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Panama's quest for alternate energy sources

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Envisioning a future with scarce and costly supplies of fossil fuels, translating into expensive energy to its citizens, the Republic of Panama has embarked on establishing and implementing the country's long-term energy policy. This has been done, among other things, through the enactment of several laws and regulations to promote the development of alternative energy projects.

The first important piece of legislation enacted with this aim was Law 45 of August 4 2004 (Law 45) which establishes incentives for the promotion of hydroelectric and other projects for renewable, clean sources of energy generation.

Government authorisations

Among the numerous advantageous provisions included in this law, is that when there is only one applicant for a concession, the Public Services Authority (ASEP) can issue the corresponding hydroelectric generation concession without the need for a public bidding process. In addition to this concession, ASEP shall communicate with the National Environmental Authority (ANAM), in order for it to grant a water concession for the use of water to generate such energy, for the same period of time as that of the hydroelectric generation concession.

Energy placement benefits

Aiming to attract investors to develop hydroelectric projects, specially mini and small hydroelectric projects, this law contains a series of incentives ranging from flexibility to sell the produced energy, to direct fiscal benefits. Under this law the mini-hydroelectric power plants with an installed capacity of up to 10MW are allowed to enter into direct con-

tract with energy distribution companies for the sale of energy, as long as these direct sales do not exceed a 15% limit of the maximum generation demand covered in the concession area of the distribution company.

In addition, there will be no distribution or transmission charges for mini-hydroelectric and geothermoelectric and other power plants of renewable energy sources with a maximum installed capacity of up to 10MW, whenever they sell their energy directly to the distribution companies or in the spot market. In this same sense, whenever the installed capacity of these power plants range between 10MW up to 20MW, they shall not be subject to distribution or transmission charges for the first 10MW during the first ten years of commercial operations.

Fiscal Incentives

Several fiscal incentives and exemptions have been set forth, including, among others:

- (i) the exoneration from import taxes, tariffs, rates, contributions and charges, as well as sales tax (ITBMS) in connection with the importation of all the necessary equipment, machinery materials and spare parts for the construction operation, maintenance of new power plants, as well as for the power increase of already existing power plants, with installed capacities of up to 500KW;
- (ii) a fiscal incentive of up to 25% of the direct investment in the development of a new power plant as well as for the power increase of those already existing power plants with an installed capacity of up to 10MW, based upon the yearly reduction of tons of carbon dioxide emissions during the term of the concession, can be used for the payment of the income tax in a given fiscal period during the first ten years commencing with the commercial operation of the project. Those power plants above 10MW may only use it for up to 50% of the income tax return. Any amounts that those projects receive for selling carbon credits certificates shall be deducted

from the amounts to be received by this incentive.;

(iii) a fiscal credit equivalent to 5% of the total value of direct investment on the construction of infrastructure, such as roads, bridges, sewage systems and others of similar nature, that after said construction become public infrastructure, prior approval of the Ministry of Economy and Finance.

However, regarding item (i) above, it is important to note that without making reference to Law 45, Law No 6 of February 2 2005 (Law 6) established in article 39 that all the exoneration affecting the ITBMS (value added tax) which have been previously granted by virtue of special laws, are rendered null and void. This has generated a series of conflicting interpretations from the Tax authorities regarding the applicability of this incentive. Nonetheless, the incentives regarding the exoneration of the ITBMS tax in connection with the importation of all the necessary equipment, machinery and materials for the construction, operation, and maintenance of eolic power plants, as set forth by Law No 44 of April 5 2011 (Law 44) remains in effect as it is subsequent to Law 6.

The law also imposes upon the beneficiaries of the hydroelectric generation concession, the obligation of implementing measures against erosion and desertification caused by developing the projects.

More recently, Law 44, sets forth an incentives regime for the promotion of the construction and exploitation of eolic generation projects.

Licensing

Upon obtaining the licensing for the constructions and exploitation of wind-powered power plants, by the ASEP, the licensee shall constitute the required performance bond of \$500 per MW to be installed.

Contracting of energy

The transmission company, *Empresa de Transmisión Eléctrica* (ETESA), the entity in

charge of authorising the connection of wind-powered power plants to the National Grid, will set up the necessary regulations to guarantee a safe reliable connection.

Probably the most important incentive of this law is that ETESA will establish public bidding processes for the purchase of energy that will be exclusive to eolic power plants. Those contracts will be entered for a period of up to 15 years. Subject to an authorisation of the Executive Branch, the total energy to be contracted in those exclusive public bidding process cannot be higher than 5% of the national annual energy consumption.

