

A LAWYER'S GUIDE TO PANAMA

TABLE OF CONTENTS

ABOUT THIS GUIDE	1
ABOUT AROSEMENA NORIEGA & CONTRERAS	2
I. THE COUNTRY AT A GLANCE	4
II. INVESTMENT PRINCIPLES AND GENERAL CONSIDERATIONS	8
1. Political System	8
2. Legal System	9
3. Economic System.....	10
4. Foreign Trade	11
III. INVESTMENT FRAMEWORK	
1. Sector Restrictions	12
2. Foreign Investment Policy	12
3. Institutions Assisting Foreign Investors	12
4. Mergers, Acquisitions, and Combination.....	14
5. Making and Liquidating Loans	14
6. Antitrust Laws	14
IV. SENSITIVE AREAS	15
1. Branch Registration	15
2. Permits	15
3. Commercial Licenses.....	15
4. Labor Law	16
5. Price Controls	16
V. DIRECT SALES	17
1. Foreign Trade Regulations.....	17
2. Import Tariff	17
3. Tariff Protection.....	17
4. World Trade Organization (WTO)	18
5. Privatization Program.....	18
VI. EXPORTS	18
1. Tax Incentives.....	18
2. Tax Allowance Certificates	19
VII. REPRESENTATIVES, DISTRIBUTORS, AGENTS, FRANCHISERS	19
1. Representatives, Distributors and Agents.....	19
2. Franchise	20

VIII.	INTELLECTUAL PROPERTY	20
1.	International Conventions	20
2.	Industrial Property.....	20
	2.1 Patents.....	20
	2.2 Trademarks.....	21
	2.3 Industrial Design and Models	22
3.	Copyrights	22
4.	Moral rights and other related rights.....	22
5.	Licensing	22
6.	Protection of Intellectual Property Rights in Free Zones, Export Proceeding Zones and Customs	23
7.	E-Commerce	23
	7.1 Legal requirements for a valid electronic documents.....	23
	7.2 Data Message and Electronic Signatures.....	24
	7.3 Certification Authorities	24
IX.	DIRECT INVESTMENT	
1.	Types of Investment Methods.....	25
2.	Types of Companies	25
3.	No restrictions on Foreign Investments.....	26
X.	INVESTMENT INCENTIVES	
1.	The Colon Free Trade Zone.....	26
	1.1 Types of Operations.....	26
	1.2 Tax Incentives	27
2.	The Province of Colon Free Port.....	27
	2.1 Introduction	27
	2.2 Persons benefited by the Free Port System	28
	2.3 Tax Aspects.....	28
3.	Tourism	28
	3.1 Tourist Enterprises	29
	3.2 Tourist Activities	29
	3.3 Incentives and Benefits	29
	Table A	31
	3.4 Tourist Employment Certificate (Certificado de Empleo al Turismo-CET)	33
	3.5 Investment and Financing	33
	3.6 National Tourism Registry.....	34
	3.7 Obligations	34
	3.8 Penalties	35
	3.9 Concessions for Tourist Development.....	35
4.	Special Incentives for Export Processing Zones	35
	4.1 Enterprises that Can Participate in the Zones	35
	4.2 Kinds of Export Processing Zones	36
	4.3 Persons Charged With Establishing and Operation the Zones	36
	4.4 Requirements to Establish in the Zones.....	36
	4.5 Main Tax Incentives for Promoters	37
	4.6 Special Immigration Treatment	37
	4.7 Special Labor Regulations	37
5.	Special Incentives for Call Centers	38
	5.1 Main Tax Incentives	38
6.	Oil Free Zones	39
	6.1 Oil Free Zones Activities.....	39
	6.2 Purpose of the Oil Free Zones.....	40

6.3	Authorizations, Permits and/or Licensing.....	40
6.4	Requirements for Contractors to Establish the Zones.....	41
6.5	Main Tax Incentives for Contractors.....	42
7.	Special Incentives for Reforestation	42
7.1	Main Tax Incentives.....	43
8.	City of Knowledge (Technological Parks)	43
8.1	Main Tax Incentives	43
9.	Special Economic Area Panama-Pacific.....	44
9.1	Tax Incentives.....	45
9.2.	Custom Incentives.....	45
9.3.	Participating Entities	45
9.4	Special Migration and Labor rules.....	46
10.	Incentives for the Development of Electric Generation Systems.....	46
10.1	Direct Purchase and Sale.....	46
10.2	Tax Incentives.....	46

XI. PURCHASE OF A BUSINESS IN PANAMA BY A FOREIGN CORPORATION
47

1.	Controls Applicable to Foreign Investors.....	47
2.	Controls Applicable to Specific Industries.....	47
3.	Regulatory Framework for Acquisitions.....	47
4.	Private Acquisition Agreements.....	48
5.	Transaction Taxes	48

XII. ANTITRUST CONSUMER PROTECTION & UNFAIR TRADE PRACTICES

		49
1.	Antitrust	49
2	Consumer Protection.....	49
3.	Unfair Trade Practices.....	50
4.	Consumer Protection and Free Trade Commission.....	50
4.1	The Conciliation Process.	51
4.2	Jurisdictional Process.	51
5.	Regulation to Commerce and Industry.....	52

XIII. BRANCHES

		52
1.	Branch Office of Foreign Corporation.....	52
1.1	Capital.....	53
1.2	Financial Statements.....	53
1.3	Resident Agent.....	53
1.4	Authentications.....	53
2.	Registration Prerequisites.....	53
3.	Tax Aspects: Branch vs. Subsidiary.....	54

XIV. INCORPORATION.....

		54
1.	Companies with Limited Liability.....	54
2.	Corporations.....	55
2.1	Introduction.....	55
2.2	Powers of the Corporation.....	55
2.3	Types of Shares.....	56
2.4	Issuance of Shares.....	56
2.5	Incorporation Requirements.....	56
2.6	Registration of Shares.....	57
2.7	Management of Corporations.....	57
3.	Taxation	57
3.1	Corporate Income.....	57

3.2	Dividends.....	57
3.3	Distribution of Assets	57
3.4	Personal Income	57
XV.	SHIPPING	58
1.	Introduction.....	58
2.	Law	58
3.	The Panama Maritime Authority	59
4.	Procedures for Registration.....	60
4.1	Provisional Registration.....	60
4.2	Permanent Registration.....	61
5.	Radio License.....	62
6.	Registration of Ship Mortgages.....	62
6.1	Requirements	62
6.2	Provisional Registration and Permanent Registration of Ship Mortgages.....	64
XVI.	OTHER TYPES OF BUSINESS ORGANIZATIONS.....	64
1.	Insurance Companies.....	64
2.	Reinsurance Companies.....	64
2.1	Reinsurance Licenses.....	65
2.2	Capital Requirements.....	65
2.3	Tax	65
3.	Captive Insurance Companies	66
4.	Chattel Leasing.....	66
4.1	Characteristics of the lease agreement.....	67
4.2	Types of leasing.....	67
4.3	Tax	67
4.4	Licenses.....	67
5.	Trusts	68
6.	Private Interest Foundations.....	69
7.	Remittance of Funds Agencies.....	71
7.1	Characteristics of the Remittance of Funds Agencies	72
XVII.	BANKING SYSTEM.....	72
1.	Introduction.....	72
2.	Banking Licenses.....	73
3.	Superintendency of Banks.....	73
4.	Banking Regulation Rate	73
5.	Capital	73
6.	Consolidated Supervision	73
7.	Documents and Reports.....	74
8.	Bank Reserve	74
9.	Penalties	75
10.	Criteria for the Granting of Bank Licenses	75
11.	Numbered Bank Accounts	75
12.	Applicable Taxes	75
XVIII.	EXCHANGE CONTROLS	75
XIX.	OTHER TYPES OF FINANCIAL INSTITUTIONS	76
1.	National Mortgage Bank	76
2.	Savings Bank	76
3.	National Mortgage Bank.....	76

4.	Social Security Institute.....	76
5.	Agricultural Development Bank.....	77
6.	Commercial Banks.....	77

XX. SECURITIES 78

1.	Introduction	78
2.	National Securities Commission	79
3.	Stock Exchange Agency and Investment Advisors.....	79
4.	Self regulated Organizations	79
5.	Registration of Securities and Reports by Issuers	79
6.	Public Offering of Securities	80
7.	Request for Proxies	81
8.	Offer for the Purchase of Shares	81
9.	Investment Companies	81
10.	Stock Exchange Credit; Options and Derivative Instruments.....	82
11.	Custody, Compensation and Sale of Securities	82
12.	Prohibited Activities; Civil Responsibility and Sanctions.....	82
13.	Intervention and Liquidation	82
14.	Inspections and Confidentiality of Information.....	83
15.	Tax Aspects.....	83

