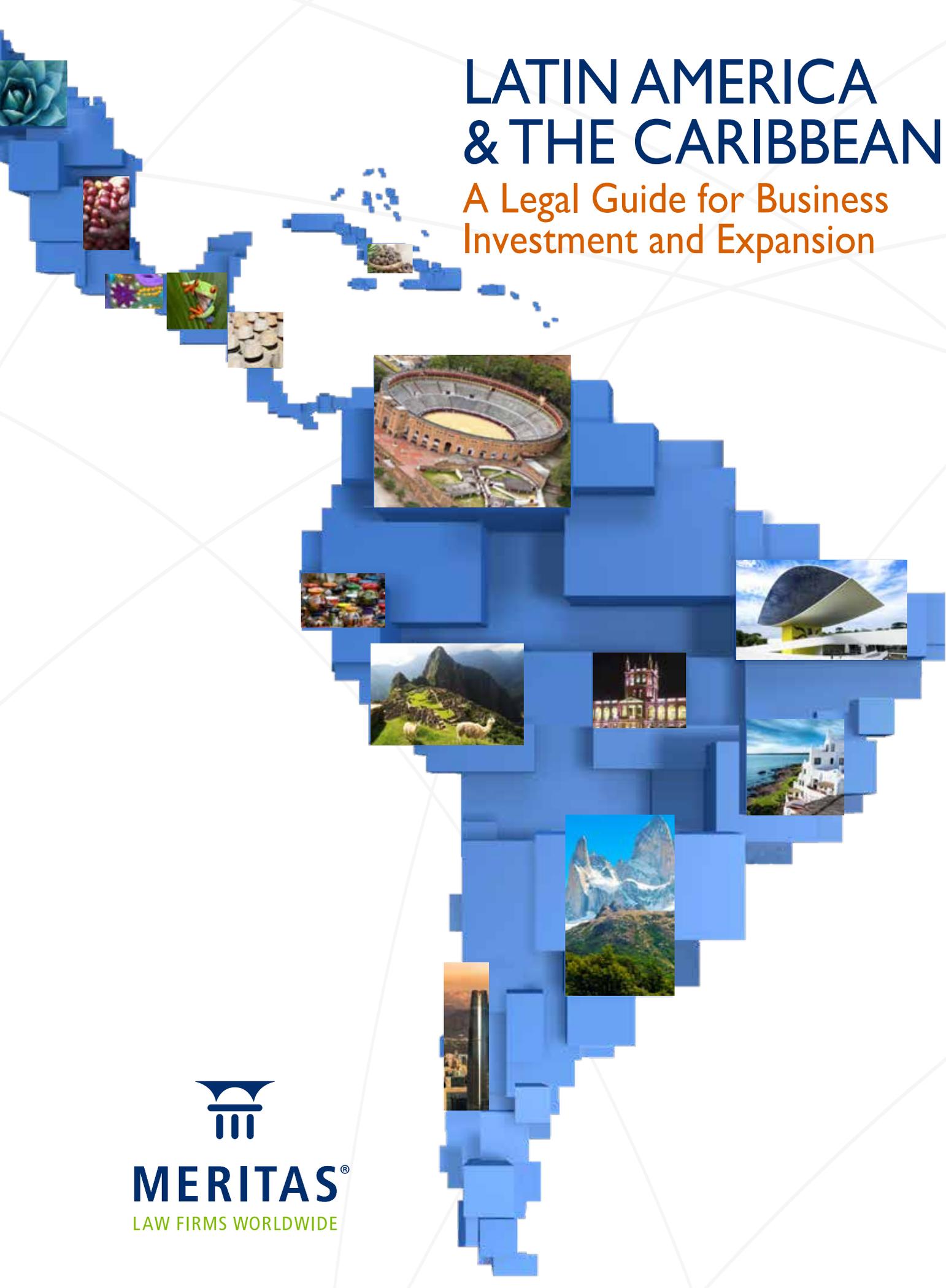


LATIN AMERICA & THE CARIBBEAN

A Legal Guide for Business
Investment and Expansion



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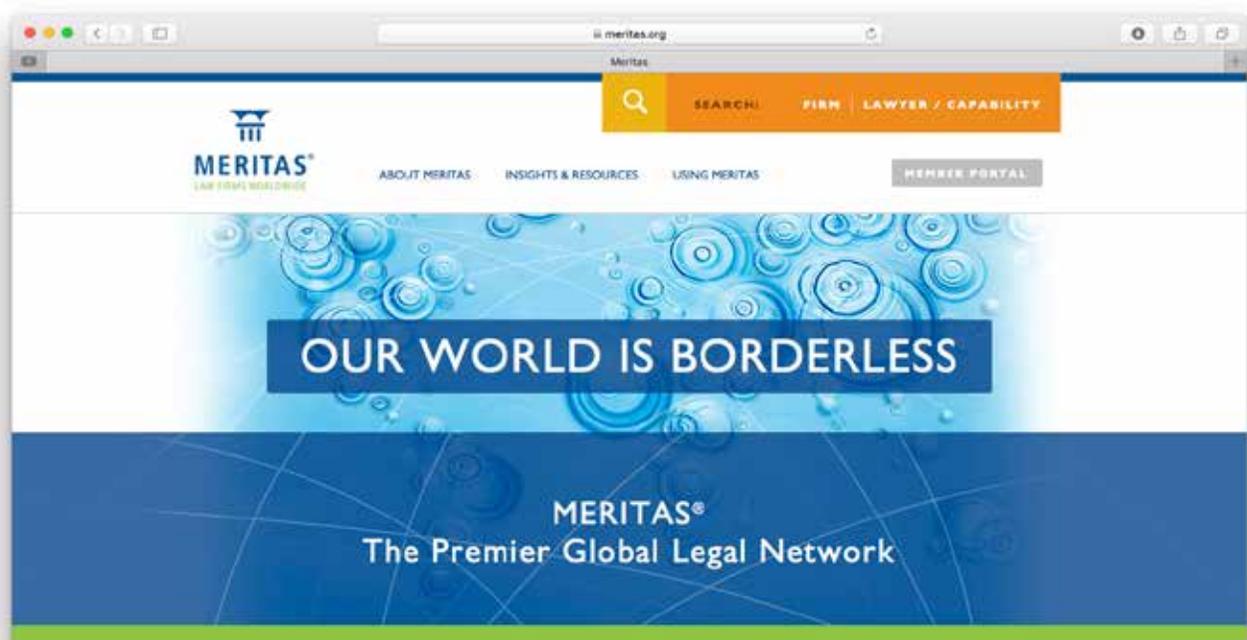
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PANAMA

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ALEMAN, CORDERO, GALINDO & LEE

Aleman, Cordero, Galindo & Lee is a full service law firm concentrating in banking and finance, M&A, offshore services and other business-related matters. The firm represents a wide variety of international and local companies, and provides them with legal advice concerning foreign investments, taxation, immigration, litigation, and administrative proceedings.

The firm places a special emphasis on banking and multinational companies, and represents many of the largest foreign and locally owned banks that operate in Panama.

The firm also handles maritime matters, such as registration of international vessels under Panamanian registry, mortgage registration and litigation in Panama Maritime Court, that has jurisdiction over vessels in the Panama Canal area.

In addition, the firm has multiple affiliate offices in places such as the British Virgin Islands, Luxembourg and the Bahamas, which provide services to the firm's clients who wish to incorporate off-shore companies or establish trusts in any of these jurisdictions.

The firm has a well-deserved reputation for providing prompt, efficient and sound legal advice. To achieve this, the firm relies on the expertise of its attorneys, all of whom have ample experience in both Panamanian and international law. In addition, the firm has very modern support services, such as advanced information systems and the latest word processing equipment.

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I. What role does the government of Panama play in approving and regulating foreign direct investment?

The government of Panama plays an important role in attracting foreign direct investment to the country. In addition to being responsible for approving commercial licenses (*avisos de operación*), generally required for operating a business in Panama, as well as other regulatory authorizations that may apply, the government also promotes special regimes for certain economic activities. The government is also responsible for enforcing rules under these regimes, granting any specific authorizations under these, enacting supplementary rules, and providing agency guidance or interpretation when needed.

