

# panama

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**Panama**

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## panama | corporate law

### **Regulations and Types of Companies**

Corporations in Panama are regulated by the Commercial Code and special legislation. The main types of corporation are the "sociedad anónima" or SA (Law 32 of 1927) and the "sociedad de responsabilidad limitada" or SRL (Law 24 of 1966). Of these two types, the latter is seldom used because is far more complicated than the sociedad anónima. (An SRL, for example, may have a maximum of 20 shareholders and its capital can be no more than USD 500,000.) Such limitations do not exist in the case of the SA.

### **Liability of Shareholders**

The liability of the shareholders in an SA is limited to the unpaid amount of the price of their shares. In the case of the SRL, the liability is limited to the amount of their contribution.

### **Share Capital**

The SA has no minimum either in the value of the shares or in the amount of the capital, nor in the contribution paid in by a shareholder. The only exception provided by the law is in the case of bearer shares which cannot be issued if they are not fully paid. Its share capital is authorized capital which is issued and paid according to the decision of the board of directors.

On the other hand, Law 24 of 1966 (for SRL's) requires a minimum of USD 2,000 and a maximum of USD 500,000 for the share capital, and the shares must be of USD 100 or multiple of USD 100. Furthermore, the law requires that at the moment of its constitution at least 50% of the share capital be paid and the respective contributions cannot be less than USD 2,000.

## Classes of Shares

The SRL makes no distinction in this respect. On the other hand, Article 20 of Law 32 of 1927, governing SA's, provides that the corporation may issue one or more classes of shares with preference and privileges in voting rights and other restrictions or requirements as provided in the articles of incorporation. The more common classes of shares are bearer shares or registered shares, and those with or without par value.

## Corporate Governance

Law 32 of 1927 does not expressly govern the time for necessary meetings of shareholders. Usually, the articles of incorporation provide that the shareholders must meet at least once per year.

The power of the shareholders is determined by the articles of incorporation. As a rule, the board of directors has full control over the affairs of the corporation, subject to provisions of law and the articles of incorporation.

Panamanian law provides expressly that the consent of the shareholders is necessary in order to pledge the assets of the corporation, or give them in trust, to guarantee the debts of third parties.

In the case of an SRL, the law provides that a general shareholders' meeting has to be held at least once a year.

## Change of Share Capital

The SA may increase the share capital whenever deemed necessary by the board of directors, without limitation.

The corporation may also reduce its authorized capital stock by amendment of its articles of incorporation; however, no distribution of its assets may be made pursuant to such reduction which will reduce the actual value of its remaining assets to an amount less than the total amount of its debts and liabilities plus the amount as reduced of its issued capital stock.

In the case of an SRL, according to the law, the share capital may be increased or reduced. However, the reduction of capital cannot be accomplished if opposed by any creditor or interested party, if due to reduction of the capital the assets of the corporation would be less than twice the liabilities (not including the share capital), or if the share capital after the reduction would be less than USD 2,000.

## Transfer of Shares

Transfer of shares in an SA may be accomplished freely without limitation, unless the articles of incorporation provide that in such case the corporation or any stockholder thereof has a preferential right to purchase such shares. The articles may also impose other restrictions on the transfer of shares, but no restriction which absolutely prevents a stockholder from disposing of his shares shall be valid.

In the case of an SRL, transfer of shares must be made by notarial deed. The articles of incorporation may provide special restrictions on the transfer of shares; otherwise, shares are freely transferable.

Changing the company's official signatures requires amendment of the articles of incorporation.

Changing the main purposes of the company requires amendment of the articles of incorporation.

## Moving Registered Office to Another District

A company founded under Panamanian law may continue as set forth in the constitution deed or amendments under the laws of another country or jurisdiction, if allowed by the laws of the other country or jurisdiction, and if the company is current in its fiscal obligations to the Republic of Panama.

