignation that has been ratified before the Ministry of Labor and Workforce Development.

L. Seniority Bonus

At the end of any contract for an indefinite period, regardless of the reason for termination, the worker shall be entitled to receive from his/her employer, a seniority premium. The seniority premium must be equal one week's wages for each year of service, starting from the beginning of the employment relationship.

M. Severance Fund

Employers must constitute a severance fund ("fondo de cesantía") in order to pay to employees with employment contracts for an indefinite period, the seniority premium and the indemnification for unjust dismissal or justified resignation, upon termination of the relationship. Contributions made by the employer to the severance fund are deductible for income tax purposes.

XXIII. IMMIGRATION

The following is a list of the most commonly used immigration visas for either employment or investment purposes.

A. Company Sponsored Visas

Companies operating in Panama frequently require foreign employees. The following is a brief description of the most common company-sponsored visas issued by the Immigration Department:

(1) Visas for Staff Employees

(a) **Qualifying employees.** This visa is available to any foreign employee who will hold a staff or ordinary position in the sponsoring company.

(b) **Quotas.** This type of visa is subject to quotas. The aggregate number of foreign employees in this category may not exceed 10% of the total number of company employees, and the aggregate amount of the compensation paid to these foreign employees may not exceed 10% of the total amount of salaries paid to all company employees, as reported on the company's payroll. Employees holding this visa must also obtain a work permit issued by the Ministry of Labor and Workforce Development.

(c) **Term and Renewal.** This visa is granted for two years, after which period the visa holder may apply for permanent residency.

(2) Visas for Experts, Technicians and Top Executives

(a) **Qualifying Employees.** This visa is available to any foreign employee who will hold a managerial position within the company or who will provide expert or highly technical services to the company.

(b) **Quotas.** This type of visa is also subject to quotas. The aggregate number of foreign employees in this category may not exceed 15% of the total number of company employees,

and the aggregate amount of the compensation paid to these foreign employees may not exceed 15% of the total amount of salaries paid to all company employees, as reported on the company's payroll. Employees holding this visa must also obtain a work permit issued by the Ministry of Labor and Workforce Development.

(c) **Term and Renewal.** This visa is granted for two years, after which period the visa holder may apply for permanent residency.

(3) Visas for Employees with Exclusive Overseas Responsibilities

(a) **Qualifying Employees.** This visa is available to any foreign executive (i) whose work responsibilities are restricted to overseas operations (i.e. these employees may not provide services to local customers or have responsibilities over local operations) and (ii) whose salary is paid from sources outside Panama (i.e. foreign headquarters or foreign affiliate).

(b) **Term and Renewal.** This visa is granted for one-year terms, but may be renewed each year an indefinite number of times.

(c) **Taxation.** Foreign employees under this visa are exempted from the payment of income tax and social security contributions in Panama.

(4) Visas for Employees of Multinational Headquarter Offices

(a) **Qualifying Employees.** There are two types of visas available to employees working for companies doing business in Panama under the Multinational Company Headquarter Law: (i) visas for permanent employees; and (ii) visas for temporary employees. These visas are available to foreign employees (i) whose work responsibilities are restricted to overseas operations (i.e. these employees may not provide services to local customers or have responsibilities over local operations) and (ii) whose salary is paid from sources outside Panama (i.e. foreign headquarters or foreign affiliate).

(b) **Term and Renewal.** Visas for permanent employees are granted for renewable five-year terms or for the duration of the employee's employment contract if the contract is for fewer than five years. Visas for temporary employees are granted for a term of up to three months.

(c) **Taxation.** Foreign employees under this visa are exempted from the payment of income tax and social security contributions in Panama.

B. Foreign Professional and Friendly Nations Visas

(1) Foreign Professional Residency Permit

This visa is available to expatriate employees with an undergraduate degree, as long as the degree is not in a field reserved by the Constitution of the Republic of Panama or by law to Panamanians only. For example, medicine, law, architecture, engineering, nursing, and accounting, among others, are all fields restricted to Panamanians. Once the provisional permit in this category is approved it shall be valid for two years; thereafter the applicant may apply for a permanent residency.

(2) Friendly Nations Permanent Residency Permit

According to Executive Decree 416 of 2012, applicants from specific nationalities, including France, the United States, Spain, the United Kingdom, Canada, Brazil, Germany and South Africa, among others, may request permanent residency due to a friendly relationship between these countries and Panama. However, this visa is not automatically granted to nationals of these countries and, upon request, ties with the Republic of Panama, either by economic or professional activity, must be proven. In general, the applicant will be required to provide evidence of the economic basis to require permanent residency in the country. Such evidence may include: a bank statement from a Panamanian bank that reflects a balance not less than four medium figures (US\$5,000.00); a job offer; or evidence indicating that the applicant is the owner of at least 50% of the shares of a Panamanian corporation.

C. Visas for Investors and Retirees

(1) Visas for Investors

Shareholders and officers of a company, who invest a minimum corporate capital of US\$160,000.00 per applicant, with the purpose of establishing commercial, financial or industrial activities in Panama, may apply for this type of visa. The company may engage in any lawful

activity not reserved for Panamanian nationals, and must hire at least five Panamanian employees per applicant. In the event that the investor has dependents, the investment must be increased by US\$2,000.00 per dependent. These amounts may be certified through a local bank reference.

