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The Panama limited liability company

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The Republic of Panama is a widely known and trusted offshore jurisdiction. Principally known for its corporations (sociedad anónima), Panama has a number of other corporate forms to offer. In recent years, clients from all over the globe have found the Panama private interest foundation to be quite useful and convenient for a number of reasons, especially for estate planning purposes.

For decades Panama has also listed the limited liability company (sociedad de responsabilidad limitada or SRL) among the type of corporate forms that it makes available to interested persons and businesses. However, for a number of reasons, the limited liability company has never met the same amount of interest or success found by its much popular cousin, the Panamanian sociedad anónima, mostly because it was founded on a long outdated law which made the Panamanian limited liability company a less flexible, and to a certain extent a less reliable, corporate form.

As a result of Law number four of January 9 2009, which overhauled the previous 1966 law behind the Panamanian limited liability company, this corporate form has found new life and purpose.

The following are among the most interesting features of this new law regulating the Panama limited liability company:

Name

Any limited liability company shall have a name agreed upon by its incorporators, which must be followed of the words "Sociedad de Responsabilidad Limitada" or its abbreviation "S de RL"

Nature

These are corporations of commercial nature and, as such, are subject to the laws and commercial uses and may engage in any type of lawful civil or commercial transactions that, by law, are not reserved to any other type of corporation.

Members

They can be constituted by two or more natural persons or corporate bodies. The minimum number of members is also two and they can also be natural persons or corporate bodies, regardless of their nationality. The economic liability of each member is limited up to the amount of his participation made or promised.

Capital

There are no minimums or maximums with respect to the authorised capital, which can be integrated by contributions of the members in cash, goods or services. The number of quotas or participations in which the capital is divided must be expressed, as well as the individual value.

Integration of capital

On the date of incorporation of the company the capital shall be totally or partially paid. The contributions in kind shall be totally made. The value of contributions in kind or in services will be fixed by the members.

Limited liability

The economic liability of each member for obligations acquired by the company shall be limited to the amount of their respective participation made or promised.

Formalities and requirements

The corporation must be organised by Public Deed and registered in the Public Registry. The Charter of Incorporation shall contain, among others, the following information:

- a) the identification of the incorporators and of the members and indication of their domicile;
- b) indication of the purposes of the company, which may be ample or limited;
- c) the amount of the authorised capital (which may be expressed in any currency) the number of participations or quotas in which it is divided and the amount of each;
- d) designation of the person or persons who shall be in charge of the administration and representation of the company, who may be members or not;
- e) the designation of one or more officers or attorneys-in-fact with general or specific powers and duties; and
- f) other lawful covenants that the incorporators may deem convenient provided they are not contrary to this Law, moral or public order.

Certificate of participation

Every member has the right to receive a certificate of participation subscribed by any of the administrators in which it shall be set forth the following information about the company:

- a) the name;
- b) the authorised capital;
- c) indication as to its registration in the Public Registry;
- d) the name of the member holding the respective certificate, who may be a natural or juridical person of any nationality;
- e) the value of the participation of the member; and
- f) the place and date of issuance of the certificate.

Rights of the members

Members in a limited liability company, as long as they have totally paid their participation in the capital of the company, will have, among others, the following rights:

- a) right to vote in the deliberations of the company in proportion to the value of their participation in the capital;

b) participate in the earnings and losses in proportion to their participation in the capital; and

c) to subscribe a proportional part to their participation in case of an increase of the capital.

Members Assembly

The Members' Assembly may be held following a call from the administration addressed in writing or by electronic means to each of the members, with prior notice of not less than ten working days, which will include the date, place, and time on which the assembly shall be held and the purpose of the meeting.

The Members' Assembly shall also meet when the administrators consider it to be convenient or at any time it is requested in writing by members representing at least 5% of the paid capital of the company.

Agreements adopted at a member's assembly shall be set forth in minutes or a certificate that shall be signed by the president or secretary of the meeting.

Administrators

The administrative functions shall correspond to the natural or juridical person or persons who are appointed to such office in the charter of incorporation or by a subsequent agreement. The appointment of the administrator shall take effect with respect to third parties from the moment of registration in the Public Registry.

The members can agree the removal of the administrators at any time and name their replacement.

Historically a crossroads for trade over both land and water, Panama has always walked a fine line between the realm of cooperative nations and the murky world of offshore jurisdictions. But the country's inclusion on the OECD's grey list is making trouble for significant financial players like BNP Paribas, which was forced by the French government last year to spin off its wealth management unit, headquartered in Panama.

Doing its best to resist out-and-out submission to transparency demands, the Panamanian government is actively negotiating with OECD officials in an attempt to retain some standards of secrecy. Still, authorities have taken several measures displaying a commitment to satisfy demands for fiscal reform.

Significant changes to Panama's tax code came into effect last July, including an increase in the value-added tax and an excise tax on vehicles. The amendments also created a tax on licensed assets for banks, lowered income taxes for natural persons and eliminated nearly all stamp taxes. Lawyers say the reforms signal the government's desire to simplify codes, lower the burden on individuals and bring corporate taxes more in line with the rest of the developed world.