XXI. TAX83

1.	Introduction.....	83
2.	The Tax Year.....	85
3.	Tax Reform.....	85
4.	International Maritime Commerce.....	87
5.	International Transportation	87
6.	Telecommunication Companies.....	88
7.	Categorization of Taxes.....	88
7.1	Corporate Income Tax.....	88
7.2	Taxation on Individuals.....	89
7.3	License Tax.....	90
7.4	Value Added tax	91
7.5	Other Taxes.....	92
8.	Tax Treaties.....	92

XXII. LABOR98

1.	Introduction.....	98
2.	Sources of Law.....	98
3.	Social Security.....	98
4.	Foreign Employees.....	99
5.	Duration of Employment Relationship.....	99
6.	Termination of Employment Relationship.....	100
7.	Labor/Management Relations.....	100
8.	General Regulations.....	101
8.1	Hours.....	101
8.2	Wages.....	101
8.3	Paid holiday and vacation.....	101
9.	Labor Reform.....	102
9.1	Labor Contract	102
9.2	Definite and indefinite Term Labor Contracts	102
9.3	Salaries and Production Premiums	102
9.4	Functional or Horizontal Mobility	103
9.5	Sexual harassment	103

9.6	Seniority Premium	103
9.7	Severance fund	103
9.8	Termination of the Labor Relationship	103
9.9	Corporate Committee	104
9.10	Union Provisions	104
9.11	Collective Bargaining Agreement	104
10.	Work at Sea.....	104
11.	Incentives for the Offer of a First Employment.....	105
XXIII.	IMMIGRATION	105
1.	Introduction	105
2.	Types of visas	105
3.	Purposes	106
4.	Taxes	108
5.	Work Permits.....	108
6.	Relation between the Visa and Work Permit	108
7.	Visas and Work Permits for Officers of an “Off Shore” Corporation or Office of Representation	109
XXIV.	DISSOLUTION, INSOLVENCY AND BANKRUPTCY	109
1.	Dissolution.....	109
2.	Insolvency.....	109
3.	Bankruptcy.....	109
4.	Creditors Agreement.....	111
5.	Foreign Declaration of Bankruptcy.....	111
XXV.	INTERNATIONAL RELATIONSHIPS	111
1.	General	111
2.	Bilateral/Agreements.....	112
2.1	Bilateral Agreements to Promote and Protect Investments.....	112
2.2	Bilateral Trade Agreements.....	112
XXVI.	LEGAL PROTECTIONS FOR THE FOREIGN INVESTOR	112
1.	Contractual Choice of Law and Jurisdiction.....	112
2.	Arbitration.....	113
2.1	General	113
2.2	Arbitration, Conciliation and Mediation Law	114
3.	The Court System.....	115
3.1	Supreme Court.....	115
3.2	Superior District Courts.....	116
3.3	Circuit Courts.....	116
3.4	Municipal Courts.....	116
4.	Enforcement of a Foreign Judgment.....	116
5.	Requirements for Recognition of a Foreign Judgment.....	116
6.	Admiralty Law.....	116
7.	Juridical Stability of Investments.....	117
XXVII.	ENVIRONMENTAL LAW	118
1.	General	118
2.	National Authority of the Environment and Natural Resources	119
3.	Environmental System	119
4.	Environmental Impact Studies	119
5.	Pollution	119
6.	Objective Responsibility	120
7.	Sanctions	120

8.	Investigation of Environmental Offenses	120
9.	Legal Actions	20

APPENDIX 1

KEY GOVERNMENTAL AGENCIES.....	121
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APPENDIX 2

FINANCIAL AND CREDIT INSTITUTIONS.....	125
--	-----

APPENDIX 3

REGULATORY AGENCIES	126
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APPENDIX 4

COMMERCIAL INSTITUTIONS AND OTHER ORGANIZATIONS.....	128
--	-----

APPENDIX 5

EMBASSIES AND CONSULATES	131
--------------------------------	-----

APPENDIX 6

LARGE PANAMANIAN BANKS AND SUBDIARIES OF FOREIGN BANK	142
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ABOUT THIS GUIDE

This Guide presents an introduction to Panama and a broad overview of laws and programs relating to doing business in our country.

The development of institutions and instruments to regulate business activities in Panama has been consistent with its trade and services economy, which is closely connected to the international market and Panama's strategic geographic position. As a result, Panama's legal and institutional framework has been specifically geared to offer facilities and incentives for the development of international commercial and service activities in Panama, with very few requirements regarding the nationality of investors and with no restrictions on converting currencies or transferring funds.

This is a general guide, based on the latest information available at the time of going to press. The statistics, laws, and rules of regulatory bodies are subject to amendment, and the reader should not rely on their remaining unchanged. We recommend that the reader seek proper professional advice on any business problems that he or she encounters and not rely on this Guide as a substitute for such advice.

This third edition incorporates new legislation which has been enacted since December 1996 when the first edition was published, and has been possible thanks to the valuable contribution and initiative of our partner Dr. Julio C. Contreras III in charge of all three projects, and recently Licda. Shanina J. Contreras who has actively participated in the preparation of this latest edition.

ABOUT AROSEMENA NORIEGA & CONTRERAS

Arosemena Noriega & Contreras, one of Panama's leading law firms, has engaged in the general practice of law since its founding in 1968, with offices in Panama City, Republic of Panama.

The firm offers a comprehensive package of legal services in the areas of corporate law, modification, merger and dissolution of corporations and other aspects of Panamanian company law, including administrative representation of corporations organized by the firm. In the area of admiralty law, the firm offers services to ship owners of Panama flag vessels and to banks and other institutions which finance the purchase of vessels.

As a way of providing additional services to our clients, our corporate department was organized combining both legal and administrative structures through the facilities offered by Offshore Solutions Inc., a wholly owned subsidiary company of the firm.

The subsidiary specializes in the formation and administration of offshore companies, while providing personalized assistance in the provision of corporate image, accounting and bookkeeping among other ancillary services.

The firm is also active in copyright, trademark, patents, the law of the protection of ideas and intellectual property including health registration, the obtaining of commercial licenses, labor-employment, immigration, visas, work permits and environmental law. The firm has wide experience in drafting and interpreting contracts, rendering opinions, advice on governmental and regulatory issues, commercial property dealings and in general all types of commercial transactions.

The firm also engages in the area of litigation covering civil, mercantile, admiralty, intellectual property and labor, as well as arbitral proceedings.

Because Panama has developed a highly successful international banking center, the firm serves as general counsel to various banking institutions that use Panamanian banking facilities. Moreover, the firm advises on bank registration and licensing, credit transactions, regulatory matters and other general banking and commercial matters.

Arosemena Noriega & Contreras lawyers are leaders in the profession and in the community. Members of our firm have held the presidency of the Panama Bar Association, Maritime Law Association of Panama, Panamanian Academy of Law and Business Law Association. A partner of the firm has been Undersecretary of Foreign Affairs for Panama and Permanent Representative of Panama to the United Nations. A senior partner of the firm is presently honorary consul of the Republic of Malta, while other members have occupied positions within the judiciary and have actively served as professors of Civil, Mercantile and Tax Law at the leading universities in the country.

Reference works on Panama have been authored by the firm's lawyers, including works on Panama Corporate law, Commercial and Investment law, Trust law and have contributed in the creation of the Private Interest Foundation law and Intellectual Property law.

The firm is a member of several associations of law firms, giving it global reach. Among these are: Lex Mundi, the world's leading association of independent law firms, with more than 160 member firms in 108 countries, 49 U.S. states and territories and ten Canadian provinces, which gives our attorneys access to over 370 offices and more than 16,000 lawyers worldwide; the Club de Abogados, with members located in each country of Latin America including Puerto Rico, as well as all western

European countries and Japan; the International Grouping of Accountants and Lawyers (IGAL) with members in over 39 countries around the world and The Bomchil Group with members in 21 Latin American countries.

This networking furnishes our clients with a proven, efficient and cost effective method of handling all legal or non-legal matters in any place in the world.