(2) Visas for Certificate of Deposit Holders

This visa may be requested by people retired from working life, living on their personal income, provided that they establish a time deposit or certificate of deposit at the National Bank of Panama (“Banco Nacional de Panama”), with a maturity date of not less than five years, and which must produce a minimum monthly yield of US\$850.00. This visa is granted for a period of five years, which may be extended for an equal term, provided that the certificate of deposit is renewed for an additional five-year period.

Holders of this type of visa and their dependents are entitled to a special Panamanian passport.

(3) Visas Based on Economic Means

Visas based on economic means may be granted in one of the following three circumstances:

- The applicant must establish a time deposit account for a minimum of three years, and with a minimum deposit of US\$300,000. The account must be in the applicant’s name, be free of all manners of encumbrances and be at a bank that holds a general banking license in Panama. The funds must come from abroad ;
- The applicant must acquire, in his/her own name, in the name of a foundation in which he/she is a founder member or in the name of a company in which he/she is the main shareholder, real estate in Panama for a minimum amount of US\$300,000.00 .
- The combination of the first two possibilities, in which the total combined value of the deposit and real estate, is at least US\$300,000.00.

D. Violations of immigration laws

Any violation of immigration laws will be sanctioned with fines that range from US\$50.00 to US\$5,000.00 for immigrants and from US\$800.00 to US\$25,000.00 for employers and

companies, depending on the violation. If the violations persist, the foreigner may be deported and ordered not to re-enter the country for a definite period of time of up to 10 years.

Furthermore, companies that engage foreign personnel without previously obtaining the necessary residency visa will be sanctioned with fines that range from US\$1,500.00 to US\$5,000.00 per foreigner; those that engage foreign personnel without previously obtaining the necessary work permit, if applicable, will be sanctioned with fines that range from US\$500.00 to US\$10,000.00 .

XXIII. ENVIRONMENTAL REGULATIONS

A. Overview

The protection of the environment and natural resources in Panama is overseen by the Ministry of Environment, which replaced the National Environmental Authority (“Autoridad Nacional del Ambiente”, or “ANAM”). The Ministry of Environment is the entity responsible for a large amount of responsibilities, which include naming a few, developing national environmental and natural resource policies; issuing rules and resolutions for the implementation of these policies and evaluating EIS’. It is also the authority responsible for the conservation, protection and restoration of the environment. It is the designated authority that may impose sanctions and fines; direct and supervise the execution of the environmental policies, represent the Republic of Panama before regional and international environmental entities; grant concessions for the use of state properties for renewable energy resource projects, and create special protection laws, among other duties.

The Minister of Environment will have, inter alia, the following responsibilities: direct and administer the Ministry, elaborate proposals on budgets and annual plans of activities; execute the environmental policies, plans, strategies, programs and special projects; represent Panama before international and local entities; authorize acts, financial operations and studies; concede and suspend licenses; grant concessions on the use of state properties, promote programs and purchase, sell, lease and negotiate property.

The Ministry of Environment is responsible for arranging strategic environmental evaluations for policies, plans and programs that presume potential strategic opportunities and risks for environmental conservation and for the sustainable use of natural resources in the country.

The Ministry of Environment may impose administrative fines for violations to the environmental quality regulations; the EIS’; the environmental management plans or resolutions; the sustainability and environmental management programs; and against violations of laws, related laws or complementary regulations. Such violations shall be sanctioned by the Ministry of Environment by way of a written admonishment, or with a temporal or definitive suspension of the activities of the company and/ or with a fine according to the situation the severity of the violations.

These fines are without prejudice to further principal and accessory fines that may be imposed on the infringing party according to the Law.

The fines imposed by the Ministry of Environment will be proportionate to the severity of the risk and/ or to the environmental damage generated by the breach, whether or not it is recurrent, and the economic capacity of the infringing party. The Ministry of Environment may also order the infringing party to pay the cost of cleanup, mitigation, or compensation for the environmental damage, without prejudice to any additional civil and criminal liabilities.

On main resources, essentially, the principal objectives of the Ministry of Environment are to administer, promote, develop, project and apply the policies, strategies, legal regulations, plans and programs directly to aquaculture, fishing, and related activities based on the principles that ensure the production, conservation, control, administration, monitoring, investigation and the sustainable and responsible use of the aquatic resources considering the biological, technical, economic, social, cultural, environmental and trade security aspects. It is also responsible for coordinating the activities with all the institutions and authorities related to fishing and aquaculture.

B. Environmental Impact Studies (EIS)

Activities and projects, whether private or public, that may create environmental risks, must undergo an EIS prior to the start of the project. The permits or authorizations shall be relative to the activities of each project, and it is required to have an EIS to comply with Law No. 8 and the previous environmental laws. The EIS has the purpose and objective to guarantee fulfillment of the environmental requirements and also to serve for continuous verification by the Ministry of Environment; as such, any person may alert the authorities of violations to the project that are not consistent with the EIS. These studies are submitted to the Ministry of Environment for evaluation and approval.

The Ministry of Environment will subsequently monitor and evaluate the implementation of any activities necessary to mitigate the effects of the project on the environment.

The Ministry of Environment has issued an extensive list of activities that require an EIS, including activities in agriculture and forestry, fishing, mining, food and drink production, textile and leather production, woodwork, paper industry, manufacturing, recycling, energy

production, construction, services, tourism, and waste disposal. The Ministry of Environment may also determine at any other activity that carries an environmental risk and requires an EIS.