The following special regimes are of relevance to foreign individuals or companies interested in investing in Panama:

- **Headquarters for Multinational Companies (*Sedes de Empresas Multinacionales*, or *SEMs*).** The special regime for the establishment and operation of the Headquarters for Multinational Companies was created by Law 41 of 2007. The main objective of this law was to promote investment, employment, and transfer of technology, attracting multinational companies that would supply the services indicated by such law, as well as other companies forming part of their own economic group. In accordance with the law, the Headquarters for Multinational Companies will benefit from important tax exemptions, as well as labor and immigration matters.
- **Free Zones.** Free Zones are governed by Law 32 of 2011, and defined as free enterprise zones specifically delimited, with the infrastructure, operational organization, and administrative management necessary for the establishment of companies from around the world. The activities contemplated include the production of goods, services, and advanced technology; scientific investigation; higher education; logistic services; environmental services; healthcare services, and general services. Free Zones may be established in any part of the national territory, and enjoy various tax and labor benefits.
- **Panama-Pacifico Special Economic Area.** Law 41 of 2004 created the Panama-Pacifico Special Economic Area, a specific area located on the Pacific coast of Panama, as a special free zone, with its own legal, tax, customs, labor and immigration regime, wherein the activities described under Law 41 would be carried out. Many of the benefits are similar to those offered to Free Zones under Law 32 of 2011.
- **Colon Free Zone.** Law 8 of 2016 approved the reorganization of the Colon Free Zone, with the objective of adapting it to the new tendencies and opportunities provided by international trade, and at the same time establishing a legal tool that will ensure its positioning in the region. According to Law 8 of 2016, the areas that make up the Colon Free Zone will be considered zones free of taxes, with a legal, tax and special immigration regime, within which the activities described in such law could be carried out.
- **Petroleum Free Zones.** By virtue of Law 8 of 1987, a special regime was established for petroleum free zones, within which no taxes are incurred. In general, in these free zones, the companies can import, re-export, store, trade and sell petroleum-derived products to the domestic Panamanian market, abroad and/or to vessels in transit in the Panama Canal.
- **Call Centers.** In accordance with Law 54 of 2001, any person duly authorized by the Public Utilities Authority (*Autoridad Nacional de los Servicios Públicos*) may operate call centers, benefiting from tax incentives granted to companies operating within Free Zones, according to the stipulations of Law 32 of 2011.
- **Tourism.** Law 8 of 1994 regulates touristic activities in Panama, establishing incentives and benefits for tourism projects such as hotels, restaurants, nightclubs, convention centers, condominiums, airports, ecological tourism, among others.
- **City of Knowledge.** Decree Law 6 of 1998 approved the project called “City of Knowledge”, which promotes educational and scientific investigation within a specific area, by the granting of various tax and immigration benefits.

An important supplement to these special laws is Law 54 of 1998 (the Legal Stability of Investments Law), which provides that investments of USD2,000,000.00 or more in certain activities will be subjected, for a period of ten (10) years, to the same legal, tax, customs, and labor laws that were in place at the time of the investment. The investment must generally be made within a period of two (2) years, and the investor must be registered with the Investment Register of the Ministry of Commerce and Finance. The activities include: tourism; industrial activities; export of agricultural products; mining; processing zones for export; commercial free zones; petroleum free zones; petroleum or natural gas refining, storage, and transport; telecommunications; construction; port development; railway developments; and electric power generation, distribution and transmission.

2. Can foreign investors conduct business in Panamanian without a local partner? If so, how does the Panama government regulate commercial joint ventures between foreign investors and local firms?

Foreign investors are generally allowed to conduct business in Panama without a local partner, and business operations may be started simply by obtaining a commercial license (*aviso de operación*), and registering the company as a taxpayer, at the General Revenue Office (*Dirección General de Ingresos*) and

applicable municipalities, and as an employer, at the Social Security Office (*Caja de Seguro Social*). The company may furthermore be required to have a tax receipt printer (*impresora fiscal*).

There are, however, nationality restrictions related to certain economic activities, most notably retail trade, which is reserved for Panamanian nationals under the Constitution, and real estate purchases along the coastline and in islands, generally not allowed except in limited circumstances. Furthermore, regardless of nationality, other authorizations may apply generally if the activities conducted are in a regulated sector of the economy (e.g., banking and financial services, insurance activities, and securities market activities).

The government does not regulate the type of corporate structure used, but commercial joint ventures with local firms are usually undertaken by incorporating a special business vehicle, most commonly a Panamanian corporation (*sociedad anónima*) and, less commonly, a Panamanian limited liability company (*sociedad de responsabilidad limitada*). Both types of entities offer a simple governing structure and flexible rules, generally allowing for corporate resolutions to be adopted by simple majority of the shareholders or partners, or simple majority of the directors or administrators, via meetings (anywhere in the world, whether physically present or through electronic means) or in writing.