Incentives

Pursuing the development of the production of wind powered energy, this law, has established several fiscal incentives: (i) exoneration from import taxes, tariffs, rates, contributions and charges, as well as of the sales tax in connection with the importation of all the necessary equipment, machinery and materials for the construction operation, maintenance of eolic power plants; (ii) accelerated depreciation of the equipment used to produce wind-powered energy; (iii) exoneration of all national taxes, for a period of 15 years applicable for companies engaged in the production of mechanic, electronic, electro-mechanic, and metallurgic equipment necessary for the production of eolic energy; (iv) exoneration from import taxes, tariffs, rates, contributions and charges, as well as of the sales tax in connection with the importation of all the necessary equipment, machinery materials and spare parts for the production of wind-powered energy by companies engaged in its commercialisation (iv) all incentives established by in Law 45 of 2005 (see above).

Financial and corporate

Recommended firms

Tier 1

Alemán Cordero Galindo & Lee
Arias Fábrega & Fábrega

Tier 2

Alfaro Ferrer & Ramírez
Galindo Arias y López
Icaza González-Ruiz & Alemán
Morgan & Morgan

Tier 3

Fabrega Molino & Mulino
Patton Moreno & Asvat
Sucre Arias & Reyes

Tier 4

Arosemena Noriega & Contreras
Tapia Linares & Alfaro

While driving through the heart of Panama City, the most populous city of Central America's southern most country, it is easy to see that the capital is flush with investment and expanding at a rapid pace. Construction cranes dot the skyline, lifting building materials high into the sky to erect gleaming new apartment blocks. Office buildings, housing, and shopping centres have sprung up in Costa del Este, a new urban area a mere five minute drive from the city's centre.

Panama enacted a legislative package in 2007 that sought to encourage multinationals to base their regional headquarters in the country through a series of tax incentives, easement of license requirements, and immigration reform. Modelled after a similar initiative in Singapore, the scheme paid quick dividends. Shortly after passage, Proctor & Gamble consolidated its Latin American operations, moving hundreds of families - in addition to its business operations - to the city. The movement continues to fuel the present real estate boom, market sources claim.

In addition to the four year-old legislative programme, Panama's new president has embarked on an aggressive infrastructure building spree. "The economy has been growing strong because of the investments," one partner says.

Amongst the more notable are a planned metro snaking its way from the city's far-flung suburbs into the overly congested downtown that has started construction at a cost of \$1.5 billion. Feasibility studies on a second line are in progress. Additionally, the government has granted bids for a country-wide roadway reorganisation that will aid connectivity and make trucking goods more efficient.

It is nearly impossible to discuss Panama without considering the canal, and the gov-

ernment has plans to expand that too. Expected to be completed by 2014, the massive \$5.2 billion project will build new locks, and dig deeper and wider channels. Larger ships will be able to pass through the canal and capacity will be doubled.

Finally, Panama moved onto the OECD "white list" this year. The list highlights jurisdictions which match international standards for tax and banking transparency, and Panama was granted status after signing a double taxation treaty with France. "The country will be able to attract business," one partner says about the categorisation. Panama has sought to shed its "tax haven" tag by aggressively pursuing double taxation treaties, with the country signing eleven last year alone, along with a tax information treaty with the United States.

Alemán Cordero Galindo & Lee

Peers describe Alemán Cordero Galindo & Lee (Alcogal) as a first-rate firm that has grown considerably over the past ten years, and is "seen as a success" by many practitioners. With a balanced mix of local and international clientele, Alemán has developed one of Panama's more respected banking practices. "When we need something, they are always available," says one client.

The firm's M&A practice saw a good amount of action last year. A team led by Alejandro Ferrer counseled Ashmore Energy International as it sold its interest in Elektra Noreste (ENSA), a large Panamanian power distribution company. Additionally, the firm advised the Bank of Nova Scotia as it acquired RBC Investment (Panama) and the Panamanian commercial banking business of BNP Paribas in two different transactions.

Arturo Gerbaud de la Guardia, a former Director of the Superintendency of Banks is popular among clients: "Very knowledgeable about the banking industry and he provides very good advice to us," says one client, while another adds: "It doesn't matter when or how, we always get high quality output from Arturo."

Last year, Gerbaud advised Citibank, an onshore trustee and collateral agent, in a \$50 million credit agreement between borrower Generadora del Atlantico and administrative agent Credit Suisse. Additionally, he advised Banco General as the arranger for two separate bond issuances, one valued at \$50 million by Compañía Azucarera la Estrella, a Panamanian sugar refiner, and a separate \$17 million issuance for Franquicias Panameñas, a fast food operator.

Leading lawyers

Jaime Alemán
Anibal Galindo N

Arturo Gerbaud
Alejandro Ferrer

Arias Fábrega & Fábrega

"A great firm" with "a lot of talent" is how one competitor describes Arias Fábrega & Fábrega (ARIFA), one of Panama's older and more respected firms. The firm added Cecilio Castillero to its roster of experienced attorneys last year. Castillero spent ten years at the New York office of Milbank Tweed Hadley & McCloy, working in the firm's global finance practice.