EIS' are divided into three categories, as follows:

- Category I – Applicable to projects that do not generate significant negative environmental impact or do not carry a significant risk of environmental damage.
- Category II – Applicable to projects that may cause significant environmental damage but where that damage can be eliminated or mitigated through well-known and easily applied means.
- Category III – Applicable to projects the execution of which could cause large-scale environmental damage, which require a more comprehensive analysis.

A project is considered to produce significant, adverse environmental impact if it meets one or more of the following criteria: (i) it poses a risk to public and environmental health; (ii) it may affect the quantity or quality of natural resources; (iii) it may cause significant changes to a protected area; (iv) it involves the disruption and resettlement of human populations; or (v) it may cause changes to areas that have been declared to be of anthropological, archeological, historical or cultural value.

EIS must be carried out by qualified professionals, who may be either natural or legal persons, independent from the developer of the project, who are duly certified by the Ministry of Environment for such work. Failure to carry out an EIS may result in work stoppage and the imposition of fines. In addition, the Ministry of Environment may also adopt any interim measures aimed at preventing damage to the environment and to human health, including the suspension of the project or the imposition of precautionary measures to the project or activity.

A resolution by the Ministry of Environment approving an EIS is valid for two years; it may also be extended for justified reasons. During this time, the execution of the project must begin; otherwise, a new filing must be made.

EIS' must include an EMP. These plans are documents that establish in detail and in chronological order the activities that the company must carry out to prevent, mitigate, control and compensate for possible environmental damage, or increase the positive environmental impact of the activity. The EMP must also include plans for follow-up and monitoring, as well as for

contingency. Companies are required to comply with these plans, and compliance of the same is monitored by the Ministry of Environment. In the resolution in which the EIS is approved, the frequency with which periodic reports must be submitted to the Ministry of Environment is established. These reports must be drawn up by certified environmental auditors.

C. Good Environmental Practices Guide

As mentioned in section B) above, an EIS must be conducted and approved by the Ministry of Environment prior to the start of a project. However, under Law 65 of October 26, 2010, certain projects, works, and activities may be able to use a Good Environmental Practices Guide (“Guía de Buenas Prácticas Ambientales”) in place of an EIS. These guides are a set of general and specific policies that complement existing environmental regulations pertaining to the prevention, mitigation, correction, and/or compensation actions that the developers of a project implement in order to promote the protection and prevention of damage to the environment. These guides must be approved by the Ministry of Environment.

Prior to being approved, these guides must undergo a public consultation process through which the entity proposing the guide provides information on the issues contained in them and solicits opinions, proposals, and suggestions from citizens and social interest organizations.

D. Fund for Environmental Evaluation and Control

The Fund for Environmental Evaluation and Control (“Fondo de Evaluacion y Fiscalizacion Ambiental”), was created by article 52 of Law 8 of March 25, 2015, which is intended to ensure the environmental quality, emergency care, protection, preservation, conservation or compensation of ecological systems and of the environment. The fund will be integrated by income from sanctions, fines, indemnifications and others for the infraction of environmental laws and also by the collection of fees charged by Ministry of Environment pursuant to the environmental evaluation and control projects or activities directed by the Ministry of Environment.

E. Environmental Adaptation and Management Program (PAMA)

The Ministry of Environment may request an obligatory environmental audit following any accident, or other incident or activity, due to the environmental risk inherent in the

same or due to a need to clean up or rehabilitate a site. An environmental audit is a systematic evaluation of an activity or project to determine its impact on the environment and evaluate its compliance with environmental laws and regulations. In particular, the Ministry of Environment may request an environmental audit for projects in the following areas: mining, exploration or production of hydrocarbons; forestry; agro-industry; aquaculture; energy and heavy industry; transportation; waste treatment and disposal; tourism and commercial building projects; and infrastructure projects such as pipelines, hospitals or clinics. The environmental audit takes into account the environmental laws and regulations related to the activity, the perception of the activity in the neighboring community, the environmental aspects and impact of the activity and the risk to health and the environment associated with the project. Audits conducted in specific industrial sectors may include additional information.

Companies subject to an environmental audit must contract an authorized environmental auditor that is independent from the company. Auditors may be individuals or companies, and must be duly registered with the Ministry of Environment.

If the audit determines that the activity in question does not meet the established standards, the company will be required to develop a PAMA. The goal of the PAMA is to propose specific actions that the company must undertake to ensure compliance with the current environmental laws; mitigate, prevent and correct any negative environmental impact; adopt good operational or engineering practices; and minimize or prevent environmental risks. In these cases, the company has 90 business days to submit its PAMA to the Ministry of Environment.

The PAMA must be drawn up by registered environmental auditors or consultants, who may be assisted by experts from the company. It must include specific objectives that are in line with the findings of the environmental audit, a timeline for carrying out corrective and preventive activities, measurable indicators of progress, a cleaner production plan, an accident prevention plan, a contingency plan, and an environmental monitoring plan.

If the PAMA complies with the minimum requirements established, the Ministry of Environment will approve the plan through an administrative resolution. If the PAMA is rejected, the company has 20 working days to submit a new PAMA.

Once the PAMA is approved, the company is responsible for executing the activities contemplated in the same and complying with the established timeline. In some cases, some of the activities may require an EIS, which must then be prepared pursuant the regulations for EIS. The company will also be required to submit periodic reports to The Ministry of Environment with respect to its progress in implementing the PAMA. The frequency of these reports will be established in the resolution approving the PAMA.