1. THE COUNTRY AT A GLANCE



Location and Area.- Panama is located at the southeastern end of the Central American Isthmus which connects the North and South American continents. The country occupies a strategic position as the connecting geographic link, and has been a pathway between the Atlantic and Pacific Oceans, a circumstance that eventually led to the building of the Panama Canal. Panama's economy has historically been oriented toward domestic and foreign trade and services; indeed, Panama's geographical location and configuration are often considered to be its principal natural resources.

The country has an area of 75,517 square kilometers (29,157 square miles) and consists of nine provinces - Panama, Colon, Chiriqui, Bocas del Toro, Veraguas, Herrera, Coclé, Los Santos, Darien and five Indian Regions: the San Blas Region (Comarca de Kuna Yala); the Embera-Wounan Region (Comarca Emberá de Darién); the Madungandi Region (Comarca Cuna de Madungandi); the Guargandi Region (Comarca Cuna de Guargandi) and the Ngobe Bugle Region. Panama borders to the East with the Republic of Colombia and to the West with the Republic of Costa Rica. The Isthmus faces the Caribbean Sea to the North and the Pacific Ocean to the South, with the Canal actually on a northwest to southeast axis, cutting through the Isthmus at one of its narrowest sections. Panama is in Zone 17 (five hours behind Greenwich Mean Time).

Language.- The official language of Panama is Spanish. In the cities of Panama and Colon a high percentage of the population also speaks English. Approximately 5% of the population still speaks Indian dialects.

Climate.- There are two seasons in Panama, the summer or dry season and the winter or rainy season. Summer lasts from late December to mid-April; winter, from mid-April to late December. The average daily rainfall is approximately 28.3 millimeters (one inch) during the winter, and there is almost no rain in the summer. The average daily temperature, which does not vary significantly between seasons, is 27° C (80°F). The relative average humidity for the year is approximately 78%, while the maximum is reached in October (98%) and the minimum in March (52%). Despite heavy rainfall, the country is free from severe storms or hurricanes.

Principal cities.- Panama City, the capital, is the largest and principal urban center of the country, with a population of 668,927 (2004 est.). Located at the center of the crescent formed by the Bay of Panama on the Pacific Ocean, the city has had, since its founding in 1519, a long tradition as an important trading center in the Western Hemisphere. Today the capital is a modern city which, despite its relatively small population, impresses visitors with its quick tempo. Since the early 1970's Panama City has become a mayor financial center in Latin

America.

Colon, the second most important city in the country, is located on the Caribbean coast of the Isthmus adjacent to the entrance of the Panama Canal. Next to the city are Cristobal, the terminal port on the Atlantic side of the Canal, and the Colon Free Trade Zone, one of the world's major free trade centers for the redistribution of manufactured goods from Japan, Europe and the United States to Latin America. The population of Colon is estimated at 158,935 (2004 est.).

Other urban centers include San Miguelito, which is really a suburb of Panama City, with a population of 290,919 (2004 est.). The city of David in western Panama is the center of an important agricultural and cattle region and has a population 115,173 (2004 est.).

Ports.- The Canal ports handle 75% of the imports and exports for the central area of the country. Some cargo is handled by the smaller port of Bahia Las Minas, also on the Caribbean (east of Colon), and by minor docking facilities in Colon.

Cristobal, under the control of Panama Ports (Hutchinson) is the main port on the Caribbean side of the Isthmus located in the city of Colon. Its 15 main docking areas have a total berthing space of 3,574 meters (11,726 feet). The port has a depth of 12 meters (40 feet) and a large breakwater that provides wide-protected anchorage for oceangoing vessels. In 1980, the port acquired new equipment for handling containers, and an ongoing improvement program, completed in early 1982, provides for facilities to handle 56,000 containers annually. The facilities include a yard for 2,000 containers, with handling equipment, a stuffing shed, and facilities for weighing and computerizing control. Presently undergoing an extensive improvement program the port is expected to handle 500,000 containers annually.

Port of Manzanillo / Coco Solo South granted in concession to Manzanillo International Terminal S.A. (MOINSA) located to the southeast of the city of Colon comprises a total area of 289,672 square meters (28.9 hectares). Its four docking facilities have a total berthing space of 950 meters (1,312.32 feet). Two of the docks have a depth of 10.5 meters (34.4 feet) and the other two docks a berth of 13 meters (42.65 feet). The port handled 1,125,780 containers in 2003.

Port of Coco Solo - North located to the northeast of the City of Colon comprises a total area of 7,850.30 square meters (16 hectares), divided into two (2) main areas:

- a) docks N° 1 and N° 2 granted in concession to Colon Container Terminal S.A./ Evergreen, presently undergoing an extensive improvement program. The docking facilities have a berthing space of 612 meters.
- b) docks N° 3 and N° 4 granted in concession to Colon Container Terminal S.A.:
 - dock N°3 has a total berthing space of 300 meters (984.24 feet) with a depth ranging from 5 to 5.8 meters (16.4 to 19.02 feet);
 - dock N° 4 has a total berthing space of 280 meters (918.6 feet) and a depth of 5 meters (16.4 feet).

Balboa, also under the control of Panama Ports (Hutchinson) is the terminal port on the Pacific side of the Canal. It is also well protected and has docking sites with a total berthing space of 2,214 meters (7,266 feet). Depth varies from 9 to 12 meters. The port has specialized facilities for the handling of cargo, including a crane for containers and some capacity for bulk cargo unloading. Dry dock repair facilities adjacent to the port have a capacity for vessels up to 80,000 DWT.

Presently undergoing extensive improvements and after completing all phases of the expansion and modernization program, Balboa will have 1,500 meters of deep water quay, 50 hectares of container storage area, 12 super post Panamax quay cranes and 28 RTG's. Panama Ports will become the biggest investor in the history of Panama with more than US\$400 million invested; the port is expected to handle 400,000 containers annually.

The port of Bahia Las Minas, on the Caribbean coast of the Isthmus east of Colon, has 90 meters (295 feet) of berthing facilities with a depth of 7 meters (23 feet) to handle general and roll on/off cargo, as well as 140 meters (459 feet) of berthing capacity for tankers serving the oil refinery therein located.

Other Panamanian ports are used primarily for the export of agricultural products. On the Pacific, Aguadulce is used mainly for the exporting of sugar to international markets, while Puerto Armuelles is geared to banana exports. On the Caribbean, the port of Almirante handles all the banana exports for that sector of the country.

The fishing port of Vacamonte on the Pacific, 27 kilometers (17 miles) west of Panama City, serves the shrimp fleet and has special docking facilities for unloading tuna and 3,000 tons cold storage installations.

Rodman and Farfan both on the Pacific side have been identified as possible sites for port and industrial development. In Rodman, studies conducted consider the possibility of building a petroleum refinery and in Farfan a new cargo terminal.

The Panama Canal.- The interoceanic waterway which cuts through the Isthmus of Panama is 82 kilometers (51 miles) long. On the average, it takes a vessel eight hours to travel from one ocean to the other, passing through three sets of locks: Miraflores, Pedro Miguel and Gatún. The depth of the navigation channel is 12 meters (40 feet). The waterway, which began operating in 1914, handles approximately 13,500 oceangoing vessels a year, transporting over 182 million tons of cargo.

Presently there are plans being discussed for the expansion of the Panama Canal by creating a third set of locks. This work should begin no later than the year 2010 and that will permit the transit through the Canal of vessels with greater tonnage.

Population.- Panama is a multiracial country with a population of 3,000,463 (2004 est.). The rate of population growth has been gradually declining over the last two decades to 1.31% (2004 est.). However, as a result of previous high growth rates, the population of Panama is very young, averaging about 18 years of age. 51% of the population resides in urban centers.

Education.- Historically, the formal education system of Panama was patterned after traditional European systems, with strong emphasis on humanities and a marked orientation toward the liberal professions. In the recent past, however, there has been a change, with more emphasis on training for the commercial and service sectors and on technological education for manufacturing and agriculture.

There are 24 universities and colleges established in Panama, the largest being: The University of Panama, a state institution with over 74,000 students on eleven campuses throughout the country; the Technological University of Panama, a state institution with over 16,000 students on eight campuses throughout the country; and the Santa Maria La Antigua University, a private institution sponsored by the Catholic Church, with an enrollment of over 4,000 students on four campuses.

