

Private Client

Contributing editors

Anthony Thompson and Nicole Aubin-Parvu



2019

GETTING THE
DEAL THROUGH

GETTING THE
DEAL THROUGH 

Private Client 2019

Contributing editors

Anthony Thompson and Nicole Aubin-Parvu

Forsters LLP

Reproduced with permission from Law Business Research Ltd
This article was first published in November 2018
For further information please contact editorial@gettingthedealthrough.com

Publisher
Tom Barnes
tom.barnes@lbresearch.com

Subscriptions
James Spearing
subscriptions@gettingthedealthrough.com

Senior business development managers
Adam Sargent
adam.sargent@gettingthedealthrough.com

Dan White
dan.white@gettingthedealthrough.com



Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 3780 4147
Fax: +44 20 7229 6910

© Law Business Research Ltd 2018
No photocopying without a CLA licence.
First published 2012
Seventh edition
ISBN: 978-1-78915-053-7

ISBN 978-1-78915-053-7

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer-client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. The information provided was verified between September and October 2018. Be advised that this is a developing area.

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112



CONTENTS

Global overview	5	India	65
Anthony Thompson and Nicole Aubin-Parvu Forsters LLP		Rajesh Narain Gupta and Anju Gandhi SNG & Partners, Advocates & Solicitors Ashok Natwarlal Shah N A Shah Associates LLP	
Andorra	7		
Jose Maria Alfin and Marc Urgell Cases&Lacambra		Ireland	71
Austria	11	John Gill and Lydia McCormack Matheson	
Paul Doralt, Katharina Binder, Elmar Drabek and Siegfried Podda-Prewett Dorda Rechtsanwälte		Japan	76
Belgium	15	Kenichi Sadaka and Akira Tanaka Anderson Mōri & Tomotsune	
Saskia Lust and Barbara Albrecht Loyens & Loeff		Liechtenstein	83
British Virgin Islands	20	Thomas Nigg Gasser Partner Attorneys at Law	
Robert Lindley Conyers Dill & Pearman		Malta	87
Cayman Islands	24	Ramona Azzopardi, Sonia Brahmi and Marlene Cini WH Partners	
Robert Lindley and Erik Bodden Conyers Dill & Pearman		Monaco	93
Colombia	28	Christine Pasquier-Ciulla and Regina Griciu CMS Pasquier Ciulla Marquet & Pastor	
Rodrigo Castillo Cottin, Ana Maria Lopez and Hanspeter Misteli Reyes Baker McKenzie		Netherlands	98
Cyprus	33	Dirk-Jan Maasland and Jules de Beer Loyens & Loeff NV	
Despina Sofokleous and Lorenzo Toffoloni Andreas Th Sofokleous LLC		Panama	104
Dominican Republic	39	Juan F Pardini, Eduardo Achurra and Juan R Sevillano Pardini & Asociados	
Maria Arthur Arthur & Castillo (AC Law)		Poland	108
England and Wales	44	Sławomir Łuczak and Karolina Gotfryd Sołtysiński Kawecki & Szlęzak	
Anthony Thompson, Nicole Aubin-Parvu, Katie Coles and Alfred Liu Forsters LLP		Singapore	114
France	54	Ronald Choo and Samantha Ng Ronald Choo LLC	
Maryse Naudin Tirard, Naudin – Société d’Avocats		Spain	118
Germany	60	Ernesto Lacambra and Marc Montserrat Cases & Lacambra	
Andreas Richter and Katharina Hemmen P+P Pöllath + Partner		Switzerland	122
		Natalie Peter and Claude Blum Blum & Grob Attorneys at Law Ltd	
		United States	127
		Stephen K Vetter and Eric Dorsch Kozusko Harris Duncan	

Preface

Private Client 2019

Seventh edition

Getting the Deal Through is delighted to publish the seventh edition of *Private Client*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Andorra, Colombia, Ireland, Netherlands, Panama, Singapore and Spain.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Anthony Thompson and Nicole Aubin-Parvu of Forsters LLP, for their continued assistance with this volume.