If a company is not in compliance with the PAMA, it may be subject to sanctions from the Ministry of Environment. There are fines up to US\$10,000.00 and they may be doubled for repeated violations. Furthermore, businesses may have their operations suspended temporarily or indefinitely. The sanctions imposed by the Ministry of Environment will correspond to the severity of the risk or environmental damage generated by each company. The offender shall be obligated to clean, restore, mitigate or compensate the environmental damage it has committed, which shall be assessed according to its economic and technical capacities.

A company may also choose to submit to a voluntary environmental audit. Businesses that do so and are found to comply with the environmental laws and regulations will receive a Certificate of Environmental Excellence. These certificates are valid for three years, and may be renewed at the end of that term following a further voluntary environmental audit. Violations in the context of voluntary environmental audits or PAMAs may result in various sanctions depending on their severity, including the temporary or definitive revocation of the Certificate of Environmental Excellence and the temporary or definitive removal from the Voluntary Environmental Audit program.

F. Protected Areas

The SINAP consists of all of the legally established protected areas in the country, which are overseen by the Ministry of Environment. These areas include national parks, forest reserves, wildlife refuges and wetlands, among others. Each protected area is regulated by a specific management plan, which in some cases may allow for limited development activities. The SINAP was created by law 8 of March 25, 2015, and it is composed of all the protected areas previously established by the laws, decrees, decisions, municipal agreements or international agreements ratified by the Republic of Panama.

The protected areas are the public property of the State and will be regulated by the Ministry of Environment, recognizing the international commitments ratified by the Republic of Panama related to the management and use of protected areas. Protected areas may be subject to administrative concessions and services concessions that may be granted to natural persons or companies, which must comply with the public consultations and technical studies.

G. Climate Change

The Republic of Panama recognizes Climate Change by virtue of article 55 of Law 8 of March 25, 2015, which added a Climate Change Title on Law 41, 1998. The Climate Change is a worldwide phenomenon that is important within the environmental sector which reflects on the population, ecosystems and every economic sector of the country. The Ministry of Environment together with the competent authorities is responsible for promoting initiatives to adapt to Climate Change so as to increase the resiliency of the country and to combat its adverse effects. The State recognizes its responsibility and created a Fund for the Adaptation to Climate Change.

XXIV. INSOLVENCY AND LIQUIDATION

A. Insolvency Regulation

The Law No. 12 of May 19, 2016, which became effective on January 2nd, 2017 (the “Insolvency Law”) applies to “insolvency proceedings” (proceso concursal de insolvencia) initiated against natural or legal persons engaged in commercial activities in Panama and that have their commercial domicile, branch, agency or establishment in the Republic of Panama, regardless of whether or not such person is registered or not in the Panamanian Public Registry (the “Debtor”). There are certain categories of persons or activities excluded from the application of the Insolvency Law. Those excluded entities or activities are: public entities, companies wholly-owned by the government, persons that provide public services during the intervention initiated by the sector-specific regulator and entities regulated by the bank, insurance and securities regulators ; the latter are already subject to each regulator’s specific reorganization proceedings.

The Insolvency Law regulates two insolvency proceedings: reorganization and liquidation. In addition, the Insolvency Law incorporates a chapter dealing with cross-border insolvency based on the UNCITRAL Model Law on Cross-Border Insolvency.

Prior to the Insolvency Law, the bankruptcy legislation in Panama focused on sanctioning the defaulting debtor, liquidating the insolvent company and distributing all assets of the debtor among its creditors. The Insolvency Law introduces the possibility for a business in trouble to seek protection from its creditors while and the Debtor creditors agree on a reorganization plan.

B. Reorganization Proceedings

The Insolvency Law provides that the purpose of the Reorganization proceeding is to allow the creditors to recover more than what could be expected upon the liquidation of a company and determines that every action involved in the process by any of the parties should be driven to achieve such goal.

(1) Initiation of Reorganization Proceedings

These proceedings may be initiated if one of the following scenarios is applicable to the Debtor:

(i) The Debtor has ceased payment of its obligations: defaults in one or more past due obligations that are in an executive title (título ejecutivo);

(ii) The Debtor is in imminent insolvency: the Debtor can't make payment of its general obligations when they are due, when liabilities exceed the assets in the financial statements of a Company; or

(iii) The Debtor has a foreseeable lack of liquidity: the Debtor can foresee that it will be impossible to pay its future obligations when they become due or the Debtor experiences financial difficulties that may cause an imminent Insolvency.

The proceedings can be filed by the Debtor, the General Creditors' Assembly, as constituted in a liquidation proceeding, or the representative of a foreign insolvency proceeding. It is worth noting that prima facie, the regulation does not precisely allow a creditor or a group of creditors to file for reorganization, however it allows the General Creditors' Assembly already constituted in a liquidation process to file for reorganization, instead of liquidation.

(2) Filing the Reorganization Plan

The reorganization plan must be filed along with the request for the commencement of the reorganization proceedings along with a series of other documents. The Judge will then evaluate the request and decide on its admission. If admitted, the reorganization proceedings are commenced by a Court Order, which also designates the administrator, provides for financial protection from the date of the Court Order until confirmation of the Reorganization Agreement, and provides for a series of publications in mass media outlets at the domicile of the Debtor.

Once the request for reorganization is submitted, the Debtor would not be allowed to (i) reform the articles of incorporation or bylaws, or other organizational documents, (ii) constitute or grant guarantees, (iii) provide compensations, (iv) make payments, (v) agree to conciliations, (vi) enter into transactions or agreements, or (vii) dispose of assets, unless the Judge of the reorganization proceeding authorizes such actions, upon request by the Debtor.