The Literacy rate of the total population is 92.6% and 18% of the population over 15 years of age are enrolled in some sort of educational institution. A substantial number of Panamanian

professionals have been trained abroad, especially in the United States, Mexico, Brazil, and Spain.

The educational system offers six years of free, compulsory schooling for all children. There is also a parallel private system that takes care of close to 35% of the total enrollment at the primary level and 41% at the secondary school level.

Religion.- The Panamanian Constitution recognizes Catholicism as the religion of the majority of the population (over 90%). There is, however, absolute freedom of worship in all faiths.

Health.- The health of Panama's population has greatly improved over the last three decades. Life expectancy rose from 66 years in 1970 to 74.74 years in 2004. The Infant mortality rate stands at 21.0% per 1000 inhabitants in 2004. The proportion of the working-age population (ages 15 to 64) climbed from 34% in 1990 to 62.7% in 2002.

History.- Ever since Panama was incorporated into the process of Spanish colonization very early in the sixteenth century, it has played an important role in international trade as a transit area. At the start of the Spanish conquest of South America, the very peculiar configuration and strategic location of the Isthmus were highly valued by the Conquistadores. They disassembled their vessels on the Caribbean coast of Panama, transported them over the Isthmus, reassembled them on the Pacific side, and then advanced to the conquest of present day Colombia, Ecuador, Peru, Bolivia and Chile.

Passage through Panama became a compulsory element in Spain's monopolistic control of trade with the South American colonies on the Pacific coast. This gave rise to the celebrated fairs at Portobelo, where goods from the colonies and from Spain were exchanged.

In 1855 the first railroad was completed across the Isthmus of Panama. It carried goods and passengers traveling between the East and West coasts of the United States and between the West Coast and Europe.

After various unsuccessful attempts by the French to build a canal in the last quarter of the XIX century, the Panama Canal was built across the Isthmus by the United States. It was completed in 1914.

Administratively, Panama was a Spanish colony until November 28, 1821, when it achieved its independence from Spain and voluntarily joined the Great Colombia Confederation, which was formed by present-day Venezuela, Colombia, Ecuador, and Panama. After the Confederation broke apart in 1830, Panama tried three times to separate itself from Colombia, but was unable to do so. With the support of the United States, Panama was finally successful in 1903, and shortly thereafter the new Republic of Panama signed a Canal Treaty with the United States.

Ethnically and culturally, the country has seen the intermingling of the original inhabitants of the Isthmus with the Spanish colonizers, as well as with African and Antillean slaves. Immigration was sporadic until the beginning of the XX century, when construction of the Canal gave rise to waves of immigrants, especially of Asian and West Indian origins.

II. INVESTMENT PRINCIPLES AND GENERAL CONSIDERATIONS

1. Political System

The Constitution of Panama, enacted in 1972 and amended in 1978, 1983, 1993, 1994 and

2004, provides for a Republican form of government. The government is divided into separate Executive and Legislative branches with an independent Judiciary.

By legislative Act N° 2 of 1994, the Constitution of Panama was amended prohibiting the existence of armed forces.

The Executive branch is constituted by the President of the Republic and the Ministers of State. The President and two Vice-Presidents are elected democratically every five years by direct suffrage.

By legislative Act N° 1 of 2004, the Constitution of Panama was amended so that only one Vice-President instead of two is democratically elected every five years. This amendment will come into effect in 2009.

The Legislative function is carried out by the National Assembly presently composed of 78 Deputies (Congressman), who are elected every five years by direct suffrage, five in each electoral circuit of the country.

By legislative Act N° 1, as of 2009 the National Assembly will be composed of only 71 Deputies.

The Judicial branch is headed by the Supreme Court and consists additionally of Superior District Courts, Circuit Courts, Municipal Courts and Arbitration Courts. The nine magistrates of the Supreme Court are appointed by agreement of the Cabinet Council subject to the approval of the Legislative branch for a period of 10 years.

In each of the nine provinces there exists a governor appointed by the President and a provincial council made up of all the representatives of the corregimientos i.e., townships (the smallest administrative units in the country) of the respective province, as well as any other members determined by law.

The functions of the Government Attorney Office are carried out by the Attorney General, Attorney for the Administration, Circuit Attorneys, Prosecutors and other officials as established by law.

There are six main political parties in Panama:

- Revolutionary Democratic Party (Partido Revolucionario Democrático – PRD);
- Panameñista Party (Partido Panameñista – former Arnulfista Party);
- Solidarity Party (Partido Solidaridad);
- Democratic Change (Cambio Democrático – CD);
- People's Party (Partido Popular – former Christian Democratic Party – PDC);
- National Liberal Republican Movement (Movimiento Liberal Republicano Nacionalista - MOLIRENA).

The large percentage of the population align themselves with either the PRD or Panameñista parties which have traditionally represented the interests of the working class and to a lesser degree with Solidarity, CD, People's Party and MOLIRENA which have a traditional alliance with trade industry and the professional class.

2. Legal System

The Constitution of Panama establishes a strict separation of powers between the Executive, Legislative and Judicial spheres. These separate spheres act limited and separate but in harmonic collaboration.

The Panamanian Legal system consists of different levels. The hierarchy of legal norms is demonstrated in the following table:

- a. The Constitution**
- b. International Treaties**
- c. Laws** (Ordinary Laws)
(Organic Laws)
- d. Decrees of Law** (Extraordinary powers granted to the Executive branch by the National Assembly covering specific matters and under certain circumstances as contemplated in the Constitution)
- e. Cabinet Council Decrees** (The President, Vice-President and the Cabinet of Ministers)
- f. Executive Decrees** (The President and the respective Minister according to the law which the Decree regulates)
- g. Resolutions** (Cabinet Resolutions)
- h. Agreements** (Other dispositions and Agreements by Administrative Authorities).

Individual acts by any government or administrative authority and by the courts must be based either on the Constitution, laws, decrees or resolutions, agreements; which is recognized as the Principle of Legality (*Principio de Legalidad*) in that all the functions which the state performs must be previously defined by law.

The Legislative functions are carried out by the National Assembly. However the Executive branch and the Administrative authorities can issue and/or approve decrees, resolutions and agreements that are an integral part of the legal system.

The Supreme Court has exclusive jurisdiction over the constitutionality of laws, decrees, resolutions and other acts of the Administration. All decisions rendered by the Supreme Court are final, definitive and mandatory.

3. Economic System

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

The economy of Panama is dominated by the tertiary or service sector, which accounted for approximately 78% of the gross domestic product (GDP) in 2004; the secondary sector, covering manufacturing, construction, electricity and other utilities accounts, for 15% and the primary sector, covering agriculture and mining, made up 7%. The Colon Free Zone and the

predominantly foreign banking center are also strong contributors to the country's GDP.

The Republic of Panama encouraged the development of a highly successful international banking center by enacting banking legislation in 1970 which insured high quality banking services, the protection of depositors and flexibility for individual banking operations.

In 1998 new banking legislation was enacted, inspired in the Basle Agreements, for the purpose of modernizing 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. To this end, the new Law creates the Superintendency of Banks.

The banking center presently comprises 77 institutions represented by: 38 general license banks, 31 international license banks, 6 representation offices and 2 State banks; with total assets in excess of US\$33.9 billion as of December 31, 2004 (see chapter XVII, *infra*).

4. Foreign Trade

One of the smallest nations in Latin America in area and population, Panama overcomes its limitations of size by location, which links the northern and the southern hemispheres. The use of the Republic of Panama as a bridge for international commerce did not arise in the modern world. Since colonial times the Isthmus of Panama has been used as a trans-shipment point for merchandise to and from South America. The existence of the Panama Canal and the Colon Free Zone are examples in today's terms, of Panama's commercial predominance (see chapter X, *infra*).

The Panama Canal, which joins the Atlantic and Pacific Oceans, is considered one of the most important channels for world commerce, servicing an average of 36 vessels daily. The Canal and the area servicing it are important factors in the national economy and large contributors to the government budget. Money generated by the activities related to the transit of ships has a multiplier effect on the economy, taking the form of salary and transfer payments that are spent on goods originating in other sectors.

III. INVESTMENT FRAMEWORK

The development of institutions and instruments to regulate business activities in Panama has been consistent with its trade-and services-oriented economy, which is closely connected to the international market and geared to using Panama's geographic position. 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 very few requirements regarding the nationality of investors and with no restrictions on converting currencies or transferring funds.