Estif Aparacio, a newly minted partner with substantial negotiating experience, gains client praise as well: "He's practical, hands on," says one client. "He's the middle person that can break down the good things and the bad things to get the deal done." Aparacio has served as the chief trade negotiator for the Panamanian government where he worked on the Free Trade Agreement between the United States and Panama. He also worked briefly for Sullivan & Cromwell in New York.

Aparacio assisted leading lawyer Ricardo M Arango as the firm represented the Bolsa de Valores de Panamá (Panama Stock Exchange) and Central Latinoamericana de Valores (Latin Clear) in a strategic reorganisation where the two exchanges would become indirect wholly owned subsidiaries of Latinex Holdings, a newly created corporation. In a separate matter, ARIFA advised Global Bank Corporation on a deal in which publicly listed preferred shares were exchanged for subordinated bonds. The public exchange offer was a first in the Panamanian market.

Furthermore, the firm is advising the Republic of Panama as it seeks to establish a sovereign wealth fund. If completed, the government would use the fund to finance its infrastructure investment plans.

Clients cite the firm's thoroughness and accessibility when using the firm. "They were really helpful," says one customer. "Our clients congratulated us for [using] them - that's not easy."

Leading lawyers

Eduardo de Alba
Estif Aparacio
Ricardo M Arango
Cecilio Castillero

Alfaro Ferrer & Ramírez

Alfaro Ferrer & Ramírez moves up a tier based on stellar market feedback. Although smaller than some peers, the firm clearly punches above its weight. "Smart" and "proactive" is how one peer describes the firm. Competitors cite Alfredo Ramírez Jr - who one says is an

"outstanding lawyer"- and Rodrigo Moreno as the firm's leading lawyers.

Competitors also note that Alfaro Ferrer & Ramírez has seen an uptick in financial and corporate work. "We see them in more deals," says one peer. In addition to having very large local clients, one reason for the upswing may be due to the firm benefiting from the influx of Venezuelan money and people into Panama. "They have an alliance with Baker and McKenzie and have clients from the United States and Venezuela," explains another partner.

Leading lawyers

Rodrigo A Moreno Jr
Alfredo Ramírez Jr

Galindo Arias y López

"Excellent lawyers, very easy to work with, available anytime of the year," is how one competitor describes the team at Galindo Arias y López (GALA), a firm respected for its sizeable banking practice.

Competitors admire the firm's domestic client roster. GALA is a "well-known local law firm, known for representing big local clients," says one peer, who also mentions that the firm "represents quite a few banks including the Bank of Nova Scotia." Last year, the firm advised Banco Industrial in structuring an IPO in Mexico and is helping Banco Agromercantil de Guatemala apply for an international banking license in Panama.

The firm also saw activity in the aviation sector over the past year. Herrera counselled Citibank in a loan to TACA Airlines, a regional carrier with 39 destinations in 22 countries. Cristina Lewis de la Guardia led the firm as it acted as counsel to Copa Airlines in the delivery, financing and leasing of several Boeing aircrafts, as well as, the subleasing of a number of Embraer aircraft in a separate transaction.

Finally, GALA counselled Publitop de Panama as it acquired Panamerican Outdoor advertising. Led by leading lawyer Diego Herrera D, the transaction created Panama's largest outdoor advertising company. In another M&A deal, the firm advised Coca Cola FEMSA on its acquisition of the Panamanian Grupo Industrias Lácteas, a dairy and juice distributor. The firm handled the due diligence process and negotiation.

Leading lawyers

Diego Alonso de la Guardia Porras
Diego Herrera Dutari
Cristina Lewis de la Guardia
Ramón Ricardo Arias Porras

Icaza González-Ruiz & Alemán

Icaza González-Ruiz & Alemán is known in the market as a traditional law firm, "very old" and "prestigious" with a roster of US clients. One competitor describes partners Alvaro A Aleman H, the current Vice Chancellor at the Ministry of Foreign Affairs, and Roberto R Aleman H as "great guys" and "fantastic lawyers". Another peer ascribes the firm's success to Roberto's stewardship of the firm and the steady development of a strong reputation, labelling the firm "a very well-established practice".

The firm is currently advising the Panamanian Ministry of Economy and Finances in the acquisition of shares for two highway concessions - the Corredor Norte and Corredor Sur. The transaction will be obtained through a \$970 billion bond issuance. In other project finance work, the firm is acting as legal counsel to Consortium ICA, FCC Construcciones, and Ingenieros Civiles Asociados as they construct the Panama Canal's Pacific access channel, an undertaking that is part of the Third Set of Locks Project.

Leading lawyer Alexis Herrera R advised the shareholders of COASSA and CPT, the owners of a petroleum terminal on Panama's Atlantic coast, during negotiations aimed at selling the terminal through an indirect transfer. Herrera also advised SAP in a public bidding to supply an integrated software system that would process administrative issues for the CSS (Social Security Administration of Panama).

