

# Panama

## Chamber of commerce:

Chamber of Commerce, Industry and Agriculture of Panama  
Apartado 74  
Panama  
Tel: +507 227 1233 /  
+507 227 1445  
Fax: +507 227 4186  
Email: infocciap@panacamara.com  
Web: www.panacamara.com

## Professional body:

Colegio Nacional de Abogados  
Calle República de Bolivia y Calle 38E  
Apartado Postal 0816-03370  
Panama  
Tel: +507 225 6371  
Fax: +507 225 0189  
Email: cnabogados@cwpanama.net  
Web: www.cnapanama.com

## Establishing headquarters in Panama

Arturo Gerbaud  
Aleján Cordero Galindo & Lee  
Panama City

The regulation of business activities in Panama has been consistent with its trade and service-oriented economy, which is closely connected to the international market and geared towards benefiting from Panama's geographic position. As a result, the aim of the legal and institutional framework is to offer facilities and incentives for the development of international commercial and service activities in Panama, with few limitations on foreign investment (especially for international business operations based in Panama). Since 1904 Panama has used the US dollar as legal tender and its sole paper currency, and an international banking centre operates freely in all currencies, creating a favourable financial climate.

### The system

A Law was recently enacted in order to create a special system for establishing and operating the headquarters of a multinational corporation in Panama. Its guiding purpose is to streamline the establishment of such headquarters by ensuring their efficient development, management and operation.

A multinational corporation is defined as a corporation that, having its main office in a specific country, develops important productive, commercial, financial activities, or services, in diverse countries. This concept also includes companies that, although operating only in a specific country, carry out important operations in different regions of the same country and decide to establish a branch, affiliate, subsidiary or associated company in Panama, to carry out commercial transactions in the region.

The headquarters of a multinational corporation is defined as a multinational corpo-

ration that carries out operations from Panama, addressed to offer services defined in the new Law to its main office or to its subsidiaries or its affiliates or associated companies, or that establishes its head office in Panama. Headquarters are always a part of multinational corporations having international, or regional, or important operations in their countries of origin.

The following services may be rendered by the headquarters of a multinational corporation:

- Management and/or administration of operations in a specific or global geographic area of a company of the business group (strategic planning services, business development, management and/or training of personnel, operations and/or logistics control).
- Logistics and/or warehousing of components and parts, required for the manufacture or assembly of the goods manufactured by the corporation.
- Technical assistance to companies of the business group or to clients that have acquired any product or service from the company and, by reason of which, it is obliged to offer assistance services.
- Financial management, including treasury services, to the business group.
- Accountancy of the business group.
- Drafting plans that form part of designs and/or constructions, which constitute part of the ordinary course of the business activity of the main office or of any of its subsidiaries.
- Electronic processing of any activity, including consolidation of the operations of the business group. This service includes web operations.
- Advice, coordination and follow-up of the marketing and advertising guidelines of goods or services produced by the business group.
- Operation support and investigation and development of goods and services of the business group.

- Any other similar service previously approved in accordance with the Law.

### Regulation and licensing

The Law created a Commission of Licences for Headquarters of Multinational Corporations, comprising five senior government officials, mainly as a consulting and advisory body for the establishing of headquarters of multinational corporations. The Commission has a technical secretariat in charge of the daily affairs of this special system, and whose main responsibilities are to grant licences, handle the special visa regime established by the Law, impose fines, supervise headquarters of multinational corporations, and keep the official registry of the companies licensed as such and of its personnel and dependants.

Headquarters of multinational corporations require a special licence to operate for an indefinite period, and they may do so as a foreign company registered in Panama or as a Panamanian company owned by the multinational corporation, its subsidiaries or its affiliates. They may only offer services to the business group to which they belong, according to the activities permitted under the Law. Reporting requirements are very limited.

The requirements for obtaining a licence shall be established by the Commission, based on parameters such as the multinational corporation's assets, the locations or headquarters of its operation, its commercial activities or operations, and listed shares on local or international stock exchanges.

### Tax and special visa considerations

Licensed headquarters are exempt from income tax for services rendered to entities of any nature domiciled abroad that do not generate taxable income in Panama. This exemption only applies to the company and not to its employees.

The services rendered by a company holding such a licence do not cause tax on transfer of corporeal chattels and the rendering of ser-

vices, commonly known as the 5% tax (a form of VAT), provided the services are rendered to persons domiciled abroad who do not generate taxable income in Panama.

Income received by a person holding a visa for permanent personnel of the headquarters of multinational corporations is not subject to income tax in Panama if it is received directly from the head office located abroad. Also, persons holding this type of visa are exempt, when they move to Panama for the first time, from taxes that may be applied to household goods due to their import.

For foreign applicants, this visa is granted for a term not greater than that of the holder's labour contract, for as long as he/she works at the company, up to five years. Once the visa is granted, its holder is not required to carry out any other procedure or to obtain any permit from other state entity to work in the headquarters of a multinational corporation or to live in Panama.