## Decision-Making Bodies

### APPOINTMENT OF DIRECTORS

In the case of the SA, Panamanian law provides that the business of the corporation shall be managed by a board of not less than three directors, who shall have full control over the affairs of the corporation with the exception of those powers that, according to the articles of incorporation or the by-laws, are reserved to the shareholders.

Recently, Article 249 of the Panamanian Commercial Code was amended and from now on any legal person – not just an individual – can be director of any corporation or partnership.

The directors of the corporation shall be chosen in the manner, time and place as determined by the articles of incorporation or the bylaws.

The management of an SRL is exercised by one or more persons designated for such purposes in the notarial deed of incorporation or by a later agreement.

### DIRECTOR'S LIABILITIES

In the case of an SA, the directors shall not be personally liable for the obligations of the company, but they shall be individually or severally liable to the company, as the case may be, and to third parties, for the accuracy of payments declared to be made by the shareholders and dividends declared, and for proper management of the accounting; and in general, for performance of their duties in a manner that is improper or in violation of the law, the certificate of incorporation, the bylaws or resolutions of the general meeting. Directors who have protested in due time against the resolution of the majority, or failed to attend for justified cause, shall be exempt from this liability. Liability may only be demanded pursuant to a resolution of the general meeting of stockholders (Article 41, Cabinet Decree N° 247 of July 16, 1970).

In the case of an SRL, the law provides that administrators shall be liable to the corporation, their partners and third parties for damages caused by them by

reason of fraud, gross negligence, breach of legal provisions, non-compliance with the corporate deed or agreements adopted by the corporation and, generally, for undue performance of the functions entrusted to them. Liability shall only apply to those administrators that, by act or omission, caused the damage. If the liability would apply to two or more administrators, these shall respond jointly and severally.

### Annual Accounts

An SA or SRL doing business in Panama must fulfill the legal obligations of any person doing business in Panama: it must keep accounting books and obtain a special license, and file an income tax return.

Panamanian law does not require publication of the balance sheet of an SA or SRL. Only banks doing business in Panama have this obligation.

### Liquidating a Company

If at the meeting of the shareholders the holders of a majority of the shares entitled to vote approve an Agreement on Dissolution of the company, a copy of the resolution is issued with a list of the names and domiciles of the directors and officers of the company, certified to by the president or vicepresident, the secretary or assistant Secretary, and the treasurer or assistant treasurer, and protocolized and recorded at the Public Registry in the manner required by Article 6.

Upon filing at the Public Registry, a copy shall be published in a newspaper in the place where the office of the corporation is in Panama, or if there be no such newspaper, then in the Official Gazette of the Republic.

If all shareholders with voting rights consent in writing to dissolution, no meeting of the directors or shareholders shall be necessary for that purpose.

The law concerning the SRL does not provide any specific procedure for dissolution. It only states the grounds for dissolution, which are agreement of the partners, expiration of the duration of the company, or judicial judgment.

## panama | tax law

### CORPORATE INCOME TAX

Panamanian tax law is mainly territorial. Only income earned in Panamanian territory is considered to be Panamanian source income and subject to income tax. Earnings obtained outside of Panamanian territory by Panamanian residents and foreign residents in Panama, as well as Panamanian corporations doing business abroad, are not subject to income tax in Panama.

The most significant development recent development in Panamanian tax legislation is introduction of a sales and services tax.

#### Tax Rate

According to Panamanian Fiscal Code, corporations doing business in Panama must pay income tax at the rate of 30% of either net income calculated according to the method provided for in the law; or, as a minimum tax, gross revenues less 95.33%.

#### Corporate Residence

Panamanian or foreign corporations which do business in Panama are subject to income tax in Panama on their Panamanian income. Corporations which only do business abroad do not pay income tax.

#### Income Determination

In order to ascertain the amount of income to be paid the corporations must file tax return stating the income they have obtained from their particular activities in Panama.

