

# Panama

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## A guide to Panamanian corporate finance legislation

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### The investment framework

In Panama the unit of currency is the balboa, which is worth the same as the US dollar and is issued only in coins which coincide in size and value with those of the US. Given the absence of balboa bills, US dollar bills are used for internal transactions in Panama, doubling as foreign exchange and internal currency.

Income tax in Panama is based on the concept of territoriality, whereby only Panamanian source income is taxable.

The development of institutions and instruments to regulate business activities in Panama has been consistent with its trade and services oriented economy. As a result, the aim of the legal and institutional framework is to offer many facilities and incentives for the development of international commercial and service activities in Panama, with few requirements regarding the nationality of investors and with no restrictions on converting currencies or transferring funds.

### Foreign investment policy

The policies of the Panamanian government toward foreign investment have been so open that there has never been any need for a formal statement of policy, and the legislation treats nationals and foreigners more or less the same.

### *Mergers, acquisitions, and combinations*

A Panamanian corporation can merge or be consolidated with one or more Panamanian or foreign corporations.

### *Making and liquidating loans*

Panama legislation does not establish any differences in local banks making loans to Panamanian or resident foreign investors.

### *Controls applicable to foreign investors*

There are generally no restrictions on the foreign ownership of Panamanian businesses, except in respect to retail, distribution, agency, representation, radio, and finance companies (*compañías financieras*), which can only be owned by Panamanian nationals or corporations.

*Private acquisition agreements*

Most acquisitions in Panama involve the purchase of a privately held family business or a subsidiary of a corporate group, and are achieved through a privately negotiated sale and purchase agreement.

*Transaction taxes*

Panamanian tax law does not impose a capital transfer tax on contributions of capital to Panamanian corporations, nor on the issue of stock or increase of capital stock of a corporation.

Neither issues of bonds by a Panamanian issuer, nor of shares by a foreign corporation, are subject to tax on the issue or transfer of those securities or shares.

**The banking system**

The procedures for setting up, operating and supervising banking institutions in Panama are contained in Decree Law No 9 of 1998.

The purpose of the new banking legislation is to modernize the banking system by perfecting the financial integration of the Panamanian economy with the rest of the world, and to create the regulatory and supervisory framework necessary to guarantee the solidity, efficiency and stability of the banking sector.

*Banking licences*

According to the law there are three types of banking licenses.

A general licence is issued to Panamanian banks and to authorized branches of foreign banks to engage in banking business both within and outside Panama. An international licence is issued to Panamanian banks and to authorized branches of foreign banks to conduct, exclusively from a Panamanian office, transactions which are completed, accomplished, or are intended to take place outside Panama. And a representation licence is issued to foreign banks to set up representative offices in Panama and to carry out those activities authorized by the Superintendence of Banks (Superintendencia de Bancos).

*Superintendency of Banks*

The Superintendency of Banks was created by law as an independent and autonomous government entity, with extensive powers in granting bank licenses and regulating, supervising and inspecting banking operations.

*Applicable taxes*

All banks operating in Panama are subject to taxes on net income obtained from local operations. No taxes are paid on offshore operations, or on interest or any other income derived from any type of bank deposits.

**Securities**

The financial system in Panama is rapidly being modernized and a key step in this process has been the enactment of Decree Law No 1 of 1999. This piece of legislation establishes provisions regarding the creation and operation of stock exchanges, the trading of securities and the development of rules that gives investors guarantees and protection in their securities transactions by fostering a climate of confidence that results in a transparent market.

*The National Securities Commission*

One of the more relevant features of the law is the creation of the National Securities Commission (the Commission), an independent government agency with wide powers to regulate and supervise all aspects of the securities business.

*Registration of securities and reports by underwriters*

Registration at the Commission is required for: (i) securities that are the object of a public auction; (ii) shares of stock issued by persons domiciled in Panama that have 50 or more shareholders domiciled in Panama, who own at least 10% of the paid capital of the underwriter. Registration is not, however, required in every situation, and certain conditions apply; and (iii) securities listed on a Panamanian stock exchange.

*Public offering of securities*

All offers or public sales of securities made by an underwriter or and affiliate in Panama must be registered with the Commission.