GETTING THE
DEAL THROUGH 

London
October 2018

Panama

Juan F Pardini, Eduardo Achurra and Juan R Sevillano

Pardini & Asociados

Tax

1 How does an individual become taxable in your jurisdiction?

Residents and non-residents of Panama are subject to taxation.

Panama tax law is based on the territoriality principle whereby, all foreign source income is exempted, but income and revenue produced within Panama are subject to Panamanian tax.

In other words, income tax is levied on all revenue produced within the boundaries of Panama, irrespective of where the income is received and of the domicile or residence of the taxpayer. Activities that take place outside of Panama are considered foreign source income and not liable to tax.

2 What, if any, taxes apply to an individual's income?

Based upon our previous answer, an individual's income generated from salaries, business investment or commercial activities within Panama will be subject to income tax or taxes (capital gain, VAT, dividend, interests, etc).

Income tax chart

Taxable income	Tax rate
Up to US\$11,000	0%
From 11K up to US\$50,000	15% for the exceeding of US\$11,000 up to 50,000
More than 50,000	US\$5,850 for the first 50,000 and a rate of 25% for any amount above of US\$50,000

3 What, if any, taxes apply to an individual's capital gains?

Capital gains derived from the sale of securities and negotiable instruments are subject to a 10 per cent tax. The purchaser must withhold 5 per cent of the sales price as an advance payment of income tax and remit that amount to the tax authorities.

Profits from the sale or transfer of real property are considered capital gains. If the transaction giving rise to the gain is part of the taxpayer's ordinary business activities, the gain is subject to the corporate tax rate; if the transaction is not part of the taxpayer's ordinary business activities, the gain is tax at a reduced rate of 10 per cent. However, in the latter case, the purchase must withhold 3 per cent of the higher of the purchaser price or the ratable value of the property as an advance payment of tax.

4 What, if any, taxes apply if an individual makes lifetime gifts?

In Panama, there are no taxes applicable to lifetime gifts.

5 What, if any, taxes apply to an individual's transfers on death and to his or her estate following death?

In Panama, there are no succession taxes.

6 What, if any, taxes apply to an individual's real property?

In accordance with Panama's tax legislation (updated in 2017), individuals owning real property are subject to pay property taxes every year – see with the following chart.

Property tax chart – main family property

Property value	Tax rate
US\$0 to US\$120,000	Exempted
US\$120,000 to US\$ 700,000	0.5%
US\$700,000 and above	0.7%

Second properties and commercial real estate

Property value	Tax rate
US\$0 to US\$ 30,000	Exempted
US\$30,000 to US\$ 250,000	0.6%
US\$250,000 to US\$ 500,000	0.8%
US\$500,000 and above	1.0%

It is quite important to note that any property tax exemptions granted prior to the new property tax legislation will be honoured in accordance with the time frame awarded.

7 What, if any, taxes apply on the import or export, for personal use and enjoyment, of assets other than cash by an individual to your jurisdiction?

Import duties, value added tax or luxury could apply for the import of goods.

VAT at 7 per cent is the general basis; however, some products are subject to 10 per cent or even up to 15 per cent VAT:

- import duties are based on the goods;
- luxury tax – zero up to 25 per cent;
- taxes are calculated on CIF value; and
- import of goods up to US\$100 are exempted from VAT and duties.

8 What, if any, other taxes may be particularly relevant to an individual?

Residents and non-residents of Panama are subject to indirect taxes, which are related to the consumption of goods or use of services.

VAT is normally 7 per cent and it is applied to several goods and services.

Luxury tax may apply to several goods such as cigarettes and tobacco, liquor, jewellery, vehicles and others. The applicable rate will vary upon the goods or services.

9 What, if any, taxes apply to trusts or other asset-holding vehicles in your jurisdiction, and how are such taxes imposed?