Furthermore, corporations have to pay at the moment of its recordation a first annual tax of USD 250 and in the subsequent year they will have to pay an annual franchise tax in the amount of USD 300. This annual franchise tax must be paid by the date provided in the Fiscal Code and in case of delay in the payment, there is a surcharge of USD 50.

When the payment of the annual franchise tax is not made for two years, then besides the surcharge, the corporation will have to pay a restoration fee of USD 300. Failure to pay the annual franchise tax for 10 years will lead to winding up of the corporation.

Foreign income is not taxable under Panamanian law.

#### Deductions

Deductible expenses or disbursements are such expenses or disbursements incurred in the production of income, and the maintenance of its source.

#### Tax Incentives

The Panamanian Fiscal Code provides some special tax regimens for corporations which do business in a free zone located in Panamanian territory. For that purpose, Panamanian law makes the distinction between local operations and foreign operations. Corporations doing business in a free zone will pay income tax only in connection with the local operations.

#### Withholding

Every person, natural or legal, that receives in any way, for the account of a natural or legal person not residing in the Republic of Panama, sums derived from income of any kind produced in Panamanian territory, except dividends or participation in shared profits, shall deduct and retain at the moment of paying such amounts in any way, the amount established in the Fiscal Code, and shall remit the retained to the official collector within 10 days following the retention date.

In addition, the Comptroller General of the Republic, autonomous entities and municipalities shall deduct and withhold monthly, or when payment is made, from salaries, allowances, pensions, bonuses, fees and other remunerations, for personal or professional services, earned by public employees from autonomous institutions or municipalities, the amounts that they owe to the National Treasury as income tax and shall issue to said employees receipts corresponding to the deductions made.

Deductions thus made by the Comptroller's office shall not be considered as diminishing the amount of the respective salaries and consequently, all public employees, whose salaries may not be reduced during a determined period in accordance with the National constitution or special laws, shall be subject to the payment of the tax deducted and withheld as described above.

With some exceptions, legal persons will retain 8% of the amounts distributed to their shareholders or members as dividends or participations. In case the total amount distributed as dividends or participations is less than 40% of the net amount of gains of the fiscal period in question, less the tax paid for the legal person, these should cover 8% of the difference. The withheld sums will be remitted to the official tax collector within the retention. Such deductions and retentions will be definite.

Legal persons will not be obliged to withhold in accordance with this section that part of their income derived from dividends, provided that the corporation distributing the dividends has paid the tax in accordance with the tax scale and has made the withholding described above.

Neither are legal persons obliged to effect the withholding dealt with herein on the portion of their income derived from dividends as long as the company distributing such dividends should be in itself exempt from the obligation of making such withholdings.

Administrators, managers, owners or representatives of commercial, industrial, agricultural, mining enterprises or similar such establishments, and persons practicing a liberal profession or professions or trades on their own accounts or independently, will deduct and withhold each month from the amount earned

by those employees or commissioners to which the pertinent provisions of the Fiscal Code refer, the amount of tax they must pay on an account or wages, salaries, commissions, or remunerations earned. In like manner local distributors of motion pictures shall withhold the tax which film producers are bound to pay.

Sums thus withheld must be remitted to the Collector of Revenue at the latest by the 15<sup>th</sup> day of the following month.

### **Tax Administration**

Panamanian law provides that legal persons must file a tax return no later than March 31. Jointly with this return the taxpayer shall file an estimated return of income for the coming year. The estimated income may not be less than the income under the current return.

### **PERSONAL INCOME TAX**

Individual taxes follow more or less the same pattern of corporation taxes. This means that only natural persons earning income in Panama have to pay the income tax regardless of its residence.

### **Gross Income**

Gross income is the aggregate total, without making any deduction, of amounts received in cash, goods or securities by the taxpayer, thus the total includes wages, salaries, overtime, day wages, allowances, bonuses, commissions, annuities, pensions, fees or other remunerations for personal services, and so on.