(3) Creditors Qualification and Voting Rights

After the reorganization proceedings are declared open by the Court Order, the creditors must verify their credits before the Debtor, after which the reorganization process administrator will present a report of the verified credits to the judge. The Debtor and creditors are then allowed a period of five days to present their objections. If none are presented then the credits are deemed to have been recognized.

Conversely, if objections have been raised, the administrator must present the judge a list of the recognized credits as well as a list of the objected credits together with a report addressed to the General Creditors' Assembly in respect to the reorganization plan or project to be debated. The objected creditors may be recognized by the General Creditors' Assembly, but if those creditors are not recognized by the General Creditors' Assembly, those creditors may file recourse before the judge. If in the administrator's opinion, the objected creditors will be an impediment to the proposed reorganization, the administrator may present a report to the judge recommending the termination of the reorganization process and the judge then has the discretion to declare the reorganization process terminated.

The Reorganization Administrator is appointed by the court from a list, approved by the Judiciary, of prequalified individuals (for the moment, the Judiciary has not approved such list). The Insolvency Law does not provide for the Debtor or the General Creditors' Assembly to appoint or suggest a Reorganization Administrator.

The court can remove the Reorganization Administrator: (i) when it has breached its duties, (ii) at the request of the General Creditors' Assembly, or (iii) at the request of a creditor who demonstrates that the Reorganization Administrator has committed negligence or abuse in the execution of its duties.

In regards to which creditors are allowed to vote on the proposed reorganization plan, the Law does not provide for a distinction between the creditors affected by the plan and those who are not. The plan is intended for all the recognized creditors as a whole and they all vote for the plan. The Law does not provide for a separation of the creditors in classes.

(4) Effects of Reorganization Proceedings

For the reorganization plan to be approved, it must be satisfactory to at least a simple majority of the creditors, representing a minimum of 66% of the Debtor's liability. If approved, then the judge will give confirmation if he considers that all the necessary requirements have been met. It follows that the plan would be executed under the supervision of the designated supervisor and the judge, who will declare the proceedings terminated once the plan has been followed to completion.

If the reorganization plan is not approved or if the majority of the General Creditors' Assembly decides to end the reorganization proceedings and the cause that initially gave rise to the proceedings was impending insolvency or a foreseeable lack of liquidity, then the proceedings will be deemed terminated without prejudice to the General Creditors' Assembly or a single creditor's right to request liquidation proceedings.

C. Liquidation Proceeding

The Insolvency Law provides that the purposes of these proceedings are the sale and foreclosure of the assets of the Debtor for the creditors to recover from the assets of the company.

(1) Initiation Liquidation Proceedings

The proceedings may be initiated if the one of the following scenarios is applicable to the Debtor:

- (i) The Debtor has ceased payment of its obligations that are in an executive title;
- (ii) Creditors have initiated three or more executory proceedings against the Debtor, in which the latter has failed to provide sufficient assets to cover the debt;
- (iii) The Debtor has abandoned his business or has closed his commercial establishment without nominating an agent with sufficient powers to satisfy its obligations as they become due; or
- (iv) For any other reason provided by law.

The Liquidation proceedings can be initiated by the Debtor itself or its representative; (ii) a creditor based on a well-founded request *solicitud fundada*; or (iii) the Foreign Representative, pursuant to certain provisions established in the Insolvency Law.

In general terms, a Debtor can be placed into liquidation either voluntarily or involuntarily. Usually, liquidation proceedings in Panama are designed to provide an orderly sale of the Debtor's assets for the purpose of paying its creditors.

(a) Voluntary Liquidation

In cases of Voluntary Liquidation, the debtor must provide a series of documents with his request, which, if approved by the court, will be followed by a Court Order declaring the state of liquidation.

(b) Involuntary Liquidation

A request for Involuntary Liquidation filed by a creditor must state the reason invoked, justifying facts, provide evidence, and a Certificate of Judicial Deposit for the sum of one thousand US dollars (US\$1000.00) bond at the National Bank of Panama for the initial costs of the liquidation proceedings. A mortgage or pledge may not request the declaration of liquidation unless he proves that the encumbered assets are insufficient for payment of its credit.

(2) Effects of the Liquidation

Once the liquidation request has been filed with the court, it will have five business days to examine the request and if all requirements are met, to issue the declaration of liquidation.

The order that initiates the liquidation proceedings contains, *inter alia*, the following information:

- (i) The date to be considered, for the moment, as the date of the liquidation (such date can be varied by the court afterwards, but in no case can be it be fixed at more than four years previous to the issuance of the declaration of liquidation);
- (ii) Prohibition for the debtor to leave its domicile;
- (iii) Appointment of the designated liquidator;
- (iv) Provisional fees of the liquidator;
- (v) An order to join or accumulate all pending proceedings against the debtor within the liquidation proceedings; and
- (vi) A notice to all local and foreign creditors.

The order that initiates the liquidation proceedings has the following effects:

- (i) The debtor loses control over the administration of its business;

(ii) The liquidation proceedings replace the debtor in all the rights the debtor has on its assets.

(iii) The liquidator will represent the debtor in any proceedings were the debtor is not the defendant.

(iv) The management of the assets of the debtor will be placed in the hands of the general creditors' assembly, represented by the liquidator.

(v) Any agency or representation powers granted upon the debtor will terminate as a result of the declaration of liquidation.

