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ENERGY POWER AND MINING

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Contents

1. Energy & Power

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

2. Mining

- Introduction
- Advantages of Investing in Mining
- Setting up Operations
- Investment and tax incentives

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If you have any specific questions about any legal matter, contact us.

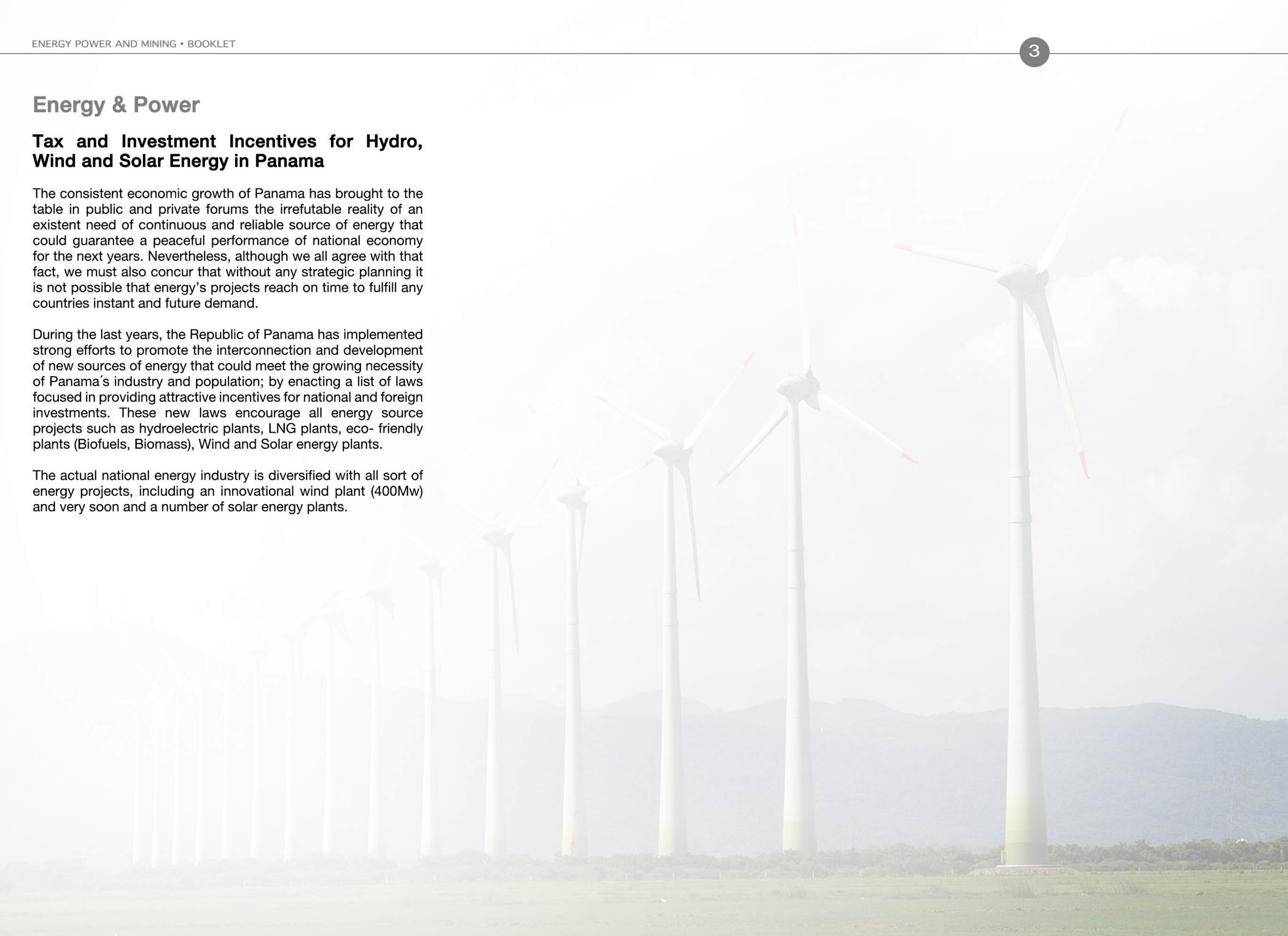
Energy & Power

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 hydroelectric 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) | Smal Hydro (10mw-20mw) | Hydro (20mw-above) | 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 | 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 | Full exemption | Full exemption | Full exemption | 10 years full exemption |
| VAT | Full exemption | Full exemption | Full exemption | Full exemption for a list of specific equipment | Full exemption | - | 10 years 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 CO2 emission **Additional comments below | 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 | Tax incentive for reduction of CO2 emission **Additional comments below | - | - | 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 CO2 emission **Additional comments below | | - | - | Tax incentive for reduction of CO2 emission **Additional comments below | - | 10 years exemption National Public Service Authority supervision fees |
| Special Incentives | - | - | - | - | - | - | - |
| Special Incentives | - | - | - | - | - | - | - |