Commentators say another aim of the reforms came about last March, when Fitch became the first ratings agency to give Panama's debt investment-grade status. But investors needed no vote of confidence in 2009 when the country made a foray into global markets. The \$1 billion bond placement - Panama's largest ever international offering - received a 5.20% interest rate, representing the lowest financing cost ever achieved by a Panamanian issuance.

Panama's lawyers say that with the Canal Expansion Project awarded and underway the next big government bid in the pipes is the Panama City Metro Line. Last January authorities launched a prequalification tender request and selected three consortiums competing to develop the subway system's first line. Present in the running are recognised players like Mitsubishi, Odebrecht and Astaldi, with the government expected to make a decision in the final half of 2010.

With the trend toward regionalisation gaining momentum in Latin America, Panama's geographic and economic position is creating a tug of war over the nation's identity. Legal sources contend the government has been courted by both South and Central American factions promoting unified capital markets, and lawyers say the country's participation in either economic bloc could shift the very momentum of development in the Americas north or south of the isthmus.

Alemán Cordero Galindo & Lee

Competitors call Alcolgal a "medium-sized firm focused on the largest clients". The partnership includes a notable government background, including partner Alejandro Ferrer's recent stint as minister of commerce and industry. "He was involved in negotiating commercial treaties with the US and others," one peer notes.

In August of 2009, partner Jaime Alemán was named ambassador of Panama to the US by President Martinelli, a distinction peers say that confirms Alcolgal's closeness to the current administration. Still, at least one rival says the appointment removes an important reference for the private-equity community from the transactional market. "He specialises in fund formation and management," explains one peer, "and has been successful bringing work to the firm."

Arturo Gerbaud earns recognition from rivals as driving Alcolgal's transactional practice, and one peer says: "He's really the person that carries the M&A and finance work in the firm." But one client identifies Gerbaud's strongest suit, saying, "He knows the Panamanian banking sector very well."

Gerbaud is representing Bank of Nova Scotia in acquiring the wealth management operations of BNP Paribas, consisting of its headquarters in Panama and several companies in the Bahamas and Cayman Islands. The spinoff of BNP's offshore industry came at the demand of the French government in response to the OECD grey list.

The firm also continues to represent Grupos Unidos por el Canal, the consortium it helped win the coveted concession to develop the Panama Canal's new locks, and is advising London & Regional on the \$700 million Panama Pacifico mixed-use development formerly Howard Air Force Base.

Leading lawyers

Jaime Eduardo Alemán
Anibal Galindo N
Arturo Gerbaud de la Guardia
Alejandro G Ferrer L

Arias Fábrega & Fábrega

When it comes to capital markets transactions, peers say Arifa leads the pack with the biggest and most sophisticated deals. "They have the most cross-border experience in terms of debt issuance," one rival says. In confirmation of its reputation the firm was sought by HSBC in the listing of negotiable bank securities on Mexico's recently reformed stock market. The \$1 billion offering represents the first Panamanian offering of bank certificates in Mexico.

Financial and corporate

Recommended firms	
Tier 1	Alemán Cordero Galindo & Lee Arias Fábrega & Fábrega
Tier 2	Galindo Arias & López Icaza González-Ruiz & Alemán Morgan & Morgan
Tier 3	Alfaro Ferrer & Ramírez Patton Moreno & Asvat
Tier 4	Arosemena Noriega & Contreras Fabrega Molino & Mulino Sucre Arias & Reyes Tapia Linares & Alfaro

Arifa also earns notice for its private-equity work, with both foreign funds doing business in Panama and Panamanian funds needing services around the world. The firm maintains a network of representative offices in Luxembourg, BVI and Belize, as well as a licensed trust company in Geneva.

Peers point to the arbitration skills of partner Octavio Amat, mentioning his experience as an alternate judge on Panama's top civil court. International associate Rodrigo Cardoze is seen by competitors as an up-and-coming lawyer among foreign corporates.

Clients in particular say partner Ricardo Arango is "widely known as the best corporate lawyer in Panama," as well as "an expert in everything related to banking and securities." The distinction made him the choice of Credit Suisse when it arranged Peru's \$1 billion bond placement in 2009. The structure was made in accordance to the new Fiscal Responsibility Law, which came into effect just prior to when the offer took place.

When it comes to bank financing, competitors note Arifa "gets the lion's share on the lender's side." One recent representative transaction involved the largest loan granted for the purpose of providing microfinance services in the region. Arango advised Citibank and OPIC locally on a \$225 credit facility to BAC/Credomatic for its small business and low-income mortgage finance services throughout Central America.

Leading lawyers

Eduardo de Alba
Octavio Amat
Ricardo M Arango
Rodrigo Cardoze

Galindo Arias & Lopez

"Gala should probably be at the top," remarks one lawyer regarding the firm's recent success. The firm is making recent waves in the lending market, helping negotiate credit lines in some of Panama's most important projects. "They are in all the work for the canal and that has been a good story for them," says one peer, "and it will continue to be a good story for them."

Partner Diego Herrera is credited with helping Panama's canal authority negotiate a seminal financing package for the expansion project, a \$2.3 billion deal involving five multilateral institutions and a complex local security package. "He is a young lawyer, so this mandate is quite important," one peer notes.