(vi) All individual proceedings against the debtor shall be immediately stayed/suspended, except for the proceedings to enforce mortgages or pledges. The proceedings that are stayed/suspended will be joined or accumulated into the liquidation proceedings.

(vii) All obligations will cease accruing interests, except for interest applicable to credits secured by a pledge or mortgage.

(viii) All obligations of the insolvent debtor will become immediately due and payable (without further interest except for interest applicable to credits secured by a pledge or mortgage).

(ix) The running of all statutes of limitation shall be suspended.

(x) For companies where the partners are jointly and severally liable for the debts of such companies, the liquidation of such a company entails the liquidation of all its partners.

(xi) For other companies such as LLC's, corporations, limited partnerships the liquidation of such companies will not affect their partners.

(xi) Any creditor or the liquidator can request the seizure or preventive attachment *secuestro* of the assets of the directors, legal representatives, managers, agents, or auditors of the company or of any person who held any of such offices within the two years prior to the declaration of liquidation, when such persons might have committed negligent or fraudulent acts against the creditors of the company.

The Insolvency Law also contains the following provisions regarding claw back:

(i) Any of the following acts and contracts executed by the company within the four years prior to the judicial decision declaring the liquidation will be declared null and void in favor of the creditors generally:

i. Gratuitous payments and gratuitous acts representing a benefit to a particular creditor;

ii. Granting of liens on collateral to secure an antecedent debt or to give a preference to a particular creditor;

iii. Payments of debt prior to maturity or the payment in kind of debts that are past due; or

iv. Amendments to the articles of incorporation or other organizational documents of the company.

(ii) Any gratuitous act committed in favor of a relative of the debtor in liquidation (in cases of natural persons) or to benefit the shareholders, managers, administrators, officers, directors, legal representatives, agents, or liquidators of the debtor in liquidation (in case of companies), within the four years prior to the judicial decision initiating the liquidation proceedings, will be declared null and void in favor of the creditors generally.

(iii) Any fraudulent acts committed by the company can be declared null and void regardless of when they were committed (there is no statute of limitations regarding this action).

(iv) Any payments made by the debtor after the date of the judicial decision declaring the liquidation are also null and void.

(3) The Liquidator

As mentioned before, the liquidator is appointed by the court. Once the liquidator takes office, it will prepare an inventory of the assets of the company in liquidation together with an estimated value of such assets.

The liquidator will have the following duties and powers:

(i) To represent the estate, defending its rights and exercising the actions and affirmative defenses required to protect its interests.

(ii) To manage the assets of the estate.

(iii) To collect all the credits and rents that belong to the estate and pay the expenses that are indispensable for the defense of its rights and for the conservation and benefit of its assets.

(iv) To sell of all assets of the estate, under the most advantageous conditions, with the approval of the General Creditors' Assembly.

(v) To examine the documents justifying the credits and to give its opinion to the General Creditors' Assembly regarding their recognition and order of preference.

(vi) To call for a General Creditors' Assembly, in cases and for the purposes it deems necessary.

(vii) To appoint representatives for the performance of one or more of its duties, with the authorization of the General Creditors' Assembly.

(viii) To request from the court all the precautionary measures necessary for the fulfillment of the purposes of the liquidation, without the need to post any bond for obtaining such measures.

(4) The Court Proceedings

After the court order is issued, creditors have up to 20 business days to file before the insolvency court the documents evidencing their respective credits for verification purposes. In this filing, each creditor should also file an affidavit regarding its relationship with the debtor in liquidation.

In case any credit is challenged, the court can request the creditor to show its accounting books as evidence to be used by the court to determine the validity of such credit.

The quorum required for the General Creditors' Assembly will be the majority of the creditors. All decisions by the General Creditors' Assembly will require the favorable vote of the majority of the creditors present at the assembly (with the exception of the decision to request the reorganization, which will require the favorable vote of the majority of the creditors present at the assembly that represent three quarters of the debts of the debtor in liquidation).

The General Creditors' Assembly will review all credits filed and will decide whether they are recognized or not. The credits that are not recognized by the creditors' assembly will be reviewed by the court to determine whether to accept them or not.

The General Creditors' Assembly will appoint a Board of three to five creditors who will supervise and provide their advice regarding the management of the liquidation by the liquidator. The Board will have no real decision-making power.

All creditors whose credits have been recognized have the right to be paid (proportionally and pursuant to legal preferences) with the sums that result from selling the debtor's assets.

The creditors secured with a mortgage, pledge or any other security interest will not be a part of the liquidation proceedings unless they waive their lien rights and privileges or unless the proceeds from the sale of their collateral are not sufficient to pay the entire debt (in this case, they will be treated as any other unsecured creditors).

The creditors secured with a mortgage, pledge or any other security interest do not have to participate in the liquidation proceedings and can enforce their security interests in separate proceedings.

The sale of the assets of the debtor in liquidation will be made by the liquidator with the approval of the General Creditors' Assembly. The law does not specify what mechanism can be used by the liquidator to sell these assets so it will be up to the liquidator to decide these mechanisms as long as it has the approval of the General Creditors' Assembly.

In case the General Creditors' Assembly does not agree on the sale of assets or assignation of credits proposed by the liquidator, they can agree on a public judicial sale of assets (with the same applicable rules as for the judicial sale of assets in mortgage foreclosure proceedings).

Within eight business days after the sale of the last asset, the liquidator will file a report with a list of the assets sold, the amounts recovered, the expenses incurred, the deposited amounts, the credits that were not recovered, and the credits pending a judicial resolution.