Additional Comments to the Chart

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

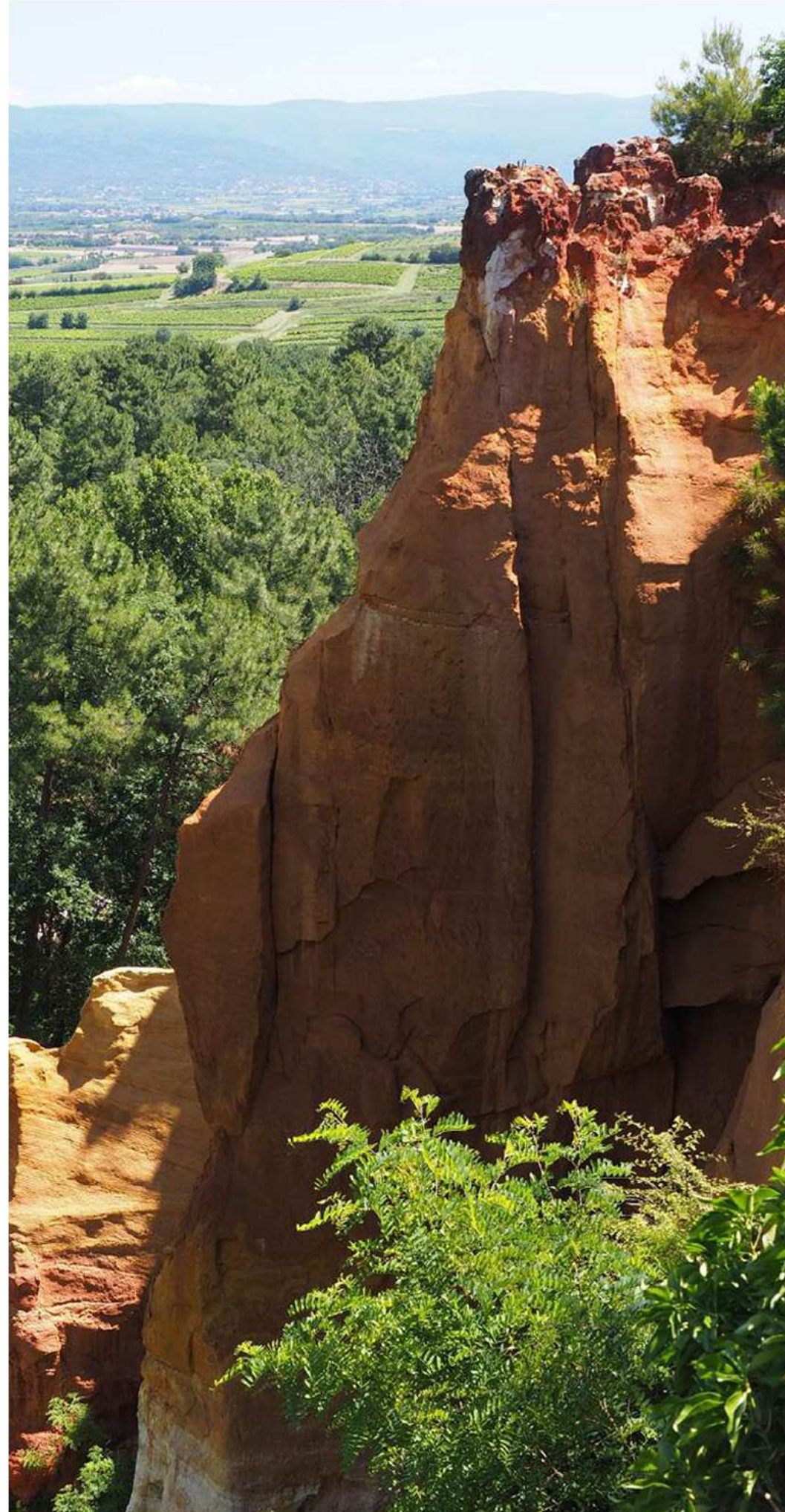
Introduction

Panama does not have a developed mining industry, even though geological surveys carried out in the early to mid-20th century suggest that it has large deposits of copper, gold, manganese, silver and other minerals. For the greater part of its history as an independent nation, mining activity in Panama has been practically restricted to the extraction of materials needed for the construction industry.

The above geological surveys indicated that some of the mineral deposits in Panama might be regarded as being world class. Since the late 1960s, international mining companies and other multinational organisations (such as the United Nations) have sponsored further geological surveys and exploration activities that have confirmed Panama's mining potential.

