

Panama Analysis

August 2015

1. Bearer Shares

Following pressure from the FATF, Law No. 18 of April 23, 2015 entered into force on May 4th, 2015. This new law amended Law No. 47 of 2013 shortening the long transitional periods that had been set for existing bearer shares in Panama.

However, there will be no changes regarding the registered shares regime. This means that registered shareholders can remain to be nominees or nominee companies and there is no public register of shareholders nor are there any plans to set up such a register.

It is important to keep in mind is that the new law also does not eliminate the possibility of issuing bearer shares if certain conditions are met. Bearer shares that are issued after May 4th will need to be delivered to an Authorized Custodian within 20 days after issuance together with an affidavit disclosing information about the owner. In addition, a resolution must be recorded at the Public Registry of Panama in which either the Shareholders or the Board of Directors authorize the company to accept the new custody system. For pre-existing bearer share owners (before May 4th), the time period to comply with these requirements is until December 31, 2015.

ATU Panama recommends in most cases to cancel existing bearer shares and issue registered shares instead. Furthermore, the Articles of companies also need to be changed to exclude the possibility of issuing bearer shares. We deem inadequate using the legal fiction remedy of the 'bearer share law'.

2. Grey List FATF

As mentioned in earlier publications, Panama was included in the grey list of the FATF towards the end of June 2014. As a reaction, the new Panamanian government adopted an action plan in accordance with the FATF to be removed from this list.

The most notable legislations that have resulted from this action plan are the aforementioned bearer share law and Law No. 23 of April 27, 2015 ('AML law') to prevent Money Laundering and Terrorist Financing. Supplementary to the AML law, recent Decree No. 361 created a supervisory body to regulate non-financial subjects and Decree No. 363 set more specific rules on the AML law.

Panama herewith expected that it had complied with the necessary steps in order to pass Phase 1 of the OECD peer review. Nevertheless, the standard to progress to Phase 2 was recently amended and there is ongoing pressure on Panama to commit to

the standard of Automatic Exchange of Information (“AEOI”). Whereas, the government is determined to get Panama off the grey list, it remains skeptical about committing to AEOI. It is therefore to be expected that decisions will only be made after the Global Forum will take place again in October 2015.

3. Treaties & Agreements

3.1 Free Trade Agreements (FTAs)

Panama is inclined to keep increasing the number of trading partners throughout the different regions. If you recall our report from May of last year, Panama and Mexico had finally signed an FTA which entered into force earlier this year. Panama now looks forward to form part of the Pacific Alliance with the help of Mexico. The trade bloc known as the Pacific Alliance currently consists of Mexico, Chile, Colombia, and Peru.

Panama also tries to negotiate an FTA with the Caribbean bloc known as Caribbean Community (CARICOM). On July of this year, the Panamanian government filed a request to enter CARICOM as an observer state. Interest in this region had been previously shown, when an FTA with Trinidad & Tobago (CARICOM member) was approved back in January.

In our previous report we discussed the negotiations for an FTA between Panama and Israel which are well advanced. A third round of negotiations described as intense and very positive concluded towards the end of July and a fourth round which is expected to be one of the final rounds (not to say the final round) might take place in Panama during the month of November.

3.2 Double Tax Treaties (DTTs)

The number of negotiated DTTs remained at 20. Panama has negotiated DTTs with the following countries:

Mexico	Spain
South Korea	Singapore
Italy	Qatar
Ireland	Israel
Belgium	Portugal
Czech Republic	Bahrain
Barbados	Luxembourg
Netherlands	France
U.A.E.	U.K.
Austria	Vietnam

At the moment, 15 DTTs have been ratified by both countries. These are the DTTs with Mexico, Barbados, Spain, Qatar, Luxembourg, Holland, Singapore, France, South Korea, Portugal, Ireland, Czech Republic, U.A.E., U.K., and Israel.

Furthermore and as mentioned in the past, Panama’s National Assembly has already ratified the DTT negotiated with Italy but is still waiting for their counterparts.