3. What laws influence the relationship between local agents and distributors and foreign companies?

There are no laws specifically regulating the relationship between local agents or distributors, and foreign companies. These relationships are principally governed by the corresponding distribution agreement, and general provisions in the Commerce Code and the Civil Code applicable to contracts, agents, and civil liability.

Although distribution relationships between foreign or local manufacturers and their distributors between 1969 and 1989 had been governed by Cabinet Decree 344 of 1969, which granted local distributors certain favorable protections, the Supreme Court, by judgment of August 2, 1989, declared it unconstitutional.

4. How does the Panamanian government regulate proposed merger and acquisition activities by foreign investors and are there any areas of the economy where they are prohibited (e.g., natural resources, energy or telecommunications)?

In general, mergers and acquisitions involving foreign investors are not restricted, but (as mentioned already) there are nationality restrictions related to certain economic activities, most notably retail trade, which is reserved for Panamanian nationals under the Constitution, and real estate purchases along the coastline and in islands, which generally prohibit

these except in limited circumstances. Furthermore, specific provisions regarding mergers and acquisitions apply to some regulated sectors of the economy (e.g., banking and financial services, insurance activities, and securities market activities), including prior approval, as well as notification of corporate changes resulting from the corresponding merger or acquisition (for example, a change of directors, officers, company name, legal representative, or attorneys-in-fact).

M&A transactions in Panama are impacted by provisions of the Commercial Code, the Civil Code, and, depending on the nature of the target company, by the Corporations Law, the Limited Liability Company Law, and industry-specific regulations (banking, securities, mining, energy, etc.). The primary regulator for M&A activity in Panama will depend on the nature of the business undertaken by the target company. So, for example, in the case of banks, the primary regulator would be the Superintendence of Banks of Panama, and in the case of broker dealers or investment advisory firms, the primary regulator would be the Superintendence of the Securities Market (formerly known as the National Securities Commission).

Furthermore, the antitrust regime, and the antitrust agency (ACODECO, for its acronym in Spanish), could play an important role in a merger where a change of control occurs, given that the validity of economic concentrations that unreasonably diminish, restrict, hurt, or impede freedom of

competition, may be challenged within three (3) years from the time the economic concentration (the applicable change of control) takes effect. However, if the antitrust agency's prior review is sought, and the economic concentration is approved or is approved under certain conditions (which are met), then it may not be later challenged.

5. How do labor statutes regulate the treatment of local employees and expatriate workers?

The Labor Code of Panama contains the provisions applicable to employment relationships in Panama. In general, in accordance with the Labor Code, the rights of workers (specifically referring to benefits) cannot be affected or reduced, and any contrary provisions are considered null and void.

Notably, the Labor Code establishes that workers that have been employed for a period of more than two (2) years cannot be terminated without just cause, and the employer must notify the worker in writing of the date and specific reason or reasons for the dismissal or termination of the employment relationship based on those causes established by the Labor Code. Subsequently, the employer may not claim other reasons as valid for termination other than the ones contained in the termination letter.

The Labor Code requires that at least 90% of the ordinary workers (workers with no expertise or technical knowledge) of all companies located in Panama be Panamanian

citizens or foreigners married to Panamanian nationals, and may have foreign specialized or technical personnel not exceeding 15% of the total workforce. Foreign workers must obtain a work permit prior to their employment, and an immigration visa within the corresponding immigration category.

There are different immigration categories including:

- **Nonresident.** For purposes of Panamanian immigration laws, a nonresident is a citizen of any country that enters without the intention of establishing permanent residency in Panama or renouncing his citizenship.
- **Permanent Resident.** For purposes of the Panamanian immigration laws, a permanent resident is a foreigner that enters the country with the intention of establishing residency in Panama, for economic and investment purposes, in accordance with the specific policies adopted by the Panamanian government. In general, after the term of two (2) years, the applicant may opt for permanent residency.
- **Temporary Resident.** For purposes of Panamanian immigration laws, a temporary resident is a foreigner that enters with the intention of establishing temporary residency in Panama, and is subject to a maximum of six (6) months.