1. Sector Restrictions

There are very few limitations or restrictive practices on foreign investment, especially for international business operations based in Panama. The few exceptions are the retail trade, including representation, distribution and agency; ownership and operation of radio stations and ownership of finance companies (*compañías financieras*), which are reserved for Panamanian nationals.

2. Foreign Investment Policy

Historically, 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 on this subject, and legislation hardly establishes any differences in treatment between nationals and foreigners. Similarly, all foreign investors, regardless of their country of origin, are treated equally and there are no general restrictions of foreign ownership on foreign enterprises and joint-ventures.

The foreign investment policy may be summarized as follows:

- *Equity Participation.* There is no explicit formal policy about equity participation of foreigners in investment ventures in Panama. Pragmatism dictates that, for larger projects, the size of the Panamanian capital market precludes any significant participation of national investors. Usually, for the larger ventures involving the exploitation of natural resources the Panamanian government prefers to have a majority participation in the equity.
- *Employment Policy.* The government encourages maximum employment of local nationals. Foreign companies are allowed to bring in needed foreign personnel to train Panamanians; however, the law sets maximum percentages of foreign employees allowed to be on the payroll of a given employer. Foreign companies are also allowed to fill certain key or top management posts, including those positions involving sensitive information, with their own personnel.
- *Exchange Control.* There are no regulations or limitations on converting and transferring funds to and from Panama.
- *Other Matters.* The Panamanian government does not limit, in any form, overseas borrowing and the remittance of dividends and royalties abroad by foreign or national investors.

3. Institutions Assisting Foreign Investors

To attract foreign investments into Panama, the government has developed the necessary institutional and infrastructure facilities, efficient public administrative machinery, extremely favorable and flexible policy guidelines, and attractive fiscal and non-fiscal incentives.

a. **Ministry of Economics and Finance** (*Ministerio de Economía y Finanzas*).

The Ministry of Economics and Finance is created as the result of a merger of the Ministry of Finance and Treasury (*Ministerio de Hacienda y Tesoro*) and the Ministry of Planning and Economic Policy (*Ministerio de Planificación y Política Económica*). This Ministry is responsible in formulating initiatives on matters dealing with economic policy; programming public investments and social strategy; the design and execution of general directives and the specific works of the government on national finance and treasury; the preparation, execution and control of the State Budget; the Public Credit and the modernization of the State, as well as the preparation and execution of the State Financial Program.

b. **Ministry of Commerce and Industries** (*Ministerio de Comercio e Industrias*).

All aspects of retail and wholesale trade, commercial licenses, industrial development, mining concessions, and patent and trademark registrations are supervised by the Ministry of Commerce and Industry. Applications for tax incentives on exports, on new investment or on investments for expansion of existing facilities in the manufacturing sector must be submitted to this Ministry for processing.

c. Vice Ministry of Foreign Commerce (*Vice Ministerio de Comercio Exterior*).

It is a department within the Ministry of Commerce and Industries that has the function of coordinating, developing, assisting, promoting and executing governmental policies in matters dealing with: commerce, industry, insurance, securities, finance companies, development of mineral resources, hydrocarbons, foreign commerce and all others established by law.

d. Coordinating Unit for the Privatization Process (*Unidad Coordinadora para el Proceso de Privatización*).

Known by the Spanish acronym of PROPRIVAT, was created as a department of the Ministry of Economics and Finance, for the purpose of coordinating and supervising all aspects of the privatization process.

e. Interoceanic Region Authority (*Administración de la Región Interoceánica – ARI*).

The Interoceanic Region Authority, known by the Spanish acronym of ARI is a fully independent entity responsible for the custody, utility and administration of all properties that have and will revert to Panama, pursuant to the Torrijos–Carter Canal Treaties of 1977.

By law, the ARI can in general sell property, with certain specific limitations, as well as to lease and grant concessions on said properties for periods of up to 20 years, which can be extended to 40 years when certain special conditions are met.

The ARI will have the duration necessary for the completion of its functions, but in no case will this period exceed the year 2009.

f. Technical Units of Investment (*Unidades Técnicas de Inversión*).

Known by the Spanish acronym of UTI's, are administrative entities charged with coordinating and carrying out the execution of investment works and projects, that are developed by Ministries, autonomous and semi-autonomous entities and other institutions of the State, in priority areas that present special conditions, determined by difficulties in communication, transportation, distance or significant limitations in the existence of contracting companies or distribution centers of materials.

To comply with their functions, the UTI's will count with the participation of the Ministry of Economics and Finance, the office of the Comptroller General and of the institutions under whose respective budget the works or investment projects are contemplated.

4. Mergers, Acquisitions, and Combinations

A Panamanian corporation may be merged or consolidated with one or more Panamanian or foreign corporations. If the merger or consolidation is with a foreign corporation, the foreign corporation must have been previously registered in the Public Registry Office. If the foreign corporation is to be the surviving corporation, it must maintain an attorney-in-fact in Panama authorized to receive service of process on its behalf for at least five years after the date of the merger.

5. Making and Liquidating Loans

Panama legislation does not establish any differences in local banks making loans to Panamanian or resident foreign investors. They are both treated basically the same.

Notwithstanding the above, the following two (2) situations must be noted:

- *Loan made to a nonresident investor.* The interest payments received by the local bank, from the nonresident investor, are taxable at special reduced rates applicable to foreign-source income;
- *Loan made by a nonresident bank.* The interest payments made by the resident investor, to the nonresident bank, are subject to a 6% flat rate withholding tax at the source.

6. Antitrust Laws

The Constitution of Panama prohibits in trade and industry all combination, contract, or other action that tends to restrict or impede free trade and competition, that would have monopolistic effects in the detriment of the general public. This prohibition refers to private monopolies and to the practice by a single person, be it natural or juridical, of exploiting a chain of commercial retail establishments in such a manner that it tends to hinder or eliminate competition by the small merchant or industrialist.

There exists the popular action (*acción popular*) to contest before the courts the performance of whatever combination, contract, or action that has as its purpose the establishment of monopolistic practices. Nevertheless, the exploitation of games of chance and betting activities can only be carried out by the State, albeit the State can grant concessions for the administration of these activities.

The competition and antitrust policy was further enhanced by Law N° 29 of 1996 (see chapter XII, *infra*).

IV. SENSITIVE AREAS

1. Branch Registration

Whereas the registration of a corporation is a routine matter for lawyers and the process of registering at the Public Registry normally takes between two to three working days; the registration of a branch could take significantly longer as more documentation is required which would need to be authenticated and in most cases translated before filing at the Public Registry. However, no licensing or permits of whatever kind are necessary to register the branch.

2. Permits

Panamanian administrative law is very rigid in some respect and in certain key areas such as, for example banking; a permit/license can only be obtained from the Superintendency of Banks if certain strict criteria concerning the reputation, integrity, efficiency and solid financial standing of the prospective applicant are met. The criteria as established is not only applicable to the bank as an institution but also to the shareholders, partners, directors and personnel (see chapter XVII, *infra*).

3. Commercial Licenses

Commerce and Industry are governed in Panama by Law N° 25 of 1994 and regulated by Executive Decree N° 35 of 1996.

The provisions contained in Law N° 25 indicate that both natural and juridical persons holders of a license can engage in commercial or industrial activities, subject to the limitations contained in the Constitution and corresponding legal and regulatory dispositions.

Pursuant to Law N° 25 there are three (3) types of licenses:

- **Type A License.** This type of license is issued exclusively for wholesale business.
- **Type B License.** This type of license is issued indistinctly, for wholesale and retail business.
- **Industrial License.** This license is issued for extraction and manufacturing activities in Panama, as well as the wholesale of extracted or manufactured products to the State. It is also required for construction companies and manual, home or craftsmanship industries that employ more than five workers.

A foreign investor should take into consideration the following:

- Retail commerce; includes the sale of goods to the consumer, the distribution representation or agency of production or mercantile companies and any other activity that classifies as such.

Only Panamanians or corporations whose Board of Directors and Officers are Panamanians and whose entire capital is owned by Panamanians can engage in retail commerce in Panama.

- Wholesale commerce; includes banking and insurance activities, the provision of services, sales to the State and all other types of activities, except those classified as retail commerce. Foreigners are free to engage in wholesale commerce in Panama.
- The applicant will be issued a numerated provisional license which will be valid up to a maximum of 90 days, at the end of which the permanent license must be issued, unless there is a delay attributable to the applicant.