There are at least two significant copper deposits in Panama: Cerro Colorado and Cerro Petaquilla. Cerro Colorado is located on the western part of Panama (formerly part of the Chiriqui and Veraguas provinces, but now part of the Ngäbe-Buglé autonomous region) and is considered one of the largest copper deposits in the world. In the 1980s, Rio Tinto conducted significant exploration activities in Cerro Colorado, but opposition by local residents and environmental groups prevented the further development of the project, which remains unexploited.

Cerro Petaquilla (also known as "Cobre Panama") is another world-class copper deposit. In the past ten years, First Quantum Minerals Ltd., of Canada, through its Panamanian subsidiary Minera Panama, S.A., has invested more than USD6 billion in the construction of mining infrastructure for the exploitation of Cobre Panama, which started production in 2019 (the first exports of copper took place in June 2019). The Cobre Panama mine is one of the ten largest mining operations in the world.



Despite these developments, on 27 November 2023, the Panama Supreme Court unanimously held that the Cobre Panama concession was unconstitutional. With no legal basis to continue operations, Minera Panama, S.A. proceeded to halt mining activities, and the Cobre Panama site is now in care and maintenance.

Panama also has important gold deposits. In the 1990s, two gold mines were in operation in the Veraguas province: Mina Santa Rosa and Remance. Between 2010 and 2014, Petaquilla Gold (an affiliate of Petaquilla Minerals Ltd., of Canada) developed the Molejon gold deposit in Cerro Petaquilla (adjoining the copper deposit). There are other untapped gold deposits in Panama, such as the Cerro Quema gold deposit in the Azuero region.

Despite all the promising deposits in the country, as a result of the public clamour and protests against metal mining, the government of Panama approved Law 407 of 2023, which established a ban on new metal mining concessions. As a result of this law, except for some minor metal mining operations in Panama, no further metal mining concessions are to be issued.

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 Laws in the world.
- Panama has areas of evident mining potential.
- Panama has certain skilled labor for mining.

Legal System governing Mining in Panama

The legal system in Panama is based on European civil law. Spanish and French laws have had great influence in the development of the Panamanian legal system.

Legislation in Panama (including laws applicable to mining activities) is enacted by the National Assembly (the legislative body of the government of Panama), sanctioned by the President and published in the Official Gazette.

The Code of Mineral Resources of Panama (adopted by means of Law Decree No 23 of 1963, as amended) (CMR) is the legal body governing most activities relating to Panama's mineral deposits (other than hydrocarbons). The CMR sets up a regime for the granting of concessions to private individuals for the exploration and/or extraction of mineral deposits. In the case of minerals used in the construction industry (sand, gravel, clay, etc), the CMR has been supplemented by Laws 55 and 109 of 1973, and Law 32 of 1996, to create a separate regime for the granting of concessions relating to those minerals

Ownership of Mineral Resources

Article 257 of the Political Constitution of Panama declares that all mineral deposits belong to the state. The CMR further develops and regulates the constitutional provision and provides for the granting of concessions to private individuals for the purposes of exploring and/or extracting minerals. Before being extracted, such minerals belong to the state, but the concession holder will own them upon their extraction, subject to the terms of the concession.

Surface rights (ie, ownership of land) may be owned by private individuals or the state. However, the mineral riches underneath such lands belong to the state regardless of the ownership of the lands. In practice, the government awards concessions to explore or extract minerals from deposits located underneath lands owned by parties other than the concession holder.

The law grants holders of concessions reasonable rights of access to, and use of, water, timber and soil within the areas covered by their concessions, subject to permission from the owner of the surface lands and/or the Ministry of the Environment.

Features of Concessions and Permits

Exploration concessions grant their holders three key rights:

- The right to engage in preliminary geological work (as would also be conferred by a prospecting permit);
- The exclusive right to engage in all necessary exploration and related activities with respect to specific types of minerals within the zone constituting the concession; and
- The exclusive right to be awarded an extraction concession over the relevant area if minerals in commercial quantities are discovered during exploration activities.

Exploration concessions are available for initial periods of four years, subject to two discretionary extension periods of two years each.

A holder of a valid exploration concession benefits from the exclusive right to apply for an extraction concession in the same area. The CMR also provides for the award of extraction concessions over minerals not currently subject to exploration activities. Extraction concessions are granted for:

- an initial period of 25 years and a maximum area of 5,000 hectares for base metals;
- an initial period of 20 years and a maximum area of 5,000 hectares for alluvial precious metals; and
- an initial period of ten years and a maximum area of 3,000 hectares for non-alluvial precious metals.

Extraction concessions may be extended, at the discretion of the NDMR, for three periods, the first one of ten years and the last two of five years each. In the case of construction materials, such concessions are granted for an initial period of ten years and a maximum area of 500 hectares, and their term may be extended for an additional ten-year period.

Corporate SPV

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.

ABOUT THE FIRM

Pardini & Asociados is an international law firm with headquarters in Panama with 43 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 all areas listed below.

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.

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RANKING & AWARDS





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