### **Deductions**

Deductible expenses or disbursements are such expenses or disbursements incurred in the production of income, and the maintenance of its source.

## OTHER TAXES

Analysis of other taxes in Panama is beyond the scope of this summary. Other taxes include:

- Sales tax
- Custom duties
- Tax on transfer of real estate
- Stamp tax
- Real estate tax
- Gift tax
- Tax on ships
- Tax on production and sale of alcoholic beverages
- Tax on sugar production
- Commercial license tax
- Insurance tax
- Banking and financial tax
- Market tax

## panama | foreign investment

Since its independence, the Republic of Panama has enacted a number of laws intended to promote foreign investment in the country. The following are some of the more important aspects of the legal regime related to foreign investment in Panama.

### Offshore Corporations

In 1932, the National Assembly promulgated Law No. 32, which governs Panamanian corporations. This law remains in force with some amendments. The most important amendments in recent years have implemented the policy of “know your client” and other provisions to combat money-laundering in compliance with international standards.

The anonymity of the shareholders of a Panamanian corporation is an essential condition that makes this vehicle so appealing to foreign investors. The only legal way to disclose the shareholders of a Panamanian company is to file a petition to the Attorney General with evidence that the company is involved in money laundering, a procedure that is in compliance with international anti-money-laundering standards.

### Free Trade Zone

The Panamanian Free Trade zone is the biggest one in the American Continent. This system allows the foreign investor to transfer merchandise from one geographical point to another in a practical way while saving considerable amounts of money in storage and import duties, which are not charged in this zone since the merchandise is not considered to have entered Panamanian territory.

### Family Assets, Inheritance

Goods acquired through succession or inheritance are not subject to inheritance tax in Panama, so investments in Panama may pass fully to the heirs.

## Private Foundations and Trusts

Panamanian private foundation structures allow the founder to give his heirs more direct access to the assets they are entitled to. The assets of a foundation may be donated by the founder; these assets are not part of the estate and are not subject to probate procedures. These assets are separate from the personal goods of the founder or his beneficiaries.

Panamanian trusts have a similar structure, and goods belonging to the trust that are located abroad are not subject to tax in Panama.

## Tax Law

Panamanian tax law is governed by the territorial tax principle. This means that income produced outside Panamanian territory is not subject to income tax in Panama. One of the benefits of a Panamanian structure is that Panamanian entities are not required to declare income earned abroad.

This principle has some exceptions, for example if an individual is physically in Panama for more than 70% of the year and the activity is the same as that carried out in Panama, it may be necessary to declare income from abroad in Panama.

## Immigration Law

Panamanian immigration law provides for a list of visas that allow the owner to reside in Panama and to obtain a Panamanian personal identity card (cédula).

Foreigners can apply for example for a “solvency” visa. As soon as the person files evidence of an account in Panama the immigration authority grants him a visa that may be renewed until he can obtain a cédula. There are also visas available for investors and small investors with the same rights.

For persons interested in coming to Panama often but without being considered for permanent residence, there are multiple-entry visas. As with temporary visitors, they allow the holder to stay in the country for five years.

It is possible for a foreigner in Panama to change his status (for example from temporary to immigrant with right to a cédula).

# panama | labor law

Panamanian labor law, as is the case in almost all Latin American countries, provides for special state protection of the worker.

## Employment Contracts

### CLASSES

Panamanian labor law provides for a general labor contract and eight classes of special labor contracts:

- Domestic employees
- Rural workers
- Teachers and professors
- Sales Agents
- Artist and Authors
- Musicians and announcers
- Route transport work
- Construction work contracts

### COST OF DISMISSAL

If an employment contract is concluded for an indefinite period and it is terminated by dismissal without sufficient cause, the employee is entitled to receive compensation according to the following scale:

- a) For less than one year’s service, the wage equivalent to a week for every three months’ work, but in no event less than one week’s wages;
- b) For more than one and not more than two years’ service, the wage equivalent of a week for every two months of work;
- c) For more than two and not more than ten years’ service, the wage of three additional weeks for each year of service; and
- d) For more than ten years of service, the wage of one additional week per year of service.