4. Labor Law

Panama has a strong tradition of strict labor laws. There are restrictions on the hiring of foreign employees which can only be employed if they have obtained a work permit and are in possession of a valid visa.

Labor law provides that every employer must maintain Panamanian workers in a proportion of not less than 90% of his total ordinary work force, albeit he can employ foreign specialized or technical personnel that does not exceed 15% of his total work force.

There are relatively high severance payments (see Chapter XXII, *infra*).

5. Price Controls

There existed in Panama a Price Control Office (*Oficina de Regulación de Precios*) ascribed to the Ministry of Commerce and Industries for consumer protection through price controls of staples and other goods. This office was subsequently abolished by Law N° 29 of 1996, which now provides for consumer protection (see chapter XII, *infra*).

V. DIRECT SALES

1. Foreign Trade Regulations

Panamanian traders are free to import from and export to all countries, regardless of their socio-political systems. Trade policy in Panama, which is flexible but selective, includes free ports for the export and re-export business, low duties on certain basic staples that are not produced locally and on certain products for the tourist trade, a protective scheme for local agriculture, cattle and manufacturing industries and for industrial and export incentives.

2. Import Tariff

Panama uses the Harmonized Commodity Description and Coding System for tariff purposes. Duties are levied ad valorem on the CIF value of goods. The tariff generally cannot be higher than 60%. Rates fluctuate from very low to intermediate to high depending on the policy pursued for different types of goods.

Import tariffs are not applied to goods imported by natural or juridical persons who are exempted by virtue of a contract or treaty and goods specified as tax exempt in tariff and special incentive laws.

A Value Added Tax and an Excise Tax are payable on all imports, based on the CIF value plus import duty, except for: foodstuffs, medicines, fuels, lubricants, export and re-export activities, transactions inside the free zones, sales of agricultural, maritime and cattle products in their natural state and also goods related to these activities (tools) as well as school material and books.

All imports are subject to the same tariffs, regardless of the country of origin, with the exception of those originating from countries that have been accorded a preferential tariff. Preferential tariffs are granted to imports that originate in each of the Central American countries with which Panama has entered into separate free trade agreements. Panama is not yet a member of the Central American Common Market.

3. Tariff Protection

As part of the incentives provided in industrial development legislation and the overall free trade policy which Panama has adopted, producers may obtain up to 100% exemptions from import duties on raw materials, component parts, machinery, and equipment.

The policy has been to reduce excessive protective tariffs, to rates that range between 3% and 15%. Nevertheless there still exist certain protective tariffs especially on automobiles, rice, sugar and dairy products with rates that range between 40% and 45%.

4. World Trade Organization (WTO)

The World Trade Organization (WTO) formerly known as the General Agreements on Tariffs and Trade (GATT) makes a general commitment to the long-standing practice of Most Favored Nation treatment (MFN), by requiring each contracting party to grant unconditional MFN status to all other contracting parties. Over the last few years Panama has been adopting its legislation to WTO standards and as a result of these efforts has in 1997 become a full member of the WTO, opening new markets to Panamanian products and services, which in turn have resulted

in a progressive general reduction in tariffs.

5. Privatization Program

Since 1992 the government of Panama has instituted a Privatization Program of public services, facilities and companies. For this purpose PROPRIVAT came into existence as a department of the Ministry of Economics and Finance to coordinate and supervise the privatization process. (see chapter III, supra).

The program includes several methods of privatization, such as: fragmentation, restructure, total or partial sale of assets and/or shares, total or partial leasing, sub-contracting, licenses, and joint ventures between government and private enterprises.

Currently the program has resulted in the successful privatization of the telephone and electricity companies, a cement factory, sugar mills, port and railroad services, industrial plantations, casinos and several hotels.

As an intrinsic part of the privatization program the government has created the Public Services Regulatory Agency (*Ente Regulador de los Servicios Publicos*), charged with regulating electricity, communications and water services.

VI. EXPORTS

In Panama, the law only considers as an export the sale of goods outside the national territory.

1. Tax Incentives

Traditionally the mechanism in Panama for granting incentives was registration of the venture with the Official Registry of the National Industry (*Registro Oficial de la Industria Nacional*), which was eliminated by Law N° 28 of 1995 that adopted measures for the universalization of tax incentives.

Notwithstanding the above, enterprises registered with the Official Registry of the National Industry at the time Law N° 28 was enacted, maintain all tax benefits granted by Law N° 3 of 1986, for the remaining duration of the registry.

Moreover, Law N° 28 also provides the following benefits:

- A flat import duty of 3% based on the CIF value, plus the Value Added Tax on all imported supplies, raw materials, semi processed goods and capital assets, whether or not importers of said merchandises are registered in the Official Registry of the National Industry;
- Exemption from import taxes and the Value Added Tax on supplies, packaging materials and raw materials used by the national pharmaceutical industry for the manufacturing of medicinal products;
- Exoneration of the Value Added Tax in the local purchases of packaging materials used by national medical plants in the manufacturing of medicines.

2. Tax Allowance Certificates

The Tax Allowance Certificate, known by the Spanish acronym “CAT”, is an instrument to promote non-traditional exports produced or manufactured totally or partially in Panama.

The following are salient features of CAT's:

- Are nominative and transferable;
- Maturity date is nine months after issuance;
- Do not earn interest;
- Are tax free;
- Are negotiable in the stock and secondary markets;
- Can be used to pay all national direct taxes and import duties;
- Sales made from the Colon Free Zone to foreign countries can earn CAT's.

From January 1, 2006 up to December 31, 2006, agricultural, livestock and aquaculture exports that qualify as non-traditional, will have the right to request CAT's, limiting the value of the CAT to the equivalence of 15% of the aggregated national value of the goods being exported.

VII. REPRESENTATIVES, DISTRIBUTORS, AGENTS, FRANCHISERS

1. Representatives, Distributors and Agents

In 1989 the Supreme Court declared the unconstitutionality of Cabinet Decree N° 344 of 1969 which had up to then regulated and protected the activities of representation, distribution and/or agency in Panama.

As a result of Cabinet Decree N° 344 being declared unconstitutional, all contracts recorded at the Ministry of Commerce and Industry were left without effect. However, this does not mean that contracts executed between the manufacturer or commercial enterprise and the local company are invalid; these relations will hence be governed by general commercial law.

The key feature of the decision rendered by the Supreme Court would seem to negate the Principle of Exclusivity, which is, considering monopolistic in nature those contracts of representation distribution and/or agency which contain exclusivity clauses. This criteria then means that all clauses that establish an exclusive relationship are null and void.

2. Franchise

No particular franchise law exists in Panama. Franchise contracts are usually looked upon as combinations of licensing agreements, distributorship or representation agreements and also other legal arrangements such as commission agencies.

In Panama, as in many other Latin American countries, franchising is an increasing industry with skyrocketing examples such as Pizza Hut, KFC, McDonald's, Burger King, Dairy Queen, Bannigan's, T.G.I. Friday, Hard Rock Cafe, AVIS, Budget, Hertz, UPS, DHL, just to name a few.

VIII. INTELLECTUAL PROPERTY

1. International Conventions

Panama is signatory of the following multinational conventions protecting intellectual property rights:

- The Universal Copyright Convention;
- The Buenos Aires Convention (1910);
- Berne Convention (1886) for the Protection of Literary and Artistic Works;
- Paris Convention for the Protection of Industrial Property;
- World Trade Organization (WTO).

2. Industrial Property

By means of Law N° 35 of 1996, a new Industrial Property Law was enacted in Panama and regulated by Executive Decree N° 7 of 1998.

2.1 Patents

Among the principal features of Law N° 35 regarding patents is the elimination of confirmation or revalidation of patents. Under the Law all patents are granted for a fixed term of twenty (20) years from the date of registration, with no possibility of extension. Moreover, the term of a Panamanian patent registration or revalidation of patents has been eliminated and hence, the term of a Panamanian patent will no longer be dependent on the term granted to any foreign patent.

The requirements for patentability under the Law are that the invention be new, the result of a creative activity and susceptible of industrial use.

Applications will be reviewed for prior art which includes “art that has been disclosed or made accessible to the public in any place of the world, by means of a tangible publication, an oral disclosure, sale or commercialization, use, or by any other means, prior to the date of filing the patent application in Panama or, in its case, prior to the date of the recognized priority...”