Leading lawyers

Alvaro A Alemán H
Roberto R Alemán H
Gabriel González-Ruiz A
Francisco González-Ruiz A
Alexis V Herrera Jr

Morgan & Morgan

"They are huge and take all sorts of clients," says one competitor about Morgan & Morgan. Easily Panama's largest, the firm's full-service practice spans across multiple disciplines. "Excellent professionals," remarks another peer about the quality of the firm's lawyers. "We have good relations with them and if we have a conflict of interest we refer [clients] to them."

For financial and corporate work, peers name Francisco Arias G and Inocencio Galindo as the firm's leading lawyers. 2010 was an active year for the firm. Morgan & Morgan represented HSBC, acting as administrative agent and lender, in a bridge loan facility to Ideal Panama. The transaction will be used for the construction of two hydro-electric generation facilities, the 87MW

Baitún Project and the 54MW Bajo la Mina Project.

On the M&A front, the firm advised MAPFRE America as it acquired a controlling stake of Aseguradora Mundial, a Panamanian insurance company. In other financing deals, the firm advised Credit Suisse as it loaned \$40 million to local companies connected with Avianca (Aerovías del Continente Americano), and in a separate transaction, advised the International Financial Corporation (IFC) as it loaned \$70 million to Avianca. In addition, the firm represented Caterpillar Leasing Chile in a \$48 million secured loan to Ferreyros subsidiary, Inti Inversiones Interamericana.

Leading lawyers

Francisco Arias G

Inocencio Galindo

Carlos Ernesto González Ramírez

Other ranked firms

Competitors note that Julio César Contreras of **Arosemena Noriega & Contreras** is “very active”. Last year he led a team advising Heineken International in the purchase and sale of share agreements with Lewiston Investments and Montgomery Investments. Additionally, he counselled International Value Advisers, an investment management service, regarding an unregistered funds offering, and in a separate matter advised Royal Bank of Canada with a close-out netting provision in an ISDA master agreement.

Leading lawyers: Julio César Contreras III

Peers explain that **Fabrega Molino & Mulino** is a “sound firm” that is well-connected and focused on its local practice. One of last year’s leading lawyers, José Raúl Mulino, is now Panama’s Security Minister. But competitors point out that Juan Pablo Fabrega Polleri is a “well-known lawyer in corporation [work], an academic with a lot of writing.”

Leading lawyers: Juan Pablo Fabrega Polleri

“They have been a successful firm in the maritime and offshore business,” says one competitor about **Patton Moreno & Asvat**. Despite being largely known in the market for its maritime and ship financing practice, feedback contends that the firm has been branching out from its core practices. They are “in the process of becoming a full-service firm,” explains one practitioner.

In addition to high praise for Ebrahim Asvat, partner Ivette E Martínez also won the praise of her colleagues. “Very sharp, very good,” one practitioner says. “I wish we’d hired her.”

Last year, the firm helped with the due diligence and acquisition of a Panamanian company with casino operations, and did the

same for a Panamanian company operating in the industrial gas sphere. Additionally, the firm advised a pre-qualified bidder in regards to the Metro Project, the \$1.5 billion subway plan for Panama City.

Leading lawyers: Ebrahim Asvat K, Ivette E Martínez S, and Francisco V Martinelli P

Sucre Arias & Reyes, described by one peer as “a law firm with integrity”, is known in the local market for strong insurance and offshore practices. The firm has affiliated offices in British Virgin Islands, Bahamas, and Anguilla and counts ALICO, Aon Group Limited de México, and HSBC Seguros (Panama) as clients. Managing partner Ernesto B Arias is described by one competitor as “a very reputable lawyer, specialised mainly in insurance law”.

Leading lawyers: Ernesto B Arias

Tapia Linares & Alfaro is described by competitors as an “older, more traditional law firm” that specialises in mostly banking with an important offshore department. It recently moved into new offices in Panama’s Costa del Este neighbourhood. The firm’s trio of leading lawyers include Eloy Alfaro de Alba, Adolfo E Linares F, and Julio E Linares F. One competitor adds that Eloy Alfaro is a “great person and a great lawyer”.

Leading lawyers: Eloy Alfaro de Alba, Adolfo E Linares F and Julio E Linares F Alfaro.

Other notable firms

Anzola Robles & Asociados advised Capital Bank last year in a loan agreement with LD Telecom, where irrevocable rights to international telecommunication lines were rented to the Panamanian telecommunications company. The firm also helped with a \$225 million issuance of senior notes by Vantage Drilling Company’s subsidiary, Offshore Group Investment. The deal required analysis of legislation in eight different jurisdictions, including the Bahamas, New York, and Hungary.