Asset-holding vehicles including trusts, corporations or foundations are not taxable as long as they do not generate income and revenues within Panama. If such vehicles produce income and revenue within Panama, then they will be taxable at the corporate rate of 25 per cent from net revenue.

10 How are charities taxed in your jurisdiction?

Charities officially registered as non-profit entities before the Ministry of Government and the Tax Office will not be subject to taxation on income received from donations.

Donors to officially registered charities will be able to deduct any donation performed.

Trusts and foundations

11 Does your jurisdiction recognise trusts?

Panama law caters for all the main types of trust normally found in traditional common law jurisdictions, such as:

- discretionary trusts
- fixed interest trusts
- charitable trusts
- investment trusts
- real estate trusts; and
- others.

One of the basic features of taxation of trusts in Panama is that, unlike in many other Latin American countries, where in the case of trusts with settlors as beneficiaries the taxpayer is the settlor-beneficiary him or herself, in all cases in Panamanian trusts the taxpayer is deemed to be the trustee in his or her capacity as such, an obligation limited to the tax liability generated by the trust fund and to the extent of the trust fund itself, in accordance with the principle that the trust is a separate patrimony from that of the trustee.

The territorial tax system immediately assures the settlor that no income other than that generated within Panama, and only from non-exempt sources, will be taxed. Panama law expressly provides that, once a beneficiary has received trust property from a trust intended to have effect after the death of the settlor, all income deriving from such transfer is income tax exempt in Panama, making an excellent case for looking into suitable residence arrangements either in Panama itself, or in a country where foreign source income is only taxed on remittances.

It should be pointed out that there is no estate tax, succession tax, or any kind of forced heirship legislation in Panama or recognition of foreign forced heirship rulings. Once an individual has transferred property into a Panama trust structure during his or her lifetime, no one can claim any rights over that property by way of right of inheritance unless they are named beneficiaries of the trust.

Panama's trust law also allows settlors to establish trusts governed by a foreign law, and foreign trusts are fully recognised. Panama is a signatory to the Treaty of Bustamante. Panama is not a party to the Hague Convention on the Law Applicable to Trusts and on their Recognition; however, the Trust Law complies with the trust concepts expressed therein. Panama law ensures that rules such as forced heirship do not apply. A properly executed foreign trust will be recognised and enforced in Panama, provided that the settlor and the trustee agree to abide by the formalities and requirements of Panama law. The trustee individually can make this statement, if so authorised by the trust deed. Accordingly, foreign investors seeking to use a Panama trust to streamline their assets or organise their estate need not worry about the Panama public policy rules.

12 Does your jurisdiction recognise private foundations?

Foundations fully own the assets contributed to them and are managed by a foundation board or council. The founder of the foundation (the person establishing the foundation) normally establishes the foundation for a particular purpose. The organs of the foundation are strictly bound to this purpose. The founder decides the beneficiaries of the foundation and to which benefits the beneficiaries are entitled. All the intentions of the founder are written down in the by-laws of the foundation. The foundation board is entitled to distribute assets to the beneficiaries of the foundation, based on the by-laws of the foundation. The founder can also appoint an adviser or guardian to control the foundation board.

Significant advantages are offered by the Panama Private Interest Foundation. The following are some highlights:

- total exemption of taxes in Panama, including, without limitation, income tax, wealth tax, real estate tax, inheritance tax, sales and transfer tax and others;
- there is no legal requirement to disclose the name of the real founder, beneficiary or protector;
- there is no requirement to file any annual tax return or financial statement;
- there is no obligation to hold an annual meeting of the foundation council, the founders or the protectors;