2.2 Trademarks

On the subject of trademarks, Law N° 35 contains many substantive changes. For example, the distinction between marks of commerce and trademarks is eliminated, as is the distinction between national marks and foreign marks. The only distinction established by the Law is between “trademark” used to distinguish goods and “service mark” in regard to services. Moreover, Law N° 35 provides for the registration of collective and certification marks, and of advertisement slogans, not previously covered under law.

With the elimination of the distinction between national and foreign trademarks, the requirement of filing a certified copy of the home registration, or of the home application, in order to file a foreign trademark application in Panama is eliminated.

Moreover, all pending Panamanian applications based on foreign applications will proceed to registration without the necessity of filing the home registration once it has been issued, provided all other requirements for registration have been complied with. Likewise, in order to renew an existing Panamanian registration, it is not necessary, to file evidence that the home registration is still in force.

Law N° 35 also changes some terms in connection with trademark matters. For example, the period to file opposition suits is reduced from three to two months after publication of the conflicting application. The term for renewal is extended. Under Law N° 35, renewal is possible during the first year period preceding the date of expiration of the Panamanian registration, and also during the six months following the expiration of the trademark registration. However, renewal during the six month period following the expiration of a

trademark registration will be subject to a surcharge.

The Law now prohibits the registration of trademarks which are identical or similar to famous or renowned trademarks for any goods or services, and to any notorious or known trademarks for specific goods or services.

2.3 Industrial Design and Models

Industrial designs and models are specifically covered by the new Industrial Property Law. In order to be eligible for registration, utility models must be new and susceptible of industrial use, while industrial designs must only meet the novelty requirement.

Registration of industrial designs is granted for a term of ten years from the date of registration, and can be extended for a single additional term of five years. Industrial designs will also enjoy an automatic protection without needing registration for a period of two years following the first disclosure of the design in Panama, which is done by the person to whom said protection corresponds.

Registration of utility models is granted for a non extensible term of ten years.

3. Copyrights

Copyright laws in Panama were, for more than 70 years, governed by the provisions of the Administrative Code of 1916. In this regard, Panama enacted Law N° 15 of 1994 to regulate the subject of copyrights.

The following are a few salient features of Law N° 15, to wit:

- *Registration.* Registration of the copyright does not establish the right, it is merely declarative. By the same token, there are no specific requirements for registration of copyrights. The law provides that the General Directorate of Copyrights (*Dirección Nacional de Derecho de Autor*) will issue the rules and regulations for the registration of copyrights;
- *Subject matter.* Any work resulting from an intellectual creation is eligible for copyright protection. Moreover, “work” is defined as “an original intellectual creation of artistic, scientific, or literary nature, capable of being divulged or reproduced by any means”;
- *Copyright protection of software.* The law specifically covers software. There is a presumption that the producer of the software is the one which appears as such in the relevant program. Unless otherwise agreed, the contract between the author and the producer implies the limited and exclusive assignment in favor of the producer, of the patrimonial rights recognized by law, as well as the authorization to decide about its disclosure and to exercise the moral rights which may be necessary for the exploitation of the work.

4. Moral rights and other related rights

Law N° 15 specifically covers moral and patrimonial rights. Moral rights are inalienable, not attachable, may not be waived and do not prescribe. Among the moral rights recognized are: the right to divulge, the right of paternity, the right of integrity, the right of access and the right to revoke an assignment or to withdraw the work from the market.

5. Licensing

Law N° 35 provides that for trademark and patent licenses to have effect with respect to third parties they must be registered with the Directorate General of Industrial Property (*Dirección General del Registro de la Propiedad Industrial*). On the other hand, the Administrative Code states that all licenses, acts, and contracts which contain transfer of copyrights need to be registered before the Registry of Literary and Artistic Property by means of a public instrument. The payment of royalties need not be approved or registered with any governmental agency. The government requires that royalty rates be reasonable, that is, they should not exceed the average for a particular industry (see chapter XX, *infra*).

6. Protection of Intellectual Property Rights in Free Zones, Export Processing Zones and Customs.

Pursuant to Executive Decree N° 79 of 1997, measures are taken to protect intellectual property rights, which includes all rights derived from industrial property in the Colon Free Zone and any other Free Zone or Processing Zones (“the Free Zone”).

As a result of Executive Decree N° 79, the Free Zone will have a centralized registry containing the names of the title holders of protected intellectual property rights and the licensees of said rights.

The Free Zone has the power to inspect and/or temporarily seize any merchandise in transit that may be infringing the laws on industrial property, copyrights and related rights.

On the other hand, the Directorate General of Customs (*Dirección General de Aduanas*) took similar action to create a centralized registry to protect intellectual property rights which also includes all rights derived from industrial property and licenses.

7. E-Commerce.

Law N° 43 of 2001, fosters freedom to provide services, technological neutrality, international compatibility, equivalence of electronic form to the hard copy form and functional equivalence of e-commerce to traditional commerce.

7.1 Legal Requirements for a valid electronic document

Law N° 43 eliminates the requirement for a document or agreement to be in writing. When under current law a document must be in writing, electronic data messages are given the same validity as written documents, as long as:

- The information contained in the document is made available for future consultation;
- The data message is conserved in the original format in which it was generated, sent or received or in some format that is shown to produce exactly said information;
- That the data if any, be conserved in such a manner that will allow to determine the origin and destination of the message, the date and hour in which it was sent or received.

The above will not apply to:

- Acts for which the law requires a particular solemnity, which cannot be verified by an electronic document;

- Juridical acts for which the law requires the personal concurrence of any of the parties;
- Juridical acts relative to Family Law.

7.2. Data Message and Electronic Signatures

Data message is defined by Law N° 43 as any information generated, sent, received, filed or communicated in optical, electronic or similar form, such as electronic data exchange (EDI), internet, e-mail, telegram, telex or telefax.

The Law permits business entities to maintain as data messages their correspondence, invoices, ledgers, corporate books and other records.

Electronic signatures are any electronic sound, symbol or process linked to or logically associated to a message and granted or adopted by a person with the intention of signing a message that allows the receiver to identify the issuer. Electronic signatures are given the same validity as written ones, when signatures are required by law, provided that the former incorporates the following characteristics:

- It is unique to the person who uses it;
- It is susceptible of being verified;
- It is under the exclusive control of the person who uses it;
- It is linked to the information or message.

7.3 Certification Authorities

Under Law N° 43, secure electronic signatures, are defined, as those which can be verified with a security system or procedure under internationally accepted authentication standards.

Entities known as Certification Authorities (*Entidades de Certificación*) issue electronic records known as certificates, which serve to verify the authenticity and legitimacy of electronic signatures as well as the integrity of the message.

The activities of the Certification Authorities are supervised by the Directorate of Electronic Commerce of the Ministry of Commerce and Industries.

The Directorate maintains a voluntary register for those Certification Authorities that operate in Panama. All repositories or databases where certificates are stored must be registered with the Directorate.

Certificates from a foreign Certification Authority are valid in Panama when these are accepted:

- By a Certification Authority registered in Panama;
- Under international agreements;
- Under approval from another foreign Certification Authority registrar of similar nature to the Directorate.

IX. DIRECT INVESTMENT

1. Types of Investment Methods

The main method of investing in Panama would certainly be the creation of a subsidiary. This has been the standard vehicle for many overseas companies to establish their interest in Latin America. On the other hand, the registration of a branch is used as an investment method only in specific cases when certain tax advantages or other benefits are granted to the parent company in the country of origin.

The ease and flexibility of Panama corporate law, coupled with a dollar economy and Panama's strategic geographical position makes it the ideal place for setting up headquarters to serve the Latin American and Caribbean markets.

Some relevant aspects that attract foreign investments are the following:

- Panama's legislation does not consider as taxable income revenues originating from transactions that take place outside the Panamanian territory (offshore) even when they are managed within Panama;
- Panama's Corporation Law (see Chapter XIV, *infra*) is very flexible about the purpose of a corporation, the amount of capital, the nationality of shareholders, the existence of bearer shares, and the geographic scope of operations;
- There is no control over free transfer to and from the country of capital, dividends, or payments for any other purpose;
- The fact that there is no national paper currency acts as a built-in guarantee against the establishment of foreign exchange regulations;
- An international banking center which operates freely in all currencies and creates a financial climate that encourages the free movement of funds.

In Panama, investments in the domestic industry are more frequently done through purchases of stock or assets of an existing company and also as part of the privatization program sponsored by the government. In addition, a fair amount of domestic investment is also done by entering into joint-venture agreements.