Dependants of foreign personnel holding the above visa may also obtain a special visa. The following may be considered as dependants: spouses, children, students under 25, and the personnel's parents. These must remain in Panama under the responsibility of the employee of the headquarters of the multinational corporation.

## Financial and corporate

### Recommended firms

#### Tier 1

Aleman Cordero Galindo & Lee  
Arias Fábrega & Fábrega

#### Tier 2

Icaza González-Ruiz & Alemán  
Morgan & Morgan

#### Tier 3

Alfaro Ferrer & Ramírez  
Galindo Arias & López  
Patton Moreno & Asvat

#### Tier 4

Arosemena Noriega & Contreras  
Fabrega Molino & Mulino  
Sucre Arias & Reyes

While technically not a Central American country, Panama's location just outside the area has allowed Panama enjoy the benefits of economic growth that is taking place throughout that region. The peaceful country is relatively well off, and its centralized location makes it very accessible to North, South and Central American businesses alike. Panama

also enjoys good infrastructure with its harbours, airports, roads, and of course the country's most vital asset, the Panama Canal. One leading lawyer said: "This is an amazing time for Panama, which has been waiting to be discovered and been undervalued for too long."

The overall increased economic activity in Central America has translated into more money for investors to spend, and Panama has been included in this largesse. The local real-estate market has witnessed increased land acquisition and development activities. According to one specialist, property prices have quadrupled over the past couple of years. Skyscrapers are beginning to stretch Panama City's skyline, with several 60- to 80-story buildings under construction and even a proposed hotel/condo multi-use project which would reach 104 stories. The development of commercial malls, hotels and retirement communities has also become important to the local real-estate industry. At the time of writing, legitimate concerns about overdevelopment and talk of a real-estate bubble were beginning to emerge. Still, plans for a mixed-use 65-story tower by developer Donald Trump continue seemingly without a hitch.

This real-estate wave has also resulted in plenty of transactions in the capital markets and banking. M&A has also increased, with international companies investing in the region and acquiring important local companies. Several of the banking deals that have made a significant impact on the Central American markets are by banks of Panamanian holding companies. Banco Cuscatlán and Banco Uno – both acquired by Citibank – were registered in Panama, as were Banistmo and Banco Colpatria. All were targets of important players like Citi, HSBC and GE Financial, which are looking to make inroads into the region, using Panama as a starting point.

It's not just the banking industry. Goldman Sachs recently announced an investment in Carrix, a leading port operator in Panama (as well as ports in LA, Seattle, Mexico, Chile, Portland), while Occidental Petroleum is looking to build a refinery in the country.

In addition to direct foreign investment from its neighbours, Panama is also counting on the \$6 billion expansion of the Panama Canal to bring in additional revenue. The modernization is expected to add another set of locks so that the canal can accommodate the outsized container ships that are now an integral part of the world economy. More and bigger ships could mean up to an additional \$6 billion in revenue for the Panama Canal Authority within 20 years.

In a slight change from past rankings, two financial law firms have risen above the rest:

Aleman Cordero Galindo & Lee, and Arias Fábrega & Fábrega (known locally as Arifa). Invariably for the big transactions, one of the two – if not both – will be involved, thanks to their concentration in the financial and corporate markets.

### Aleman Cordero Galindo & Lee

Participating in several billion-dollar deals last year helped cement Aleman Cordero Galindo & Lee as one of two firms in Panama's top tier. The firm garners respect from its competitors; a partner at one leading law firm said: "They are a formidable competitor, and provide excellent service to their clients. If I have a conflict of interest with a client, I usually pass them on to Aleman Cordero and I know the client will be well served."

Aleman Cordero had an active role in several of the largest banking acquisitions, representing both acquirers and sellers. First up was the September 2006 acquisition of the firm's client, Banco Atlántico, by Banco Continental. The deal was reportedly for \$96 million, and appeared to set the stage for the firm to participate in more banking takeovers at the end of the year and the beginning of 2007.

November 2006 saw the firm participate in the takeover of Banistmo by multinational bank HSBC. Aleman Cordero again represented the sellers in a deal, which was valued at \$1.8 billion. Banistmo is one of the largest banks in Panama, and had recently embarked on an expansion into Central America. Additionally, more than half the bank's assets were in Panama, making this an important deal for the local market as well. The size and complexity of the deal – with operations in multiple jurisdictions – were not typical for the country and helped showcase Aleman Cordero's abilities in this sort of transaction. HSBC was impressed enough to retain the services of the firm afterwards, making Aleman Cordero the lead counsel for some of the country's biggest banks.