3.3 Tax Information Exchange Agreements (TIEAs)

Since our last report, the situation remains unchanged. Panama has signed nine (9) TIEAs, namely with the U.S., Canada and the Nordic Countries.

The only TIEA which has not been ratified by both countries and is currently not in force is the one with Denmark. All the remaining eight (8) are currently being enforced (U.S., Iceland, Canada, Finland, Norway, Sweden, Greenland, and Faroe Islands).

4. Politics

Since President Juan Carlos Varela took office in July 2014 the political situation has proven very stable despite of the lack of government majority in the National Assembly. Whereas the new government is continuing a pro-growth economic policy agenda, the country is currently undergoing an important anticorruption campaign. Obviously, this has led to a greater scrutiny in awarding construction permits and public contracts, which in turn might slow down certain investments. It is worthwhile to note that real measures have been and are being taken towards those held accountable for corruption allegations in the previous government – up to minister level.

5. Economy

Last year was another good year for Panama's economy as it closed with a GDP growth of 6.2%. The most dynamic activities during 2014 were those linked to the external sectors such as ports, air transport, financial, tourism, Canal services and also the exports of fruits (mostly banana, melon, and watermelon). New shopping centers currently also abound, in particular in the sector of international brands and luxury.

Due to the fact that tourism plays an increasingly important role in Panama's economy, the Tourism Authority (ATP) keeps working on ways to improve the sector. The report for the first quarter of 2015 showed that the number of tourist visiting the country grew by 8% again when compared with the same period in 2014.

Back in January of this year, the ATP stated that one of the main goals would be to further increase air connectivity throughout 2015. Since then additional flights have been announced from/to Paris (Air France) and from/to Canada (Sunwing Airlines). The latter actually arrives at the airport Scarlett Martinez which is located in the province of Cocle much closer to Panama's beaches of the Pacific.

New flights will start operating in March 2016 from/to Frankfurt (Lufthansa), probably in February 2016 to Istanbul (Turkish Airlines – the return flight will have a layover in Bogota) and in the same month from/to Dubai (Emirates Airline). The direct flight Dubai – Panama will be a historic route, not only because it will become the longest flight with 17 hours and 35 minutes but also because it will help to put Panama on the map of the Middle East for the first time.

At the moment the economic situation in Panama remains solid. Fitch Ratings reaffirmed its investment grade in Panama at 'BBB rating' taking into consideration the positive impact that shall result from the Canal expansion which is now at 93% and expected to start operations on April 2016.

So far it seems that Panama will continue to enjoy economic growth for the current year. The General Comptroller Office stated that the economic activity in the first quarter of 2015 increased by 5.9% when compared to the same period in 2014. Furthermore, the study done by the International Monetary Fund (IMF) forecasts that economic growth for this year in Panama will be between 6% and

7%. The IMF further concludes that the new canal and the new copper mine (Minera Panama, opening in 2018) will help to carry on Panama's growth in a similar range for the coming years which should help to keep its pole position in both Central America but also in the Americas in general.

6. Tip of the day: Are you up for some coffee?

You can now enjoy a 'Tall Caramel Frappuccino' from Starbucks in Panama. The famous coffee chain recently entered Panama opening their first coffee store in one of the new luxury malls of the country.



Starbucks plans to open 20 coffee stores in Panama during the next five years, 4 of them which are to be inaugurated within the next 8 months.

The investment of another renowned chain in Panama will come as no surprise. The Central American country has gone through tremendous development over the

years luring countless popular brands which can be found practically anywhere in the city.

7. Liquidation instead of strike off procedure

Panama, being a Civil Law country with a public Register of companies does not recognize the strike off procedure known from many offshore islands based on the common law.

Therefore, a Panamanian entity (corporation / foundation) always needs to be liquidated in order to be eliminated from the Register. Shall the entity be left alone, the directors or council members remain fully liable and will not be able to escape responsibility if the entity will be used in bad faith against any third parties. Therefore, liquidation is the only way to wind down a Panama structure in a responsible way.

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