## EMPLOYMENT CONTRACTS FOR DIRECTORS

There is no special regime for the contracts with directors of corporations. Legally speaking in Panama, they are not considered to be employees.

### Employees' Representation and Union Representation

In Panama the organization of unions is considered to be of public interest as an effective means of contributing to the maintenance of social and economic development of the country, popular culture and democracy.

#### HOW LABOR UNIONS ARE RECOGNIZED

Unions, federations and the like are legal persons registered with the Ministry of Labor and Social Welfare.

Proceedings for registration of a social organization are made on unstamped paper and are free of tax.

There is a 30-day period to admit or refuse registration, which cannot be extended, from the date on which the request for registration was received in the Ministry. The request includes:

Signature of the President or Secretary General of the union in process of being formed, or of the Federation, Confederation or Central, as the case may be.

It must be sent to the Director-General of Labor directly or through the labor authorities, or the main political authority of the locality.

An authenticated copy of the minutes of the constituent assembly, of the by-laws approved and of the minutes of the meeting or meetings at which such approval was resolved must be attached.

#### RIGHTS AND PRIVILEGES OF LABOR UNION REPRESENTATION INSIDE A COMPANY

The following enjoy union privileges:

- Members of unions in formation,
- Members of the Directive Council of the unions, federations, confederations of worker's centers,
- Substitute members of the Directive Council, even if they do not act, and
- Union representatives ("shop stewards").

A worker protected by the union privilege cannot be dismissed without the prior authorization of the labor courts, based on a just reason provided in the law; unlawful dismissal is a breach of union privileges.

Unilateral change of working conditions or transfer of the worker to another establishment or work center, other than a transfer in the normal course of duties, or even in the normal course of his duties but preventing him from carrying out his union duties, is also a violation of union privileges, in which case prior legal authorization shall also be necessary.

### Collective Bargaining Agreements

#### CLASSES

Panamanian labor law makes no distinction among collective labor agreements.

#### ARE COLLECTIVE BARGAINING AGREEMENTS BINDING FOR LABOR CONTRACTS?

Every employer and union member is bound to conclude a collective labor agreement when requested by the union. If the employer refuses to sign the collective agreement, the workers may strike once conciliation proceedings have terminated.

The collective labor agreement shall apply to all categories of workers who work in the enterprise or enterprises included in the collective agreement, unless the agreement expressly indicates the contrary.

The collective agreement extends to all persons working in the categories included in the agreement, in the enterprise, business or establishment, whether or not they are members of the union.

Workers who do not belong to the union and who benefit from the collective labor agreement shall be bound to pay the ordinary and extraordinary dues agreed to by the union, and the employer is obliged to deduct the dues from their wages and deliver them to the union, as provided for in the Labor Code, even if the proportion of union members does not meet the level required by the Code for compulsory dues.

All collective agreements are binding on the parties and the persons in whose name they are made or to whom they apply. They also apply to future members of the respective employers' organizations and workers who subsequently enter the service of the enterprise included in the agreement, from the date of affiliation or entering the company.

## Wages and Other Compensation

### CLASSES

Panamanian law makes no special classification of wages.

### MINIMUM SALARY IN 2005

The minimum salary in 2005 has not been published up to this date. The minimum wage in force since 2003 varies depending on the location and the trade, but is in the range of USD 1 to USD 2 per hour.

### OVERTIME

Work on Sundays or other compulsory weekly rest day shall be paid with a supplement of half the regular wage, without prejudice to the right of the worker to enjoy another rest day.

If a worker has to work on the day which was to be given to him as compensation because he had worked on Sunday, or on his compulsory weekly rest day, he will be paid a supplement of half the ordinary wage.