- there is no legal requirement of maximum authorised capital;
- the payment of the foundation capital is not required for the incorporation of the foundation and there is no maximum time or deadline to make such contribution;
- there is no limitation in respect of perpetuities, accumulation of capitals and other restrictions which are required in similar structures in other jurisdictions, such as the Anglo-Saxon or common law trust;
- the private interest foundation can engage in any business or civil transactions (only in exceptional cases) in part of the world and in any currency;
- the founders, members of the foundation council, beneficiaries and protectors may be individuals or corporations of any nationality;
- the members of the foundation council need not be founders;
- the founders, the protectors and the members of the foundation council may be beneficiaries of the foundation;
- there is no limitation on the maximum permitted number of founders, members of the foundation council, beneficiaries or protectors;
- the founders and the members of the foundation council may hold their meetings in any country and may be represented by proxy;
- the foundation's books and accounting books may be maintained in Panama or abroad;
- the foundation charter can be signed by an attorney in fact or by a trustee without the need to disclose the name of the founder; and
- private interest foundations incorporated in other countries can be redomiciled or continue existing as Panama private interest foundations and vice versa following a simple continuation procedure.

Same-sex marriages and civil unions

13 Does your jurisdiction have any form of legally recognised same-sex relationship?

Panama has not yet recognised any form of legalised relationship status for same-sex couples.

14 Does your jurisdiction recognise any form of legal relationship for heterosexual couples other than marriage?

Panamanian law does not recognise any type of legalised union among heterosexual couples other than marriage. There are many forms to acquire a marriage status, such as a common law marriage, although this one does not produce any legal effects, unless the couple request the recognition of their common law marriage, before the authorities, which will immediately transform the status from single to married, therefore, still constituting the same type of legal marriage relationship duly recognised by law.

Succession

15 What property constitutes an individual's estate for succession purposes?

Any assets located in Panama, whether registered or non-registered, in the possession of a person, and whether included in the person's will or not, are subject to be inherited through a succession process.

16 To what extent do individuals have freedom of disposition over their estate during their lifetime?

During their lifetime, adults are entitled to dispose of their assets, as long as they have complete control over them, in any way they find suitable for their conditions, without any boundaries that might limit their will.

17 To what extent do individuals have freedom of disposition over their estate on death?

As long as a person prepares a will in time and through the valid means recognised by the law, in principle, the freedom of disposition of a person's estate is total in Panama.

Nonetheless, there are some variables that can limit their will to secure some interests. A person may be limited in disposing a part of the estate in those cases where the testator has an underage child or an adult son or daughter who is under 25 and is still completing education, or an adult son or daughter who is incapable of sustaining him or herself owing to a medical condition, in order to provide them enough funds to cover financial support or their needs.

In any of the previously mentioned cases, the will can be approved, although if a person appears before a judge after the death of the testator claiming support for a child under these conditions, the judge will limit the estate of the deceased and ensure the provision of sufficient funds from the estate to cover the child's support.

On the other hand, if the deceased does not leave a will, a judge, after submitting a motion, will dispose of the deceased's estate in favour of his or her legally recognised married partner and recognised sons or daughters.

18 If an individual dies in your jurisdiction without leaving valid instructions for the disposition of the estate, to whom does the estate pass and in what shares?

If an individual dies in Panama without leaving valid instructions for the disposition of the estate, after the submitting of a motion a judge will dispose of the deceased's estate in favour of the deceased's legally recognised married partner and recognised sons or daughters in equal parts. If there is no wife or sons, it will go to their closest ascendants. If there are no ascendants alive, the estate will go to the closest relative. If there are no relatives, the assets will be transferred to the government.

19 In relation to the disposition of an individual's estate, are adopted or illegitimate children treated the same as natural legitimate children and, if not, how may they inherit?

If an individual dies without leaving valid instructions for the disposition of the estate, there is no difference between adopted or illegitimate children among natural legitimate children. But if the individual did not prepare a valid will, the law will not recognise the rights of an illegitimate or unrecognised son. Properly registered adopted children will always be treated as a natural legitimate child.

