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ENERGY, POWER AND MINING

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Energy & Power

Tax and Investment Incentives for Hydro, Wind and Solar Energy in Panama

The consistent economic growth of Panama has brought to the table in public and private forums the irrefutable reality of an existent need of continuous and reliable source of energy that could guarantee a peaceful performance of national economy for the next years. Nevertheless, although we all agree with that fact, we must also concur that without any strategic planning it is not possible that energy's projects reach on time to fulfill any countries instant and future demand.

During the last years, the Republic of Panama has implemented strong efforts to promote the interconnection and development of new sources of energy that could meet the growing necessity of Panama's industry and population; by enacting a list of laws focused in providing attractive incentives for national and foreign investments. These new laws encourage all energy source projects such as hydro electric plants, LNG plants, eco- friendly plants (Biofuels, Biomass), Wind and Solar energy plants.

The actual national energy industry is diversified with all sort of energy projects, including an innovational wind plant (400Mw) and very soon and a number of solar energy plants.



Please find below a comparative chart of incentives for energy projects.

Energy Industry Incentives

Incentives	Mini-Hydro (10mw)	Small Hydro (10mw-20mw)	Hydro (20mw-above)
Income Tax	5% discount on income tax for facilities developed for public domain	5% discount on income tax for facilities developed for public domain	5% discount on income tax for facilities developed for public domain
Municipal Tax	-	-	-
Import duties	Full exemption	Full exemption	Full exemption
VAT	Full exemption	Full exemption	Full exemption
Special Incentives	Allowed to perform direct purchase agreement with distributors	No distribution or transmission fees for direct sales or spot market for the initial 10mw	Tax incentive for reduction of CO ² emission **Additional comments below
Special Incentives	No distribution or transmission fees for direct sales or spot market	Tax incentive for reduction of CO ² emission **Additional comments below	-
Special Incentives	Tax incentive for reduction of CO ² emission **Additional comments below	-	-
Special Incentives	-	-	-
Special Incentives	-	-	-

Disclaimer: This chart does not constitute a legal opinion or statement as it has only been created for informative purposes. The interpretation and/or procurement of any right or incentive stated in this document will be subject to the procedures and regulations from the governmental office in charge of providing such incentives.

Incentives	Solar	Wind	LNG	Biofuel and Biomass
Income Tax	5% discount on income tax for facilities developed for public domain	5% discount on income tax for facilities developed for public domain	5% discount on income tax for facilities developed for public domain	10 years full exemption including carbon credits income
Municipal Tax	-	-	-	10 years full exemption
Import duties	Full exemption	Full exemption	Full exemption	10 years full exemption
VAT	Full exemption for a list of specific equipments	Full exemption	-	10 years full exemption
Special Incentives	Allowed to apply expedited evaluation method for Solar generation equipments	Allowed to apply expedited evaluation method for Wind generation equipments	Allowed to apply expedited evaluation method for LNG generation equipments	10 years exemption of distribution or transmission fees for spot market trading
Special Incentives	-	No distribution or transmission fees for direct sales or spot market	Manufacturers: 20 years income tax exception	Commercial license fees exemption
Special Incentives	-	Tax incentive for reduction of CO ² emission **Additional comments below	-	10 years exemption National Public Service Authority supervision fees

Additional

The company that develops new projects or that increases the energy production capacity of mini hydroelectric power station systems, geothermal electric power station systems and other new, renewable and clean sources power station systems up to 10 MW of installed power capacity, and that initiates its construction as of August 10, 2004, will be able to opt to obtain an equivalent fiscal incentive of up to the twenty five percent (25%) of the direct investment cost in the respective project, based upon the reduction of tons of equivalent carbon dioxide (CO₂) emissions per year, calculated through the term of the concession or license, which could only be applied to the Income Tax derived in the activity, per fiscal period, during the first ten years, counted as of the beginning of commercial operation of the project, as long as the operations is not subject to other incentives, exonerations, exemptions and/or fiscal credits granted in other laws.

The company that develops new projects or that increases the energy production capacity of small hydroelectric power station systems, hydroelectric power station systems, geothermal electric power station systems and other new, renewable and clean sources power stations of more than 10 MW of installed power capacity that initiates its construction as of August 10, 2004, will be able to choose to obtain an equivalent fiscal incentive up to the twenty five percent (25%) of the direct investment cost in the respective project, based upon the reduction of tons of equivalent carbon dioxide (CO₂) emissions per year calculated through the term of the concession or license, which could only be applied as payment of up to fifty percent (50%) of the Income Tax derived from the activity, per fiscal period, during the initial ten years counted as of the beginning of commercial operation of the project, as long as the operations is not subject to other incentives, exonerations, exemptions and fiscal credits established in other laws.



