



New law imposes accounting record obligations on offshore legal entities

A law introduced in Panama on 27 October 2016 (Law No. 52) introduces a new obligation for certain entities to maintain accounting records and supporting documentation. Law No, 52, which will apply as from 1 January 2017, also provides for penalties for failure to comply with the rules, including the suspension of a legal entity's corporate rights.

Main obligations under Law No. 52

Under the law, resident legal entities that do not carry out operations that are carried out or take effect within Panama ("offshore companies") are required to maintain accounting records and supporting documentation for a period of no less than five years from (i) the last day of the calendar year during which the transactions covered in the accounting records took place; or (ii) the last day of the calendar year in which the legal entity ceases operations.

The accounting records and documentation must be retained in the office of the offshore entity's resident agent, or in any other place determined by the entity's management. "Supporting documentation" for these purposes refers to contracts, invoices, receipts or other documents that substantiate the transactions carried out by the legal entity.

If the accounting records and supporting documentation are not maintained in the offices of the legal entity's resident agent, the legal entity must provide the resident agent with the following information in writing:

- The physical address where the accounting records and supporting documentation are held; and
- The name and contact information of the person that maintains the records under its custody.

The Panamanian agent must be informed of any change in the physical address or contact information within 15 business days from the day on which the change is approved.

If the accounting records and supporting documentation are held outside of Panama, the legal entity will be required to provide the necessary documentation to its resident agent upon a request of the Panamanian tax authorities within 15 business days from date the agent is notified of the request.

Legal entities that fail to comply will be subject to a fine of PAB 1,000, plus a penalty of PAB 100 for each day of noncompliance.

If an offshore company fails to provide the resident agent with the documentation requested by the tax authorities within the 15-day deadline, the resident agent is required to resign within 10 business days from the day following the deadline to submit the documentation. If the resident agent fails to announce its resignation to the Public Registry of Panama in a timely manner, the Directorate General of Revenue (DGI) will impose a fine of PAB 500 and require the removal of the agent's status as such from the legal entity.

Where a legal entity does not engage in any operations that are carried out or take effect within Panama and the documentation is retained at an office other than that of the Panamanian agent, the agent must maintain a record of where the legal entity maintains its accounting records and supporting documentation. The information that must be kept on file includes the following:

- The name of the legal entity;
- The physical address where the accounting records and supporting documentation are maintained; and
- The name of the person that maintains custody of the documents.

Regardless of whether it retains copies of the other accounting records and supporting documentation, the Panamanian agent must maintain copies of the registered shares and the shareholder book for any corporation for which it acts as a resident agent.

Other changes made by Law No. 52

Recordkeeping obligations: The Commercial Code is revised to require that all commercial entities maintain a journal and general ledger, as well as a minute book and a shareholder book.

Noncompliance: The Fiscal Code is modified to establish consequences for the failure to comply with certain tax obligations.

If an entity fails to pay the annual franchise tax in a certain year, it will not be included in the public registry, and certificates relating to the legal entity cannot be expedited. Certifications indicating that the entity is in a state of delinquency will be issued at the request of any relevant authority. However, the delinquency status will not prevent the registration in the public registry of the resignation of members of the entity's management or its resident agent.

The public registry will suspend all corporate rights of legal entities that:

- Do not designate a new Panamanian agent within 90 days after the resignation, removal or termination of the prior resident agent;
- Are in delinquent status with respect to the franchise tax for three consecutive years; or
- Are in delinquent status in relation to the payment of a penalty or fine that has been imposed by a competent authority.

The suspension of a legal entity's corporate rights by the public registry will mean that the entity will be unable to initiate legal processes, conduct business, dispose of its assets, make claims or exercise any right or perform any corporate functions that may be required. However, the legal entity may still:

- Submit a request to reactivate its status in the public registry;
- Manage its defense in any legal proceedings; and
- Proceed with legal proceedings that were instituted before the date of suspension.

Once a legal entity is suspended from the public registry, reactivation cannot be sought for two years. The person requesting the reactivation of the entity must pay a fine of PAB 1,000 and correct the issues that gave rise to the suspension.

If reactivation is not sought for a period of two years after the permissible window for reactivation opens, the public registry will proceed with the permanent cancellation of the legal entity. Once dissolved, the legal entity must follow the proceedings required for liquidation.

Other measures:

- Certification of a Panamanian agent must be issued when a legal entity chooses to change the legal status of the agent.
- A Panamanian agent may resign at any time from a legal entity without having to pay registration fees to the public registry if the agent declares under oath that it is unable to carry out necessary communications with the shareholders of the legal entity it represents or has not received payment of its agent fees for three consecutive years.
- If an owner of bearer shares has not submitted the relevant certificate to the authorized custodian, the shareholder will not be permitted to exercise and economic (and other) rights inherent in such shares.

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