The following acts are exempt from registration: (i) securities issued or guaranteed by the government or issued by international entities; (ii) private offerings to no more than 25 persons and that together result in the sale of said securities to no more than 10 persons within one year; (iii) the offer and sale of securities to institutional investors; (iv) the offer, sale or transfer of securities originated by corporate transfers; (v) the offer and sale of securities to employees, directors or officers or of affiliated companies; and (vi) any other transactions excepted by the Commission.

*Offers for the purchase of shares*

The law insists that all shareholders must have enough information available to them on the public offer to purchase registered shares.

*Prohibited activities, civil responsibility and sanctions*

Those persons that violate any of the provisions of the law will be liable for damages and fines.

*Inspections and confidentiality of information*

Information presented to the Commission is automatically considered to be public except if it refers to business secrets or documents considered confidential, and to those documents obtained through investigations.

*Tax aspects*

Profits obtained from registered securities are not subject to any type of taxes provided that: (i) the transaction is done through a stock exchange; (ii) they are the result of a public offering; or (iii) they are the result of a corporate merger, consolidation or reorganization and the shareholder receives shares of the subsisting entity.

## Corporate and commercial

### Recommended firms

Aleman Cordero Galindo & Lee

Arias Fabrega & Fabrega

Icaza González-Ruiz & Alemán

Morgan & Morgan

Alfaro Ferrer & Ramirez

Galindo Arias & Lopez

Sucre Arias & Reyes

Arosemena Noriega & Contreras

Fabrega Molino & Mulino

### Aleman Cordero Galindo & Lee

Aleman Cordero Galindo & Lee is not the largest of the firms in Panama, with seven lawyers and 12 associates, but it is one of the most prestigious and innovative. It also has a reputation for having some of the largest international banks and corporations among its clients, including Kraft Foods and Banco del Istmo.

Offshore work takes up most of the firm's time, and it has offices in the British Virgin Islands and the Bahamas to help it with this network of advice. It is also a strong domestic mergers and acquisitions house, however, and was involved with Banco del Istmo's purchase of Bancolat, Banco del Istmo's acquisition of Banco Grupo El Ahorro and the Panamanian aspects of the international merger between Kraft Foods and Nabisco. Partner Carlos Cordero is recommended for his corporate work, and Jaime Aleman is the leading finance lawyer at the firm.

#### Key contact partner

Jaime Aleman

#### Leading lawyer

Carlos Cordero

### Arias Fabrega & Fabrega

Arias Fabrega & Fabrega has the largest corporate legal department in Panama and the greatest experience, being among the oldest firms in the country. It has two leading lawyers, Eduardo de Alba and Ricardo Arango, that are consistently recommended as both highly skilled and highly conscious of their client's business.

Arias also has a strong finance department, as is demonstrated by a run of work such as acting for Credit Suisse First Boston on the securitization of Visa and Mastercard receivables generated by Banco General, advising JP Morgan on a

\$750 million bond issue by the Republic of Panama, and advising Morgan Stanley as underwriter on a further issue of \$250 million notes issued by the Republic. The firm also worked on the securities issue by Empresa de Generacion Electrica Fortuna, Panama's largest electricity generating company, which was the first international offering launched on Panama's stock exchange. Arias also has a strong offshore department.

#### Key contact partner

Ricardo Arango

#### Leading lawyers

Eduardo de Alba

Ricardo Arango

### Icaza González-Ruiz & Alemán

Founded in 1920, Icaza González-Ruiz & Alemán is one of the oldest firms in Panama and has one of the best reputations abroad. With 19 partners and eight associates, it is also among the biggest in Panama – in fact, only Morgan & Morgan is larger.

It has an impressive international presence with affiliated offices in Anguilla, Belize, Luxembourg, Tortola in the British Virgin Islands, Nassua in the Bahamas, Montevideo in Uruguay and Lugano and Geneva in Switzerland. It should not surprise, given this list, that the firm is one of the best for offshore advice worldwide.

Corporate advice, banking and litigation are all strengths, and the firm's international clients include Banco Cuscatlán and Dell. The firm advised Banco Cuscatlán last year on its \$82 million acquisition of Lloyds TSB's central American assets and acted for the latter on setting up a call centre in the old Howard Air Force base. Other notable work in the past has included advising German construction company Bilfinger Berger on its winning bid to build a second bridge over the Panama Canal, and advising Cerveceria Nacional, Panama's largest brewery, on its acquisition by Colombian company Grupo Bavaria for \$260 million.