If there are credits that cannot be recovered, a special meeting will be held with the liquidator and the General Creditors' Assembly so that the assembly decides what measures to adopt.

Once the liquidation of all the assets has taken place, the final distribution will be made, proportionally and pursuant to the legal preference rules, among the recognized creditors.

The court can declare that the liquidation is terminated provided that (i) the General Creditors' Assembly grants its agreement and that (ii) the report by the liquidator indicates that there are no additional assets with which debts and expenses can be covered.

Once the final distribution of assets has been approved by the General Creditors' Assembly, the liquidator will submit its final report.

If the report by the liquidator indicates that there are no additional assets with which debts and expenses can be covered, but the General Creditors Assembly does not grant its agreement for the termination of the proceedings, the court will order that the General Creditors' Assembly cover all the expenses related to the liquidation (including the payment of the liquidator's fees). If the general Creditors' Assembly does not cover such expenses, the court will declare the termination of the proceedings.

The liquidation proceedings will be deemed terminated once: (i) the liquidator has filed its final report and (ii) once the court has ordered the termination of the proceedings.

In any case, there is no maximum amount of time that liquidation proceedings may last.

D. Cross-Border Insolvencies

(1) Enforcement of Foreign Insolvency Proceedings

The Insolvency Law recognizes and permits the recognition of foreign insolvency proceedings if (i) a foreign court or a Foreign Representative requests assistance in an insolvency proceeding carried out in Panama; (ii) assistance is sought in a foreign State in connection with an Insolvency proceeding; (iii) there are two insolvency proceedings related to the same Debtor, one abroad and one in the Republic of Panama; or (iv) foreign creditors or other interested persons in a foreign state have an interest in requesting the commencement of, or participating in insolvency proceedings in the Republic of Panama. The provisions for recognition of foreign insolvency proceedings are based on the UNCITRAL Model Law on Cross-Border Insolvency.

A Foreign Representative has standing to request the recognition of a foreign insolvency proceeding before the Fourth Superior Tribunal of the First Judicial District. The request

must include: (i) an authentic copy of the resolution issued by the foreign court declaring the initiation of the foreign insolvency proceedings; or (ii) a certification issued by the foreign court attesting to the existence of the insolvency proceedings and designating the Foreign Representative; (iii) a declaration issued by the Foreign Representative with the information of all other known foreign proceedings. The court may accept any other form of evidence that can confirm the existence of the foreign proceedings and the name of the Foreign Representative. The court will determine if the foreign insolvency proceedings are primary insolvency proceeding or subsidiary insolvency proceedings. All the documents presented with the filing for recognition need to be (a) translated to Spanish by a certified translator; and (b) Apostilled or subject to consular legalization.

Once certain foreign insolvency proceedings is recognized by the courts in Panama as primary insolvency proceedings, then: (a) no insolvency proceedings can be initiated against the Debtor; (b) any such proceedings already initiated will be suspended; (c) all rights to transfer or encumber the assets of the Debtor will be suspended except for transfers or encumbrances done in the ordinary course of business. Any transfer or encumbrance made in contravention of this provision in the Insolvency Law will be considered null and void.

In cases where there are more than one set of foreign insolvency proceedings, the court must ensure cooperation and coordination among these proceedings. As a consequence, any measure taken by a court of a subsidiary insolvency proceeding that is inconsistent with the measures established in the primary insolvency proceeding must be reviewed, modified or suspended in case such measures is determined to be inconsistent with the primary insolvency proceedings.

XXV. DISPUTE RESOLUTION

A. Arbitration

Arbitration (both domestic and international) is regulated by Law 131 of December 31, 2013.

(1) Arbitration

Under applicable provisions, all matters or disputes which have arisen or may arise between the parties with regard to a particular legal relationship, contractual or non-contractual, in which the parties may dispose of their rights without statutory limitations may be submitted to arbitration. National courts have a duty to refrain from overseeing and deciding matters subject to an arbitration clause. A court facing an arbitration clause is legally required to dismiss the claim and direct the parties to arbitration; however, the arbitral tribunal may request the court the adoption of precautionary measures and the latter may grant such measures to ensure the arbitration award.

Arbitration agreements should be in writing and the parties may freely agree the procedure for the appointment of a sole arbitrator or a tribunal composed of an uneven number of arbitrators.

Under article 42 of Law 131, any precautionary measure or preliminary order granted by an arbitral tribunal that is based in Panama, will be recognized as binding and may be executed immediately by a competent judicial court upon request for assistance made by the arbitral tribunal.

The parties may freely agree to the language or languages to be utilized during the arbitration proceedings.

(2) Disputes with the State

The state, its autonomous and semiautonomous entities, and the ACP (also an autonomous State entity) may validly enter into arbitration agreements. Arbitration may also be used whenever international conventions or bilateral treaties provide for conflict resolution through arbitration. Once the dispute arises, in the absence of a previously executed arbitration agreement, a favorable recommendation from the Attorney General of the Administration and an authorization

from the Council of Ministers to the President of the Republic would be required in order for the State to submit a dispute to arbitration.

B. Choice of Law

Except in the case of government contracts and certain cases where principles of conflicts of laws or public policy provide for the application of Panamanian law, parties to any commercial agreement may choose the governing law of the agreement. Thus, foreign investors, as well as nationals, are free to govern their commercial relations by Panamanian or foreign law.

