

## CREATION OF CORPORATIONS

Infante & Perez Almillano has a corporation department, with expert staff in such area. Thus, we can offer our clients the great advantages that the offshore corporations offer, not only in the Republic of Panama, but also in other jurisdictions such as: British Virgin Islands, Curaçao, Bahamas, Cayman, Belize, among others, with our main objective: to use and combine these corporative entities in the most favourable way for the client.

## **CORPORATIONS IN PANAMA**

### **A. GENERAL CHARACTERISTICS**

Panamanian laws recognize corporations as having their own legal status different from that of their partners for all their acts and contracts.

Corporations in Panama have certain characteristics that make them different from other kinds of corporations.

Among the most important ones, we can mention the following:

1. The principle of limited responsibility. The corporation responds in the compliance of its obligations with all its assets, " Shareholders are only liable to creditors up to the amount they owe at the expense of their shares..."
2. Ability to transfer share titles. This is other of the main characteristics of panamanian corporations. Said titles can be freely negotiated by simply handing in when dealing with certificates issued to the bearer, or through endorsement thereof, in the case they are issued in the owner's name.

Notwithstanding the foregoing, some restrictions can be established in Articles of Incorporation to allow the free trade of the shares, setting a preferential right of the stockholders to proportionally acquire, the stocks that another stockholder wants to sell.

Our law considers as void, however, "Every restriction that absolutely forbids the transfer of shares".

3. It is worth mentioning as essential characteristic that corporations refer to share capital corporation that operate under a determined corporate name and that their organization is conditioned to the observance of certain formalities. We will deal with these aspects in detail later on.

### **B. ESTABLISHMENT OF THE CORPORATION**

#### **The Articles of Incorporation**

The procedure for the creation of a corporation in Panama is very simple: two or more persons, of legal age (18 years or older), of any nationality, even if they do not have an address in Panama, can create

a corporation for any legal purpose, subscribing the Articles of Incorporation before a Notary of Panama. The Articles of Incorporation must be registered later on in the Registry.

### **C. ARTICLES OF INCORPORATION**

The Corporate Agreement must contain at least the following:

#### **The Subscribers**

Identification of each one of the subscribers to the Articles of Incorporation t. When these people are not in Panama, two persons previously appointed for this matter, can grant the Articles of Incorporation in the presence of a Notary, transferring later on, by means of a private document, any rights they could have acquired when creating the corporation.

#### **Name and Corporate Name**

This name must not be the same as in any other previous corporation, so that it could not lead to mistakes.

The name must include one word, phrase or abbreviation, such as S.A., CORP., INC., etc., that indicates that it is a corporation.

Both the name and the abbreviation that indicate that it is a corporation can be established in any language.

Some special laws forbid the use of certain words in the corporate name, without previous authorization from the corresponding entity. So, the words "Bank", "Insurance company", "Reinsurance company", "Insurance Administrator", "Broker", "Trust", or others that indicate the practice of these activities cannot be used without the previous authorization of the governmental entity that controls the respective activity.

#### **The Corporation Address**

The domicile of the Corporation can be established in Panama or in any other country.

It is usually consigned in the Articles of Incorporation that the corporation will have its domicile in Panama, but that it may have offices and branches anywhere in the world.

### **Ojectives and Purposes for its Creation**

The main objective of the corporation can be defined in the most broad terms and it may cover any and every lawful activity.

Usually, there is one activity stated in the Articles of Incorporation as the main activity of the corporation, and then there is a wide list of lawful activities, to conclude that, in one word, it can do any business that is not considered void or forbidden by the Law.

It is not required here in Panama, to confine the purpose of the corporation to one or several specific objectives.

### **The Corporation's Capital**

The corporation must have a "Authorized Corporate capital".

The amount of the corporate capital may be in Dollars or in any other currency.

The corporate capital can consist of:

- a) An amount of money, divided into a certain number of shares with a nominal value assigned to each share (for example US\$10,000.00 Dollars divided into 1,000 shares of a nominal value of US\$10 Dollars each).
- b) Certain amount of shares without nominal value (for example: " the corporate capital will be composed by a thousand shares without nominal value") or;
- c) A combination of both formulas.

It is not mandatory to issue or subscribe or pay all or part of the authorized corporate capital in a fixed moment, nor make a deposit in any bank, official or private, except the fact that the subscribers of the corporate agreement must subscribe one share each, at the moment of creation of the corporation.

### **The Shares**

The corporation is entitled to establish and issue one or more kinds of shares, with appointment of the preferences, privileges, ability to vote, restrictions, requirements and any other rights determined in the Articles of Incorporation.

Thus, the shares can be issued to the bearer or registered in the owner's name.

The endorsed shares can be issued without being completely paid. Any assignment or transfer of registered shares must be registered in the Book of Registry of shares of the Corporation under no circumstance such transfer binds the Corporation unless registered in the Registry Book.

The shares issued to the bearer must be completely paid to be issued. The Assignment or transfer of such shares is made only with the delivery of the title or certificate that represents them.

The title or share certificate must include:

- a) Information about the registration of the corporation in the Public Registry.
- b) The authorized corporate capital.
- c) The number of shares that the certificate represents.
- d) The kind of shares, if any of different classes, as well as the special conditions, appointments, privileges, preferences, prizes, advantages and restrictions or requirements that some of these kinds of shares might have over the others.
- e) If the shares represented by the certificate are completely paid and non-assessable and if they have not, it must be stated for the record the amount of money paid for them.
- f) If they were registered shares, the name of the shareholder must be consigned.