2. Types of Companies

Panama Corporate and Commercial law recognizes various types of legal entities, to wit:

- The Corporation (*Sociedad Anónima*);
- Limited Liability Company (*Sociedad de Responsabilidad Limitada*);
- General Partnership, with a clause of limited liability (*Sociedad Colectiva Limitada*);
- Limited Partnership by Shares (*Sociedad en Comandita por Acciones*).

The most common form of business entity adopted by Panamanians and foreign investors in Panama is the Corporation (*Sociedad Anónima*) because of the ease in incorporation and flexibility that it grants businessmen and investors (see Chapter XIV, *infra*).

The other types of company and partner forms are not very common in Panama because of the complex legal formalities and restrictions involved.

3. No restrictions on Foreign Investments

The policies of the Panamanian government are geared to encourage foreign investment to the

extent that there has never been any need for a formal statement of policy on this subject. Moreover, legislation hardly establishes any differences in treatment between nationals and foreigners. Consequently, all foreign investors, regardless of their country of origin are treated equally.

X. INVESTMENT INCENTIVES

1. The Colon Free Trade Zone

The Colon Free Trade Zone was created pursuant to Decree Law N° 18 of 1948, and for over 50 years has served as a center for the redistribution of goods that originate in industrialized countries and that are being imported into Latin American countries.

The Colon Free Zone offers efficient services for monitoring all transactions, for providing effective protection against losses of merchandise, and for offering a program of institutional stability covering the legal as well as the administrative aspects of the entity.

1.1 Types of Operations

Companies established in the Colon Free Trade Zone engage in three (3) types of sales operations:

- *External Operations.* The re-export of merchandise from the Colon Free Trade Zone warehouses;
- *Internal Operations.* The sale from Colon Free Trade Zone warehouses to customers located within the customs territory of Panama;
- *Direct Sales.* Sales made to foreign companies where the merchandise is shipped directly from sources to customers, without ever physically coming to Panama.

1.2 Tax Incentives

Companies established in the Colon Free Trade Zone are granted the following tax incentives:

- As of January 1, 1997 total exemption from the payment of income tax on earnings derived from external (re-export) operations;
- Capital investment is exempt from any national taxes as well as from provincial and municipal taxes;
- Total tax exemption from import duties, guarantees, licensing and other requirements and limitations on imports;
- Total exemption from direct sales income;
- Tax credit depending upon the number of Panamanian employees;
- Total exemptions from dividend tax on dividends paid as a result of proceeds obtained from external operations and from direct sales;
- Royalties paid to companies established abroad are not taxable to the recipient, but the

expense is not deductible from the Free Zone Company either;

- Total exemption from taxes, assessments and fees of all kind for merchandise arriving at, stored and leaving the Colon Free Trade Zone for foreign countries;
- Total exemption from all types of national or municipal taxes, except the US\$300 Franchise Tax paid annually by all corporations established in Panama and the property tax on any real estate owned by them.

2. The Province of Colon Free Port

2.1 Introduction

Law N° 29 of 1992, establishes a special fiscal and customs system with the structure of a Free Port applicable to the territory of the Province of Colon, subject to the economic policy of the National Government and to the supervision and control of the Ministry of Economics and Finance.

Pursuant to Executive Decree N° 70 of 1999 and Resolution N° 133 of 2000, dispositions were enacted to regulate and implement by phases the special system of Free Port in the Province of Colon, directed to promote the economic and tourist development of said Province.

2.2 Persons Benefited by the Free Port System

- Natural or Juridical persons that operate within the territory defined by the Ministry of Economics and Finance;
- Foreign visitors, vessels, passengers and crew in transit, whose port of exit is within the Free Port area, that comply with the transfer process of their purchases, in accordance with the provisions established by Executive Decree N° 70 and the norms that govern custom matters;
- Nationals that visit commercial establishments and tourist attractions that are established within the Free Port area can purchase merchandise after payment of the corresponding taxes.

2.3 Tax Aspects

- All merchandise imported into the Free Port area is free from all custom taxes, rates, fees, duties or liens;
- Except for the exceptions provided by law, the sale of products or merchandise within the Free Port area is subject to the payment of the Value Added Tax and the Selective Consumer Tax;
- All merchandise imported into the Free Port area, may leave said area for: export or re-export; the sale to visitors, passengers or crews in transit and whose port of exit may or may not be located within the Free Port area, the sale to vessels that cross the Panama Canal, the sale to airplanes that use local airports with foreign destinations, the sale to nationals for introduction into the fiscal territory of the Republic (previous payment of all corresponding taxes), and their destruction;
- The possibility of installing within the Free Port area “Merchandise Warehouses”

operated by transport companies to provide door to door international transport services. The transport agents engaged in this service are exempt from having to furnish a sworn affidavit on withholding taxes.

3. Tourism

Pursuant to Law N° 8 of 1994, as amended by Decree Law N° 4 of 1998, tourist activities are promoted in Panama. The purpose of the law is to establish a simple, prompt and rational process to develop tourist activities; grant incentives and benefits to persons engaging in tourist activities, adopt the necessary mechanisms for the public and private sectors to join and coordinate their efforts in the area of tourism and promote tourism in Panama. Under the law tourism is declared a public service industry, and elevated to the rank of national interest.

3.1 Tourist Enterprises

Hotels; Motels; Inns; Bed and breakfast; Apartment hotels; Cabins; Time-shares; Tourist Horizontal Property Regime; Camping sites; Restaurants; Theme parks; Convention Centers and Marinas.

3.2 Tourist Activities

- Construction, furnishing, renovation and operation of hotels, motels, apartment hotels, boarding houses, inns, bed and breakfast, buildings under the horizontal property regime that are destined entirely to public tourist lodging, tourist time-share units, cabins, camping sites for the exploitation of ecotourism and theme parks;
- Construction, furnishing and building of access infrastructures, renovation and operation of convention centers, shops for native crafts of tourist interest, recreational parks, zoos, tourist resorts, ecotourism and marinas;
- Land, air and maritime transportation for passengers within Panama, mainly for tourists;
- Construction, furnishing, and operation of restaurants, discotheques and nightclubs catering for tourists;
- Construction, renovation, restoration, remodeling, and expansion of any real estate for commercial or residential use at historic landmarks where these types of activities are authorized;
- The operation of tourist agencies handling incoming tourism, devoted entirely to such activity;
- Any company producing feature films, television series and international artistic or sport events to be broadcast over closed circuit television or abroad by satellite;
- Any investment in the design, restoration, construction, maintenance and lighting of historic landmarks, municipal parks, national parks or any other public area under the direction of the Panamanian Institute of Tourism (*Instituto Panameño de Turismo - IPAT*) and in coordination with the National Institute of Culture (*Instituto Nacional de Cultura - INAC*).

3.3 Incentives and Benefits

The incentives are classified under the law according to the service offered and the impact they will have on the tourist activity in Panama. Said benefits must be recognized and verified by the IPAT.

A few of the tax incentives provided in the law include:

- Total exemption for 20 years from import taxes affecting the importation of materials, equipment, personal property furniture, vessels and certain vehicles with a minimum capacity of 8 passengers, provided that these are declared as indispensable by IPAT to carry out the particular tourism activity;
- In the case of goods, these are also exempted as long as they are not manufactured in Panama, or are not manufactured in sufficient quality or quantities or of similar price in Panama. The imported articles cannot be sold or transferred, without first paying the corresponding taxes, except between enterprises protected by this law, previous approval by the Ministry of Economics and Finance;
- Total exemption from real estate property tax; income tax; tax and duties on the use of docks and airports, in the case where the parties invest in a “Tourist Development Zone of National Interest”, which are areas that meet the requirements as special tourist attractions, but lack the basic infrastructure to develop such activities;
- Total exemption from taxes, contributions, duties or other levies of any kind on the use of docks or airports by the enterprise;
- Total exemption from import taxes and duties on all tourist publicity material provided it is distributed free of charge;
- Total exemption from import taxes on land or water vehicles used by enterprises dedicated to receptive tourism;
- The incentives contained in Law N° 8 and Decree Law N° 4 will be valid up to December 31, 2005 for those areas that have not been declared as “Tourist Development Zone of National Interest” and up to December 31, 2015 for those zones that have been declared as such.

See **Table “A”** for further information on tax incentives.