C. Choice of Jurisdiction

Parties to a private commercial agreement are generally free to submit any dispute arising under such agreement to the courts of Panama or to the courts of a foreign jurisdiction, as well as to arbitration and other ADR methods.

D. Enforcement of Foreign Judgments

Foreign judicial decisions or arbitral awards may be enforced in Panama, provided that certain requirements are met and that they were not against Panamanian public policy.

(1) Judicial decisions

Subject to the issuance of a writ of exequatur by the Supreme Court of Panama, any final judgment (it is not required or mandatory that the judgment be issued by the superior courts, only that the judgment be final, in firm standing, and in full force and effect) entered against a Panamanian company in any foreign court- would be recognized, conclusive and enforceable in the courts of the Republic of Panama without re-trial or reconsideration of the merits of the case, provided that:

- a) Such foreign court grants reciprocity to the enforcement of judgments of courts of the Republic of Panama;
- b) The party against whom the judgment was rendered, or its agent, was personally (not by mail) served in such action within such foreign jurisdiction;

- c) The judgment arises out of a personal action (i.e. not an “in rem” action) against the defendant;
- d) The obligation in respect of which the judgment was rendered is lawful in the Republic of Panama and does not contradict the public policy of the Republic of Panama, as the courts of Panama will not apply or give effect to any provision of foreign law that violates the public policy of Panama.
- e) The judgment is properly authenticated by diplomatic or consular officers of the Republic of Panama or by Apostille; and
- f) A copy of the final judgment is translated into Spanish by a licensed translator in the Republic of Panama.

(2) Arbitral Award

Panamanian courts will process and enforce foreign arbitral awards except in the following cases:

- The parties to the agreement were, under the applicable law, under some incapacity, or the agreement is not valid under Panamanian law or under the law of the country where the award was made;
- The party against whom the award is invoked was not properly served or given notice of the appointment of the arbitrator(s), or of the arbitration proceedings, or for any reason was unable to defend the case;
- The award refers to a difference or controversy not contemplated in the arbitration agreement, or it contains decisions that surpass the scope of the arbitration agreement. However, if the decisions on matters submitted to arbitration can be separated from those not submitted, the part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced;
- The constitution of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, or, in the absence of an agreement, was not in accordance with the laws of the country where the arbitration takes place;
- The award has not yet become binding or mandatory on the parties, or has been set aside (annulment procedures) or suspended by the competent authority of the country in which, or under the laws of which, the award was made;
- If the matter decided in arbitration could not have been resolved in arbitration under Panamanian law, or

- If enforcement would result in a breach of Panamanian public policy.

(3) Recognition and Enforcement

A request for recognition and enforcement of either a foreign judicial decision or international arbitration award must be submitted before the Fourth Chamber of the Supreme Court of Justice of Panama, which is in charge of verifying that the decision meets the requirements referred to above. Such proceedings are held with the intervention of the Attorney General, who will present his/her recommendations as to the enforceability of the decision in Panama. If the Fourth Chamber decides the decision can be enforced, then the Fourth Chamber will order its enforcement before the competent court (e.g., the civil circuit courts).

E. General Actions

(1) Ability to Bring Suit

Any natural or legal person, national or foreign, including the state, its autonomous and semiautonomous entities, may bring a suit before a Panamanian court, provided that such complaint falls under the rules of jurisdiction of the Panamanian courts. Corporations are served by the courts through their legal representatives. Foreign corporations with business interests or commercial establishments in Panama must appoint a legal representative or agent with capacity to receive service of process on behalf of, bind and represent the company before local authorities.

(2) General Procedure

Civil law proceedings are governed by the Judicial Code, as well as, special laws as they may apply.

(3) Special Proceedings for Creditors

(a) Executory Proceedings

Special proceedings exist for the enforcement of secured and unsecured commercial and financial obligations contained in enforceable titles or securities over assets. Such proceedings are known as special execution proceedings. The enforceable titles subject to these proceedings are listed in the Judicial Code and contemplated in certain special laws, and include, among others,

negotiable instruments (such as notes), public deeds, documents acknowledged before a public notary, a CPA certified bank statement of balance owed or final decisions rendered by a court or arbitration panel. These special proceedings allow creditors to obtain an expedited first instance judgment, in lieu of more lengthy ordinary proceedings.

(b) Precautionary Measures

In any type of proceeding, the claimant may always request the court to issue an order attaching the assets of the defendant in order to ensure that a final and binding decision against the defendant can be enforced at least against such assets. This is to avoid the defendant dispersing or transferring its assets before a final decision is obtained. For an attachment to be granted, Panamanian courts will request from the claimant a security bond, in the form of cash, or a local bank or local insurance guarantee, which amount is estimated at 30% to 40% of the amount of the attachment. In case a final judgment is rendered in favor of the defendant, the defendant may request from the court the amount of the bond as payment for the damages suffered as a result of the attachment.

(4) Timing Concerns

As a general rule, disputes in the Panamanian judicial system are decided in two instances, allowing the review of first instance (or trial) decisions through a writ of appeal to be filed before the higher court (court of appeals). In addition, during the normal course of proceedings, the parties are allowed to file special writs or requests also subject to review in appeal, such as a challenge of jurisdiction, a request for annulment due to an error in procedure, or exceptions (i.e. the claimed obligation not being due). In addition, the extraordinary writ of cassation is also available in certain cases; therefore, the time required to resolve a dispute will depend on the workload of the court, as well as any dilatory tactics employed by the defendant.