The firm's star lawyer is Alvaro Alemán, especially recommended for his skilful technical work. He was admitted to the Panama Bar in 1986 and works in a wide range of practice areas: corporate, litigation, labour, employment, taxation and sports law.

#### Key contact partner

Roberto Alemán (junior)

#### Leading lawyer

Alvaro Alemán

### Morgan & Morgan

The largest firm in Panama, and one that has grown consistently over the past two decades, Morgan & Morgan is a leader in ship registration, corporate work and offshore activities.

Despite economic turmoil producing a lull in work in Panama over the last few years, Morgan advised on several big deals, including the financing of a hydroelectric plant for US company AES Energy, and Banco del Istmo's acquisition of local banks and issue of \$100 million in preferred shares. The firm also worked opposite Icaza González-Ruiz & Alemán on Cerveceria Nacional's takeover, and acted on HSBC's acquisition of a branch of Chase Manhattan in Panama.

Managing partner Eduardo Morgan, who has taken over from Romulo Roux in the last year, is a former ambassador to the US and a leading lawyer. His brother Juan Morgan is also highly recommended.

Under the flag of the Morgan & Morgan Group, the firm has law offices in Panama, London, Madrid, the British Virgin Islands and Belize, and has tax-specific offices in the Bahamas, Zurich, Geneva, Lugano, Luxembourg and New York.

#### **Key contact partner**

Eduardo Morgan

#### **Leading lawyers**

Eduardo Morgan

Juan Morgan

### **Alfaro Ferrer & Ramirez**

Alfaro Ferrer & Ramirez is a firm with a long history and strong political connections. Several of the firm's partners have held political or public office, and it often advises the government on financial matters, one example being its advice on the restructuring of a contract between the government and Texaco, following a case filed by the energy company against the government for a breach of that contract.

Strong practice areas include energy, labour and employment, litigation, telecoms and banking. Work in recent years has included the acquisition of a Panamanian reinsurance company by QBE, an Australian reinsurance company with headquarters in New York, and the restructuring of British American Tobacco's operations in Latin America, on which it worked with US firm Baker & McKenzie.

Alfredo Ramirez is much respected for his "keen and incisive advice". The firm has offices in Aruba, the Bahamas and the British Virgin Islands that deal with offshore matters.

#### **Key contact partner**

Luis Lopez Alfaro

#### **Leading lawyer**

Alfredo Ramirez

### **Galindo Arias & Lopez**

Galindo Arias & Lopez has recently established an alliance with US firm Ferrell Schultz Carter Zumpano & Fertel in Florida. It has one associate permanently stationed there and has associated offices in Montevideo and Miami. Galindo has also just opened a new trade practice with the hire of Norman Harris, who used to be Panama's top trade negotiator.

The firm recently advised Copa Airlines, a key client, on a \$42 million bond financing and a \$200 million aircraft purchase participation agreement for four new aeroplanes in the last couple of years. It also represented Banco Continental de Panama on two deals, the acquisition of Banco Alemán Platina for \$1.7 billion and Banco Internacional de Panama for \$1.9 billion. Partner Ramon Ricardo Arias led the Galindo team on both acquisitions, alongside Cristina Lewis. Galindo was also involved with the merger of Panamerican Beverages and Coca-Cola Femsa for \$3.6 billion, and the takeover of Alianza Viva by Telecarrier.

#### **Key contact**

Ricardo Zubieta

### **Sucre Arias & Reyes**

Founded in 1969 by Carlos Sucre senior and Carlos Sucre junior, Sucre Arias & Reyes is a highly rated domestic firm with a wide client base across the country. This client list and the firm's breadth of practice have both increased in recent years following the merger of Sucre with Marquez & Preciado in June 2001.

There are now eight partners and 12 associates working for the firm in Panama, with several others in its offices in the British Virgin Islands, the Bahamas and Anguilla. Sucre junior is the managing partner in Panama, while Ernesto Arias is highly recommended for his knowledge of Panamanian law and the precision of his advice. Arias specializes in insurance, banking, capital markets and acquisition finance work.

#### **Key contact partner**

Carlos Sucre

#### **Leading lawyer**

Ernesto Arias