The early half of 2007 saw another banking client close a couple of M&A deals of its own. This time, Aleman Cordero was on the buyer's side as Citibank completed its acquisition of one of the region's largest credit card issuers, Banco Uno. The Panamanian bank also had operations in the five countries of Central America, so the \$1 billion deal immediately placed Citibank among the ranks of the largest bank in the area. This was followed by Citi's \$1.5 billion takeover of Banco Cuscatlán in May 2007. Cuscatlán was one of the biggest commercial banks in Panama and its neighbouring countries.

Aleman Cordero's client list includes other banks such as Banco General, Scotiabank and

Banco Bilbao Viscaya Argentina, but the firm has also worked on other projects.

It represented Grupo Ideal – owned by Mexican billionaire Carlos Slim – in a winning bid to develop two hydroelectric projects. And real-estate developer London & Regional Properties was successful with a \$700 million bid to convert a former US Air Force base near Panama City, the Howard Project, in a 40-year development project.

#### Leading lawyers

Jaime Alemán  
Carlos Cordero  
Arturo Gerbaud

### **Arias Fábrega & Fábrega**

The other firm in Panama's top tier, Arias Fábrega & Fábrega (called Arifa locally) was able to demonstrate its capabilities in the financial markets last year. The firm offers international services through its local office and in London, and also maintains affiliates in the British Virgin Islands, Hong Kong and Luxembourg. Interestingly enough, it has not as yet expanded into its Central American backyard.

The firm participated in leading M&A deals last year, but was also active in capital markets, advising clients arranging bond offerings. One rival commented on the firm's abilities: "They are like an American firm, with specializations and lawyers in different practice areas."

Arifa helped its client JP Morgan in a \$100 million issue of 7.6% senior notes to power distribution company Elektra Noreste. The July 2006 debt placement was for refinancing purposes, and was placed in Europe, New York, and locally.

The firm helped client Credit Suisse in a couple of financing deals for the Panamanian subsidiary of power company AES. A \$366 million syndicated loan was made to AES to finance the construction of a hydroelectric plant in Changuinola. This was followed by a notes placement of \$300 million in New York, Europe and locally, which was used to refinance previous loans. The loan and the debt placement were at the higher end of typical Panamanian transactions.

But it is the banking industry where the biggest and most significant deals occurred. Arifa client Banco General, one of the largest banks in the country, merged with Banco Continental, the second-largest bank, early in 2007. The resulting enterprise will have deposits of nearly \$8 billion, and a network of operations in Costa Rica, Colombia and El Salvador. This will allow Arifa's client to compete against the multinational banks that have entered the region.

In a slightly smaller deal, firm's Colombian client Bancolombia, acquired El Salvador's largest bank, Banagrícola. Arifa advised its client for the Panamanian part of the deal. The total value of the takeover could reach \$900 million, although the initial purchase was for \$791 million. The bank has an option to purchase further shares from minority owner groups which would inflate the total. This December 2006 buyout places Arifa in a select group of Panamanian firms that have been handling cross-border banking deals.

In a non-banking acquisition, the firm advised RestCo Iberoamericana in the Panamanian leg of a \$700 million acquisition of the operations of McDonald's in 18 Latin American countries. The deal included the participation of law firms that are ranked in the top tiers of the 18 countries where RestCo is acquiring properties.

Still, it is Arifa's banking clients that are making the largest impact in the Panamanian market. In addition to those mentioned, other clients include Merrill Lynch, Bayerische Hypo- und Vereinsbank and BNP Paribas.

Of the lawyers at Arifa, the one singled out is Ricardo Arango. A partner at another firm said: "Arifa's star is Ricardo Arango, without a doubt. He is the most visible one, doing a lot of securities deals."

#### Leading lawyers

Ricardo Arango  
Fernando Cardoze  
Eduardo de Alba  
Rogelio de la Guardia  
Leroy Watson

### **Other notable firms**

The largest and oldest firm in Panama, **Morgan & Morgan** has a reputation to match its history. The firm has a prominent offshore company practice, and is very strong in shipping law. It has been moving into transactional deals through its clients HSBC and AES; it represented HSBC as Panamanian counsel in the \$1.8 billion Banistmo acquisition. A trio of younger partners has been singled out by lawyers at other firms for their work in the financial practice area: Juan David Morgan, Romulo Roux and Inocencio Galindo. An elite client list includes the US State Department, Halliburton, Maersk Sealand and Bank of China.

**Icaza González-Ruiz & Alemán** is the other firm in the second tier, part of the quartet of firms that dominate the Panamanian financial legal market. Juan Tejada and brothers Alvaro and Roberto Alemán lead the firm, described as "one of the larger, more traditional firms in Panama". The firm advised Citibank and the International Finance

Corporation in a \$275 million financial facility granted to Manzanillo International Terminal for the expansion of the Manzanillo container port. The firm also maintains offices around the Caribbean, Switzerland, and Montevideo, Uruguay. One partner at a leading firm said: "They offer a wide range of services, and basic corporate work is their strength."