To determine the total amount of the fiscal incentive, a reference price per ton per year of carbon dioxide (CO₂) equivalent will be used and a base line in metric tons per MW-hour of carbon dioxide (CO₂) equivalent to be applied to the totality of MW-hours estimated to be generated during the concession or license period calculated for each project by the National Authority of Public Services, in coordination with the Ministry of Economy and Finance and the National Environmental Authority.

The company that develops new projects or that increases the energy production capacity of mini hydroelectric power station systems, small hydroelectric power station systems, hydroelectric power station systems, geothermal electric power station systems and other new, renewable and clean source power stations that achieve to sell its carbon dioxide (CO₂) emissions reduction certificates before or after taking advantage of the benefits stated in this Law, will have to report the sale of it certificates to the Tax office in order to deduct this amount from the balance of the fiscal incentive up to twenty five percent (25%) of the respective project direct investment cost.

Mining

Introduction

It was the quest for gold which brought the first men to the Isthmus of Panama. Columbus, during his 4th voyage, personally visited the Cocuyo District on the Atlantic side of the Isthmus. Some 9 tons of gold were produced in Cocuyo by slave labor between 1559 and 1589. The same "sed d'oro" was the motive power of Balboa and Pizarro. Gold built old Panama City. The bullion records of the Spanish archives show that the old "Tisangel" mine was one of the richest they discovered in the Americas.

Another famous gold mine was the "Espiritu Santo de la Cana", located in the Province of Darien near the border with Colombia. The Cana mine continuously produced gold until 1727. This mine was later reopened by the Darien Gold Mining Company and operated until 1907, producing about 4 tons of gold. During the early 19th century, new gold mining areas were discovered in Remance, Lajillas, Rio Torio, Santa Fe and Cañazas, all in the Province of Veraguas.

On September, 1990, the Department of Mineral Resources of Panama together with the Swedish Geological International Company (SGAB), after three (3) years of evaluations and grassroots explorations, completed and formally presented a "Mineral Inventory Report" which identifies three (3) large numeralized areas with considerable gold and silver potential. One of the main aims was to locate areas of commercial interest to mining companies.

Panama is part of the Circum-Pacific ring of gold and its geology offers optimal conditions for gold-rich deposits.



None of the persons mentioned below can obtain, exercise or enjoy mining concessions:

- A) Foreign governments or states, or any entity or official or semi-official institutions.
- B) Government officers or employees up to one year after leaving office. These provisions extend to family relatives.
- C) Persons in arrears with the National Tax Office.

It is worth mentioning that foreign owned corporations controlled directly or indirectly by a foreign state are permitted to obtain mining concessions or invest in mining concessions. Such was the case with First Quantum \$6 billion copper project in Panama, where both Korean and Singaporean companies indirectly owned by their governments invested in said project.

Advantages of Investing In Mining

The new democratic government of the Republic of Panama has undertaken as its main priority the country's economic recovery through the promotion of foreign investments in specific areas, such as Mining.

Panama now offers political stability and a unique business climate to foreign investors in mining. Main advantages to be taken into account are:

- The US Dollar is legal tender and, thus, there is a total absence of metals and exchange controls.
- No restrictions on 100% foreign owned investments and no controls on capital repatriations.
- One of the most flexible Corporation's Laws in the world.
- Panama has areas of evident mining potential.
- Panama has certain skilled labor for mining.

Panama has a new mining legislation stating, inter alia, the following:

- A clear system to obtain a concession.
- Total guarantee that the foreign investor in exploration has the exclusive right to extraction.
- A new classification of minerals following modern mining principles.
- Exploration concessions are granted for a period of four (4) years, renewable for two (2) additional periods of two (2) years.
- Extraction concessions are granted for twenty (20) to twenty five (25) years, depending on the class of mineral, renewable for three (3) periods of ten (10), five (5) and five (5) years, respectively.
- Multiple tax incentives

Setting Up Operations

Panamanian law recognizes different forms of juridical persons, including:

- General partnerships.
- Limited partnerships.
- Stock issuing limited partnerships.
- LLC
- Corporations (including joint venture corporations)
- Branches

Notwithstanding the above, the most advisable forms to structure a foreign mining investment are either a Corporation (or subsidiary), an LLC or a Branch of a Foreign Corporation.

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Corporation

Usually, Panama corporations are formed as wholly-owned subsidiaries of a foreign corporation, as branches, LLCs or as a joint venture corporation for a specific project. It is worth noting that mere joint ventures do not have a legal identity separate from the joint venturers under Panamanian law.