Work on a legal holiday or day of national mourning shall be paid with a supplement of 150% of the regular wage, without prejudice to the right of the workman to be given, as compensation, any other rest day during the week. The supplement of 150% includes payment for the rest day.

When the worker provides services on the day which he would have had free because he had worked on a holiday or on a day of national mourning, he will be paid a supplement of 50% of the regular wage.

A 50% supplement is paid for all work performed during the worker's free days, in the case of work weeks of less than six days, if the work is carried out during daytime working hours, and a 75% supplement for mixed hours or night hours.

## Employment Regulations

Under the Panamanian Labor Code, the main duties of an employee are:

- To perform their work personally, with diligence, care and efficiency such as is compatible with their strength, aptitudes, preparation and dexterity, at the time and place stipulated.
- To refrain from committing acts endangering their own safety, that of their fellow workmen, or third parties, as well as the safety of the establishment, workshop or places where they work.

The employer's main duties include:

- To provide effective work for the employee to perform under the conditions agreed to.
- To pay the employee his wages and other compensation in accordance with the Labor Code.
- To provide the employees promptly with the necessary tools and materials necessary for the performance of the work agreed upon, which must be of good quality and appropriate for the work.

## Social Security

According to Panamanian law the contributions for social security are as follows:

- The employee must contribute 7.25% of his salary.
- The employer must contribute an amount equal to 10.75% of the employee's wages.
- Contribution of 6.75% of pensions granted by social security, paid by the beneficiary.

## Health and Safety

The employer must adopt health and safety measures as well as any other measure prescribed by the competent authorities for the construction and operation of factories, workshops, offices or other premises where work is to be performed.

The employer must also adopt measures that are necessary or prescribed by the authorities to prevent accidents in the use of machinery, tools and materials, and professional risks, and keep available a stock of such medicine and therapeutic materials are necessary for giving first aid in the event of an accident.

Finally, if the employer has agreed to provide room and board, the employer is required to provide workmen with hygienic living quarters and healthy and sufficient meals. On agricultural, poultry and cattle farms employing more than 10 workmen, seasonal or permanent, for work that must be carried out in a place that is more than 5 km from the residence of any of the workmen, the employer is obliged to supply, free of charge, hygienic living quarters, unless the employer prefers to pay the transportation expenses as provided for in the Labor Code. Hygienic living quarters are understood to mean those that comply with the standards and conditions indicated by the labor authorities with reference to construction, minimum requirements for living area, form, ventilation, ceiling height and floors, and areas for kitchen, laundry, storeroom and water and sanitary installations.

# panama | real estate

## Types of Ownership

Panamanian law has one concept of ownership, which applies both to movables and real estate.

## Land Register

Panama has a Public Registry for a number of legal interests. It is divided into several sections: Persons, Mercantile, Mortgage and Property. It has been reorganized recently in order to make it an autonomous entity which establishes its own rates independently.

## Transfer Formalities

Real estate is transferred by notarial deed and the sale contract is recorded in the Public Registry. (Transfer of movables, by contrast, is accomplished by delivery of the movable.)

## Mortgages

Both real estate and movables may be the subject of a mortgage which gives to the creditor the right to seize the property and sell it through public auction for payment of the debt secured. A special judicial procedure must be followed. (Movables may also be given in pledge; there is a special judicial procedure for enforcing the pledge.)

## Restrictions on Acquisition

There is no restriction on acquisition by foreigners. Therefore foreign natural and legal persons can acquire any kind of property in Panama.

## **Construction and Use Restrictions**

For the construction of buildings it is necessary to obtain a municipal permit. In this case, the authorities must analyze and determine if the construction fulfills the legal requirements concerning the zoning and is compatible with the surroundings.

## **Leases**

Both real estate and movables may be the subject of leases. Usually in this case the contract is a written contract in the form of a notarial deed, and in the case of real estate, it is also necessary to fulfill a special form which is registered in the Housing Ministry.