Additionally, the team showed prowess as borrower's counsel in the private sector with Petroterminal de Panama, operators of an oil pipeline that crosses the isthmus from coast to coast. In October 2009 partner Diego de la

Guardia advised Petroterminal in relation to a loan agreement with a syndicate of banks led by HSBC. The \$375 million loan, part of a refinancing and expansion project, will fund the construction of new storage terminals on both the pipelines Atlantic and Pacific terminals.

The firm carries weight in capital markets transactions with partner Ricardo Arias, whom competitors include in Gala's second generation that is pushing the firm. Arias worked recently with aviation law partner Cristina Lewis on several deals for Copa Airlines and Colombia's AeroRepublica, including an interchange agreement with airplane manufacturer Embraer.

Leading lawyers

Ramón Ricardo Arias Porras
Diego Alonso de la Guardia Porras
Diego Herrera Dutari

Icaza González-Ruiz & Alemán

Seen as a generalist firm with a brisk business in corporate work, one competitor holds Icaza is "not really a go-to firm when it comes to major deals." Still, peers consider the firms partners "very qualified and knowledgeable," and mention the firm's strong ancillary practices as an important component of the firm's reputation. "For instance, if you have a litigious matter you probably go to them before Arifa," explains one competitor.

In the area of corporate law, partners Gabriel and Francisco González-Ruiz are called a "dangerous force" by rivals, who also consider Roberto and Alvaro Alemán the leading lawyers of the firm in recent transactions.

One peer claims Icaza's traditional structure and family ties "tend to make the operation of the firm a little complex." Still, another peer admires the "well-recognised and well-positioned" partnership.

Leading lawyers

Alvaro A Alemán H
Roberto R Alemán H
Gabriel González-Ruiz A
Francisco González-Ruiz A

Morgan & Morgan

Being the largest firm in a jurisdiction carries its advantages and detractors, and one lawyer notes Morgan's ability to draw together effective legal teams tailored to suit the deal. "I feel comfortable working with them - they get results," the competitor says. Still another peer says the firm's structure is outsized for the market, adding, "If you take a firm like that to New York - no problem."

Partners Francisco Arias and Inocencio Galindo earn mention as Morgan's most proactive lawyers in the transactional market. Arias in particular finds financing work with HSBC, including a \$375 million syndicated credit facility for Petroterminal de Panama, operator of a pipeline crossing the isthmus.

Morgan is mentioned in the market as the leading firm in Panama's important ship registration area, and one peer says the firm has "a very significant practice of off-shore companies." When it comes to transactional work, the lawyer states: "They do everything."

At the end of 2009 insurer Mapfre retained the firm's counsel in taking a majority share of Panama's Aseguradora Mundial, including subsidiaries throughout Central America. The \$211 million stake makes the resulting association the largest insurance operation in the region.

Leading lawyers

Francisco Arias G
Inocencio Galindo
Carlos Ernesto González Ramírez
Enrique Jiménez B

Other ranked firms

While lacking the stars that populate Panama's top ranks, peers say **Alfaro Ferrer & Ramírez** is a "more complete firm" than its third-tier counterparts. "They are organized by practice and offer a full range of services," says one peer. In 2011, Afra celebrates 50 years in Panama's legal community.

Partner Alfredo Ramírez Jr earns praise for a "very good knowledge of transactional matters." Market feedback holds the firm sees a good deal of banking work and represents a lot of multilateral institutions, including Dutch development bank FMO.

Leading lawyers: Alfredo Ramírez Jr

Already a leading presence in maritime law, **Patton Moreno & Asvat** earns marks from competitors for recent strides in the transactional market. Peers also note the partnership recently moved into a new modern office building, signalling the intention to grow its practice.

Rivals say the firm holds an important player in public sector transactions through partner Ebrahim Asvat, and describe partner Francisco Martinelli as "very proactive and very service oriented" in the corporate market. One peer particularly commends partner Ivette Martínez for her distinction as a Fulbright Scholar.

Leading lawyers: Ebrahim Asvat K, Francisco V Martinelli P and Ivette E Martínez S

A modern corporate structure and a well-trained set of lawyers make **Fabrega Molino & Mulino** an emerging star in the eyes of

competitors. “I deal a lot with them,” says one rival, adding: “They do a good job.” In 2009 partner José Molino was named minister of Government and Justice, Panama’s chief law enforcement officer.

Peers consider partner Juan Pablo Fabrega a “legend in procedural law” and note the recognised scholar has recently written several books on administrative law and foreign policy.

Leading lawyers: Juan Pablo Fabrega Polleri and José Raúl Molino.

The law firm **Tapia Linares & Alfaro** earns repute as a small but well-rounded practice of less than ten lawyers. Commentators single out partner Eloy Alfaro as an important business lawyer specialised in conflict resolutions. “Families that have old money usually go to him,” says one peer.

Peers consider partners and brothers Julio and Adolfo Linares to be competent general practice attorneys.

Leading lawyers: Eloy Alfaro de Alba, Adolfo E Linares F and Julio E Linares F