Other Requirements

Upon incorporation, the Corporation, LLC or Branch, will be required to prepare and file applications for concessions, liaise with government institutions, prepare and negotiate agreements, hire accountants, etc. and Pardini & Asociados will be there to assist you.

Investment and Tax Incentives

Besides all the advantages mentioned before, new mining legislation introduced in 1988, as amended in 2012, substantially amended the existing regulations and placed Panama in an outstanding position to attract foreign investments in mining through the following incentives:

- A reasonable rental fee per hectare per year of approximately USD 1 to USD 3 during exploration. Exploration rental fees can be set-off against exploration expenses up to 75% of the total rental fees payable within a fiscal year.
- A production royalty of 4% for all minerals and of 8% for precious minerals, both calculated over the gross production.
- Loss carry-forward for three (3) years after the fiscal period in which they were originated.
- A depletion allowance deduction may be applied annually based on the mineral reserves and the units extracted.
- Accelerated depreciation of assets.

- Total exemption from import taxes and custom duties for all equipment, spare parts and materials required for the development of mining operations.
- Total exemption from export taxes.

The land rental fee by hectare as well as the royalty applicable to extraction concessions will be:

Class	First 5 years	From 6 to 10 years	After 10 years	Royalties
I	1.50	3.50	4.50	
II	2.00	4.00	6.00	5%
III	2.00	4.00	6.00	8%
IV	2.00	5.00	7.00	4%
V	1.50	3.00	4.00	4%
VI	3.00	6.00	8.00	6%

Should you have any questions or need any additional information, please contact us.

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About the Firm

Pardini & Asociados is an international law firm with headquarters in Panama with 35 years of tradition and experience advising foreign clients and corporations of all sizes.

Pardini & Asociados was founded in 1982 with an original practice in Corporate, Commercial, Admiralty and Maritime law, which still continues today.

Since then, our law firm has been at the forefront of many innovative legal developments and during the past 15 years, the law firm has developed a highly specialized practice in foreign investments mainly in the areas of Aviation, Hotels & Resorts, Real Estate, Petroleum, Energy, Mining, Telecommunications, Tax Planning, Intellectual Property, Insurance and Reinsurance, M&As, Banking, Securities, Antitrust and Competition, Manufacturing, Infrastructure, Construction, Litigation plus a strong expertise in Labor and Immigration.

Core Strengths

We offer legal services linked to a broad scope of business needs. Our clients look for us for our experience and knowledge in any of these practice disciplines, our innovation and cost-effective results.

Our team is composed for the best legal specialists in different areas with a deep expertise in all major business sectors.

How we can help you

- Aviation
- Antitrust, Trade & Competition
- Banking & Securities
- Commercial
- Corporate & Transactional
- Employment
- Energy
- Foreign Investments
- Hotels, Resorts & Casinos
- Immigration & Residence
- Infrastructure & Construction
- Insurance & Reinsurance
- IP
- Latin American Practice
- Litigation & Arbitration
- Maritime and Admiralty Law
- Mining, Petroleum & Natural Resources
- Telecommunications & Information Technology
- Wealth, Fiduciary & Corporate Services



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Ranking & Awards

Who's Who Legal

Natural Resource and Transport
2016 / 2017

Private Client, Energy and Aviation - Central America
2018

ACQ Law and Global Award

M&A and Corporate Law Firm of the Year
2013 / 2014 / 2015

Real Estate Law Firm of the Year
2017

Corporate INTL

Aviation Law Firm of the Year in Panama
2012 / 2013 / 2014 / 2017 / 2018

Shipping & Maritime Law Firm of the Year in Panama
2016 / 2018

Acquisition International

Mining & Energy Law Firm of the Year: Panama
2012 / 2013

Business Law Firm of the Year
2014

Dispute Resolution Award
2014 / 2015

Corporate Law Firm & Business Law Firm of the year – Panama
2014

Best Foreign Investments Law Firm - Panama
2016 / 2018

Global 100

Corporate and Litigation Law Firm of the Year
2013 / 2015

Corporate Law Firm of the Year - Panama
2016

Energy and Petroleum Law Firm of the Year - Panama
2016

Real Estate Law Firm of the Year - Panama
2016

Law Firm of the Year - Corporate – Panama
2017 / 2018

Getting the Deal Through

National Expert - Air Transport
2017 / 2018

Legal 500

Dispute Resolution
2017

CityWealth Leaderlist

Lawyers – Corporate and Regulatory
2017