



PANAMA HAS ENACTED A NEW LEGISLATION ON LIMITED LIABILITY COMPANIES (LLC)

The Republic of Panama has just approved a new legislation on Limited Liability Companies. By means of Law No.4 of January 9, 2009, in force since January 15, 2009, the former legal provisions related to LLC's, in force since 1966, were replaced.

Following we point out the more relevant aspects of the new law:

1. An LLC can carry out any lawful activity in the World, either civil or commercial.
2. It must be incorporated by at least two (2) persons, either individuals or legal entities, Panamanians or foreign, in Panama or abroad, either personally or by an attorney in fact. The subscribers of the articles of incorporation do not need to be partners of the company.
3. An LLC must have at least two (2) partners. There are no restrictions as of a maximum of partners.
4. The LLC's do not have minimum or maximum stated capital requirements.
5. The stated capital can be on any currency.
6. The stated capital does not need to be fully paid by the partners at the moment of incorporation of the company.
7. The stated capital shall be divided in participation quotas, with the stated capital set out in the articles of incorporation.
8. The participation quotas are issued in nominative form and are represented by participation certificates which should not be considered negotiable instruments. Transfer of the participation quotas is subject to approval by the partners, thus the transfer thereof may not take place by simply



endorsing and delivery of the participation certificate.

9. Participation quotas may be paid with assets and services, in addition to cash. The value of the assets or services is set out by the partners' meeting.
10. Payment of the participation quotas made through assets must be made immediately.
11. The liability of the partners is limited to the amount of their participation in the capital of the company.
12. The participation quotas may be pledged as well as the rights derived from them, such as the use and enjoyment of the fruits of the company, may be ceded. The articles of incorporation may set out prohibitions, restrictions or limitations thereto. It may also restrict the transfer of quota participations in case of inheritance.
13. The identity of the partners must be disclosed in the articles of incorporation, therefore the admission of new partners requires the amendment thereof.
14. The partners have the right of first refusal to acquire the new quota participations that the company may issue as well as the preferential right to purchase the quota participations that a partner may sell.
15. The company may be incorporated by a limited period of time or at perpetuity.
16. The businesses of the company will be managed by one or more managers, who may be individuals or legal entities, Panamanian or foreign, who do not need to be partners.



17. The articles of incorporation must set out the following minimum information:
- a. Name of the company
 - b. Identity of the subscribers of the articles of incorporation and initial partners, with indication of their domicile.
 - c. Domicile of the company.
 - d. Duration of the company.
 - e. Amount of stated capital and the participation quotas in which it is divided, with indication of their par value.
 - f. The name of the person or persons appointed as administrators of the company.
 - g. The appointment of one or more officers or attorneys in fact and their duties and powers.
 - h. The appointment of a lawyer or law firm as Registered Agent.
 - i. Any other provisions that the subscribers may deem convenient.
18. The company shall become into life as of the date in which the articles of incorporation are recorded in the Public Registry of Panama.
19. Each partner that has fully paid his quota participations shall have the right to vote in the partners' meeting, in proportion to his participation in the capital of the company.
20. The resolutions at the partners' meeting shall be approved by the vote of the partners who represent the majority of the paid up capital of the company. The articles of incorporation may require a higher percentage.
21. There is no obligation to hold ordinary or annual meetings of partners. The partners' meeting may take place only as needed, when called by the administrator or at the request of partners that represent at least 5% of the paid up capital of the company.
22. Partners must be represented at the meetings by proxy that can be granted to any third party who does not need to be partner.



23. A partner may retire from the company and the later compelled to purchase his quota participations in case that it was approved the extension of the term of the company created for a limited period of time; the change of object or main activity of the company; the increase or reduction of the stated capital of the company; the transformation of the company into any other type of legal entity or the merger of the company and the retiring partner voted against such decision. Therefore, the partner must notify his retirement to the other partners within thirty days following the date when the resolution was approved.
24. Partners are prohibited to carry out businesses or activities that may compete with those of the company.
25. Partners may be expelled from the company by decision of the partners' meeting and lose their quota participation without compensation if the partner:
 - a. Competes with the company.
 - b. Does not pay his participation quotas when due.
 - c. Is declared in bankruptcy.
 - d. Obstructs the development or carrying out of the business and operations of the company.
 - e. Breaches his loyalty duties and due care to the company.
26. Partners and administrations may challenge in court any decision approved at a partners' meeting when they breach the articles of incorporation or the law. The lawsuit must be filed within 30 days following the date of approval of the decision.
27. The administrators shall have the legal representation of the company and the powers to carry out the daily business and operations of the company.
28. The administrators can be appointed by term or for an indefinite period of time, and removed at any time by decision of the partners' meeting.



29. The company may be dissolved at any time. The Administrators shall take care of the liquidation of the company. There is no term to conclude the liquidation.
30. The company may be merged with any legal entity of any nature, either Panamanian or foreign, converted into any other type of legal entity and change its domicile.
31. Foreign LLC's may be re-domiciled to Panama.
32. Due to the territorial criteria of the source of income followed by our fiscal legislation, the income earned by an LLC from business, operations or transactions that are executed, carried out or consummated abroad and the dividends paid to partners resulting from the foregoing income are not subject to Income Tax in Panama.

Author: Juan Pablo Fábrega, partner.