- Resident by Special Policies (Temporary). This process applies to foreigners that enter the country temporarily as a trusted employee, producer, actor, technician, or expert of a foreign company, performing a specific job within the national territory. It applies in the cinematography and audiovisual fields, the City of Knowledge, the Panama Canal Authority, the Panama-Pacific Area, Free Zones, call centers and Headquarters for Multinational Companies.

6. How do local banks and government regulators deal with the treatment and conversion of local currency, repatriation of funds overseas, letters of credit, and other basic financial transactions?

Panama does not have provisions restricting the conversion of local currency or the repatriation of funds overseas. Panama has a robust banking system, with over ninety (90) banks currently offering all types of banking products and services (from consumer banking to commercial and investment banking). Many banks in Panama are part of large international financial groups, such as Citibank N.A., The Bank of Nova Scotia, Bancolombia, among several others. While KYC and AML requirements are many, foreign investors in Panama should have no trouble in finding any banking product or service required for their business.

7. What types of taxes, duties, and levies should a foreign investor in Panama expect to encounter?

Panama tax laws adopt the “principle of territoriality”, which generally implies that only income generated by domestic activities or carried out in the territory of the Republic of Panama will be subject to income tax.

A determination of all taxes a foreign investor may encounter investing in Panama requires a careful analysis of the specific investment to be made. However, taxes that may generally be expected to apply include the income tax (*impuesto sobre la renta*), which is 25% for juridical entities; the value-added tax (*impuesto sobre la transferencia de bienes y servicios*), which is 7%; the dividends tax, which is 10% for the Panama-sourced income and 5% for the foreign-sourced income; the commercial license tax (*impuesto de aviso de operación*), which consists of an annual tax of 2.0% over the capital of the company, with a minimum of USD 100.00 and a maximum of USD 60,000.00, unless the invested capital is less than USD 10,000.00; and any applicable municipal taxes.

Furthermore, there is a tax caused by remittances or payments sent to natural or companies domiciled outside of Panama resulting from any service or action benefiting individuals or companies, national or foreign, located in the territory of the Republic of Panama. This tax (called remittance tax) consists of withholding an equal amount, the applicable general rates on 50% of the amount to be remitted. This withholding duty

will not apply if the beneficiary of the payment registers as a taxpayer in Panama. Regarding the dividends tax, it is important to note that, if the legal person does not distribute earnings, or the total amount distributed is less than 40% of the net income for the corresponding fiscal year, 10% of the difference must be withheld and paid to the treasury as a supplementary tax.

8. How comprehensive are the intellectual property laws of Panama, and do the local courts and tribunals enforce these laws regardless of the nationality of the parties?

Law 64 of 2012 protects the rights of authors and right holders over their literary, artistic or scientific work, regardless of their type, form of expression, destiny, including related rights; it further provides that copyright is independent and compatible with industrial property rights that may exist on the work. This protection is recognized independently of the material form contained within the work, and is not subject to any formality.

Law 35 of 1996, in addition, protects inventions, trade names, utility models and industrial designs, industrial and trade secrets, trademarks for products and services, collective marks and guarantees, geographical indications, indications of source, destinations of origin, trade names, as well as advertising and slogan signs.

In Panama, these protections are afforded to the authors and/or owners of the specific works, trademarks, etc., regardless of their nationalities.

9. If a commercial dispute arises, will local courts or will international arbitration offer a more beneficial forum for dispute resolution to foreign investors?

Plaintiffs will often prefer arbitration rather than a local court because arbitration offers a more expedient process than the court system. Conversely, defendants will often prefer a local court rather than arbitration, since they benefit from a broader scope of actions and defenses within the process. Ultimately, which forum is more beneficial to foreign investors for dispute resolution – whether a local court, local arbitration, or international arbitration – will depend on each particular situation.

10. What advice can you provide for how best to negotiate or conduct business in Panama?

Panama has been, and continues to be, a country that is open to trade and business from around the world, with a strategic location for logistics, and a growing services-oriented platform. Prior to conducting business in Panama, however, it is advisable for the interested person to become acquainted with the general commercial landscape of Panama (including its laws, taxes, and business practices), and to learn of any requirements, obligations, or pertinent facts connected to the particular business to be conducted, and the parties involved, in order to assess the risks and advantages of the potential course of action. To best accomplish this, we recommend seeking the advice of well-trained and experienced professionals - attorneys, accountants, investment advisors, etc. that can best provide the necessary guidance.

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