### **The Resident Agent**

The law establishes that every corporation must have an appointed Resident Agent in the Republic of Panama, who must be a lawyer or a law firm suitable to practice the profession.

The Resident Agent does not have the power of engage in obligations on behalf of the corporation, nor can he tax in any way its assets owned by it, unless he is specifically granted this power. He is, however, able to present the resolutions of the corporation for their Protocolization and registration at the Registry.

The Resident Agent is also authorized to pay on behalf of the corporation the Annual Corporate Tax (Annual Taxes for the Corporations).

**The Directors**

The businesses of the corporation are administered by the Board of Directors, which must be composed by at least three Directors, who can be of any nationality and who are not required to have an address in the Republic of Panama.

It is not necessary to be a shareholder to fill the position of Director.

The first directors are appointed by the subscribers to the Articles of Incorporation at the moment the corporation is created. From that moment on, directors are appointed and relieved from their duties as indicated in the Articles of Incorporation or as determined by the shareholders. They must remain in their positions until a replacement is appointed.

As agreed by the Board of Directors, the corporation can sell, lease, exchange or in any other way transfer all or part of its assets according to the terms and conditions that the Board of Directors considers convenient, as long as it is authorized for this purpose by Resolution of the holders of most of the shares with the right to vote in the matter, adopted at a meeting requested for that purpose.

Notwithstanding the above mentioned, the consent of the shareholders is not necessary to transfer the assets in a Trust or to encumber them with pledge or mortgage, as a guarantee for the corporation's debts.

**The Officers**

The corporation must have at least three officers: a President, a Secretary, and a Treasurer, but it can have as many as it requires.

The same person can fill one or more positions, if it is determined in the Articles of Incorporation.

It is not necessary that a person be a shareholder or member of the Board of Directors to be an officer, except if the Articles of Incorporation demand so.

The officer's attributions and faculties are usually established in the Articles of Incorporation.

## **The Shareholders**

The Assembly of Shareholders is the corporation's highest authority, but it cannot, in any case, relieve the shareholders from the rights they might have acquired.

As well as in the case of the directors, the shareholders can be of any nationality and it is not required that they have an address in Panama.

The meetings of the Assembly of Shareholders can take place in the Republic of Panama or in any other country of the world, if it is so appointed in the Articles of Incorporation and can be called by the President, Vice-president, Secretary or Assistant Secretary, or by any other person authorized by the Articles of Incorporation.

The Shareholders can be represented in the meetings by a representative, who doesn't need to be a shareholder, and who could be appointed by public or private document, with or without substitution clause.

It can be established in the Articles of Incorporation that the shareholders have a preferential right to buy, in proportion to the shares they own, the shares of the corporation that another shareholder wants to sell.

The approval of the shareholders is necessary for the following matters:

1. To change the articles of the Articles of Incorporation.
2. To sell, lease, or transfer all or part of the corporation assets and to encumber them as a guarantee of the obligations of third parties.
3. To merge with other corporations.
4. To perform the dissolution of the corporation.

Shareholders are only responsible to the corporation's creditors up to the amount they owe on account of their shares. It cannot be established any lawsuit against any shareholder upon the corporation debts until the sentence has been passed against it, whose total amount was not collected after the execution against the corporate assets.

**Corporate Dissolution**

If the Board of Directors of the corporation deems convenient that the corporation be dissolved, it will propose by majority of votes of its members, a dissolution agreement, and within the ten (10) following days, it will call for a Shareholder's Meeting to decide about it.

If in the Shareholder Meeting, the holders with most of the shares with the right to vote adopt a resolution approving the dissolution agreement of the corporation, a copy of such agreement will be issued, accompanied by a list of the names and addresses of the directors and members of the corporation, certified by the President or the Vice-president and the Secretary or Assistant Secretary, such copy will be protocolized, and will be presented for its registration at the Public Registry.

A copy of this resolution must be published once in a local newspaper, where the corporation has an established office in the Republic of Panama.

Once these formalities have been carried out, the corporation is considered dissolved, but nevertheless, it will continue during three (3) years from that date, for the specific objectives of starting the special procedures considered necessary, defend its interests as defendant, settle its affairs, transfer and dispose of its assets and divide its corporate capital.

**Fiscal Considerations**

In the Republic of Panama, Income Tax is only encumbered over the gross revenue obtained from the operations that took place in the Republic of Panama. The revenues obtained abroad, are not from Panamanian source, and so, are not subject to encumbrance under our Law.

Even if the Panamanian corporation has an office, employees, and licence to operate businesses in the Republic of Panama it will not generate income taxes in Panama as long as the transactions from which this revenue came from, were held outside the Republic of Panama.

The shared income dividends that come from sources outside the Republic of Panama are not subject to encumbrance. Panamanian law states that the Panamanian corporation that has as its only source of revenue dividends or participations received from other corporations, from Panama or abroad, is not required to pay income tax in the Republic of Panama. Only dividends distributed from income originating from a Panamanian source, should be taxable at the rate of ten percent (10%) whether they are received by a corporation or individual, resident or non-resident.

A Panamanian corporation that has only had income originating outside the Republic of Panama, will be able to distribute all or part of its assets, at the moment of dissolution, merger or sale, without being subject to any taxes over capital gains.

Corporations that only have revenues from foreign sources are not obliged to prepare or publish financial statements, nor are they required to register any tax or any other declaration.



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