



Panama's New Limited Liability Corporation Law

The National Assembly of Panama has recently issued a new law regarding limited liability corporations (LLCs) which replaces Law 24 of the 1st of February of 1966, which used to be the legal foundation for LLCs in the Republic of Panama. This new legislation allows for greater flexibility and privacy in the creation and use of the LLC structure, although still requiring more disclosure for its constitution than a Panamanian corporation ("sociedad anonima").

Law 4 of the 9th of January of 2009, henceforth, Law 4 of 2009, provides a new vehicle through which foreigners and nationals can structure their investments and make use of tax advantages that their country of origin's laws may provide for limited liability corporations. In this regard, Article 28 of the new legislation states that income tax that an LLC may generate falls upon the partners in accordance to their share of participation in the LLC.

- **Incorporation Requirements**

The incorporation of a Panamanian LLC requires a minimum of two or more partners, which may be individuals or corporations, and should be noted in the articles of incorporation, which are publicly available. While our previous legislation set a maximum of twenty partners, there is currently no legal limit on the number of partners than an LLC may have.

The articles of incorporation must be entered to the Public Registry and may be documented either by a protocolized private document or by a public deed and must include the following information:

1. The identity of the granters, the partners and an indication of their domicile;
2. The LLC's domicile;
3. The duration of the LLC, which may be perpetual or for a definite period of time;
4. An indication of the corporate purpose, which may be broad or limited;
5. The amount of authorized corporate capital, which may be in any currency, the shares or quotas in which it is divided and the value of each one;
6. The designation of one or several individuals who will be in charge of the administration and representation of the LLC and who may or may not be partners;
7. The designation of one or more dignitaries or general power of attorney holders, special power of attorney holders, and the powers granted to them;
8. The designation of a resident agent, which must be a lawyer or a law firm; and



9. Any other legal agreements that the granters wish to include.

Our new legislation allows LLC to exist in perpetuity, which was not the case before. Additionally, it is no longer required for information on the decision making process of the General Assembly of Partners to be included in the article of incorporation or for an extract of the articles of incorporation to be published in a national newspaper.

Our new law also simplifies the rules dealing with the corporate capital of the LLC. Previously, 50% of the corporate capital had to be paid within five years of the incorporation. Now, the corporate capital may be completely or partially paid at the time of incorporation, and only the contributions in kind must be completely made at the time of incorporation. Modifications to the corporate capital may now be made by amending the articles of incorporation, however, a reduction of the corporate capital is not allowed if such a decrease could cause the corporation's assets to be less than its liabilities.

While changes in the articles of incorporation must still be registered, it is no longer required that they be published in a national newspaper or that two thirds of the partners approve them. Transfers of corporate quotas that change the identity of the partners and the dissolution of the LLC must also be registered to be valid, however it is no longer required to register the establishment or closing of its agencies and the Agreements of the General Partner Meetings.

- **Corporate Governance of a Panamanian LLC**

Panamanian LLCs are governed by two corporate bodies: a General Assembly of Partners and Administrators, individuals designated to carry out the LLCs operations.

Law 4 of 2009 changes previous legislation on the matter of the General Assembly of Partners by expressly admitting notification of partners of a General Assembly through electronic means. It also allows partners who represent 5% of the paid in corporate capital to request the administrators, in writing, of the need to hold an extraordinary meeting. If the administrators do not accede to call the meeting, the aforementioned partners may proceed to call for the meeting themselves. Additionally, the Law expressly states in its Article 35 that written agreements between partners are valid, without the need for a meeting, and whether the partners are present or absent.



With regards to the administrators, Law 4 of 2009 states in its Article 40 that if there were several administrators, agreements are to be made by a majority of votes, unless the articles of incorporation state otherwise. In our previous legislation, the actions of any one administrator were held to be valid.

