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PANAMA ENACTS NEW LAW TO REGULATE SPIN-OFFS AS CORPORATE REORGANIZATION SCHEME

The National Assembly approved **Law 85 of 22 November 2013**, whereby several provisions are incorporated to our Commercial Code to allow the *spin-off of companies as a form of reorganization*.

A commercial company of any kind or nature may be subject of a spin-off by means of the division of all or part of its assets and its transfer to one or more companies already incorporated or to new companies called “beneficiaries”, that either (i) have the same partners or shareholders of the original entity or (ii) have said original entity as its partner or shareholder.

The effect of the spin-off is the segregation and transfer of assets from the original entity to the companies or companies already organized or to be formed and the issuance of quotas or shares by these companies to the partners or shareholders of the original entity.

The approval of the spin-off is carried out by the partners or shareholders of the original entity and the minutes approving said transaction or a certificate issued by the Secretary of the meeting shall be notarized in deed form and registered at the Public Registry to be effective against third parties. Third parties are entitled to claim any rights that arise from the transaction following a notice made in the form of a certificate issued by the Public Registry and published for 3 days in a daily circulation newspaper.

The partners or shareholders of the entity subject to the spin-off may agree the following in the minutes approving such operation:

- The transfer of all or part of the assets, individualized or as a block;
- The limitation of liability regime of the original entity and of the beneficiaries;
- The transfer or non-transfer of the liabilities of the original entity;
- The transfer of the quotas or shares that correspond to each partner or shareholder of the original entity, in proportion to their existing participations.
- The approval of the articles of incorporation of the company or new companies to be constituted.

Unless otherwise agreed, no shareholder or partner of the original entity shall lose its condition as such by virtue of the spin-off.

From the date of registration of the spin-off at the Public Registry the beneficiary companies shall assume the obligations that are imposed upon them in accordance to the terms of the spin-off and shall acquire the rights, privileges and obligations inherent to the patrimonial portion that is transferred to them, from the

moment the rights arose or the assets were originally acquired by the original entity, in the same terms and conditions.

The beneficiary company(ies) shall be jointly and severally liable with the original entity *vis-à-vis* its creditors if the transfer of its patrimony harms said creditors. Any creditor of the original entity may object to the spin-off within the 30 days following the last publication of the notice stated in the preceding paragraphs.

The liability of the beneficiary companies shall be limited to the net assets that they receive pursuant to the terms of the spin-off.

The transfer of assets as a result of the spin-off is not considered a transfer for tax purposes, provided the transfer is carried out for same value the assets have in the accounting records of the original entity.

The beneficiary company(ies) shall be jointly and severally liable with the original entity for the taxes, advances, withholdings, sanctions and interests and other fiscal obligations that are attributable to the original entity at the time of the spin-off, as well as for those that are imposed subsequently.

The company that proposes to be spinned-off must communicate its intention to the General Revenue Directorate within 30 days prior to the date the spin-off is to be perfected, with indication of the name of the company(ies) that will be beneficiary(ies) or if a new company will be constituted. Once the communication is made, the company may initiate the spin-off process.

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