- **Partner Rights**

Law 4 of 2009 maintains most of the rights granted to partners in our previous legislation. Among them are:

- Partners who have totally paid their corporate share will have the right to vote. This right to vote is in proportion to the value of their share in the corporate capital.
- Partners have the right to subscribe shares in proportion to their quota when the LLC is increasing its corporate capital.
- Partners have the right to withdraw from the LLC if they vote against prolonging the duration of the LLC, varying the corporate purpose, increasing or reducing the corporate capital, converting the LLC in a different type of corporation, a merger.
- Partners have the right to withdraw from the LLC voluntarily by notifying written notification three months in advance.
- Partners have the right to exclude other partners if they do not pay their quotas on time, if they are declared in bankruptcy, if they in any way disturb the corporate operations, or if they breach their duty of loyalty and duty of care in a grave manner.

- **Limited Liability of Partners**

In the LLC, the partners' liability is limited, as they participate in the profits and losses only in proportion to their stake in the corporate capital. Article 25 of Law 4 of 2009 further states that the economic responsibility of each partner for the corporation's obligations is limited to the amount of their share, either already made or promised.

- **Transfer of a Partner's Rights**

Article 26 of Law 4 of 2009 regulates transfers of partner shares. Transfers may now be made through a private document and must be entered to the Public Registry. In order to become a partner, the transferee must be approved by the other partners.



- **Death or Incapacity of a Partner**

Following the death of a partner, the LLC may continue with his or her heirs or without them, as were agreed upon in the articles of incorporation. If the heirs are not to participate, the deceased partner shares must be liquidated and paid, at fair price, which will be determined by experts, as explained by Article 27 of Law 4 of 2009.

If a partner is incapacitated, the corporation may continue with his or her curator or guardian, or liquidate the incapacitated partner's share at fair price.

- **Usufruct of Partner Shares**

The rules regarding usufruct of partner shares have changed and are now encompassed in Article 17 of the Law. The bare owner of the share is still the partner, who retains voting rights. Our new law grants the holder of the usufruct the right to participate in the profits obtained and to the benefits of the liquidation of the LLC. Previously, the holder of usufruct rights had the right to participate in the net profits of the LLC and the right to judicially request the annulment of any partner agreement in detriment of his or her interests.

- **Security Interests on Partner Shares**

Holders of a security interest in a partner's shares are now granted the rights to exercise both the corporate rights of the partner as an owner of the share, as well as the right to exercise the patrimonial rights of the owner, as pointed out in Article 18 of Law 4 of 2009. Security interests over partner shares may be held by private document or public deed, which may or may not be registered in the Public Registry, at the partners' choice. Any security interest, however, must be notified to the LLC, as well as any agreement between the parties which grants the security interest holder any special rights.

- **Conversion and Mergers**

Law 4 of 2009 permits Panamanian LLCs to transform into any type of corporation or merge with any other type of corporation, if such a conversion or merger is approved in the manner that the articles of incorporation dictates or by decision of partners that represent the majority of the corporate capital. In the same manner, any other type of corporation can transform into an LLC.



Mergers and consolidations with other national or foreign corporations of any kind are also allowed, as long as there is an agreement between the partners, expressing the name of the surviving corporation and the rights that the partners will have in the resulting corporation. The merger or consolidation must be entered to the Public Registry and does not produce a transfer of assets, inclusive of all legal effects. The resulting corporation has the rights and obligations of the merged or consolidated corporation.

We must note here that in Article 50, Law 4 of 2009 allows Foreign LLCs to continue to exist under Panama's jurisdiction, as long as they fulfill the incorporation formalities established by the new Law. In the same manner, a Panamanian LLC can continue in other country, if it fulfills the formalities established by the foreign jurisdiction's laws.

- **Dissolution and Liquidation of a Panamanian LLC**

The dissolution and liquidation of a Panamanian LLC follow what was established in our previous legislation, with a change in the cases of dissolutions that arise from the reduction of the LLC's assets. Our new law states that a Panamanian LLC will be dissolved if its assets are reduced to less than half of the corporate capital established in its articles of incorporation because of losses, allowing the partners to prevent the dissolution by agreeing to supply the necessary sums of capital within thirty days of such a reduction of capital.

The advantages provided by this new legislation, as stated before, are greater flexibility for the Panamanian LLC structure and less registration requirements. Potential tax benefits for foreign investors are also to be considered when evaluating whether an LLC is convenient. For current LLC partners and administrators, we must note in closing that Law 4 of 2009 dictates that it will rule all previously created LLCs that were formerly governed by Law 24 of 1st of February of 1966.