20 What law governs the distribution of an individual's estate and does this depend on the type of property within it?

The Civil Code is the statute that governs the distribution of an individual's estate regardless of the type of property within it. Nonetheless, the location of the assets determines the applicable law, therefore *lex situs* governs all matters in Panama relative to the estate.

21 What formalities are required for an individual to make a valid will in your jurisdiction?

There are three types of will valid in Panama. The simplest one is a handwritten sheet of paper signed by the individual. The only formality required for this type of will is that it has to be written and signed by a person of legal age and it has to include the date on which it was signed.

The most commonly used type of will is a deed drafted by a Panamanian lawyer, properly notarised by a Panamanian notary.

22 Are foreign wills recognised in your jurisdiction and how is this achieved?

Foreign notarised wills are recognised under Panamanian law. As long as the will complies with the formalities established by the law of the country in which it was rendered and the document is legalised by apostille under the Hague Convention or by a legalisation process at the Consulate of Panama, the document will be valid and executable in Panama.

23 Who has the right to administer an estate?

According to Panama law, a testator has the authority to designate a person to administer the estate. If there is no determination on the will, the court will appoint an administrator of the estate.

The only limitation, according to our law, is that the administrator must be a person of age, capable of undertake legal obligations.

24 How does title to a deceased's assets pass to the heirs and successors? What are the rules for administration of the estate?

The only way to pass title over the deceased's assets is through a judicial process before a Panama court.

Depending on the successor's age and conditions, commonly there are no administrators, unless there are under age child or persons with limited capabilities that might not be able to freely dispose of their assets.

Normally, the assets remain under the same conditions, while heirs go through the process before the court until the judge renders a judgment recognising their rights as successors.

25 Is there a procedure for disappointed heirs and beneficiaries to make a claim against an estate?

Within the required judicial process, there is a phase, in which disappointed heirs, beneficiaries or even creditors are able to show up before the court and submit a motion supporting their claimed right.

This phase begins with a public announcement that the deceased's succession process has been opened, rendered by the court and published on a national journal by the heirs, for five consecutive days.

Capacity and power of attorney

26 What are the rules for holding and managing the property of a minor in your jurisdiction?

In cases in which the one or more heirs are underage children, the court will appoint an administrator of their assets until they reach the age of 18. Most of the time, this administrator is the same living relative who retains custody of those children.

The rules for holding and managing the property of a minor are open to the testator's will. If the deceased does not leave instructions, then the rules of the Panama Civil Code will apply.

27 At what age does an individual attain legal capacity for the purposes of holding and managing property in your jurisdiction?

An individual attains legal capacity for the purposes of holding and managing property at the age of 18.

28 If someone loses capacity to manage their affairs in your jurisdiction, what is the procedure for managing them on their behalf?

If a person loses the capacity to manage his or her affairs, a judge must declare him or her incompetent and appoint an administrator of his or her assets. Normally, this is decided in a custody process, in which a relative requests to be named custodian, and after the court's judgment this person may gain administration powers over the assets.

Immigration

29 Do foreign nationals require a visa to visit your jurisdiction?

Panama is visa-free for an extensive list of countries; nevertheless, the immigration authorities do have a list of citizens that require a travel visa for Panama as such countries are considered a massive migration risk or a threat to local economy.

Some citizens may have more restrictions than others.

30 How long can a foreign national spend in your jurisdiction on a visitors' visa?

In general, a foreign national may stay in Panama up to six months. Nevertheless, for some citizenships the immigration authorities have limited the stay time to one month or up to three months.

31 Is there a visa programme targeted specifically at high net worth individuals?

There are few programmes that could be considered as targeted at high-net-worth individuals based upon the investment amount (ie, a person of means programme, free trade zone investor, large investor programme, second passport and others).

32 If so, does this programme entitle individuals to bring their family members with them? Give details.

Panama's immigration regulations entitle the principal applicant to claim family members as dependents under the following rules:

- her or she is the principal applicant's parents;
- he or she is the principal applicant's spouse;
- they are principal applicant's children up to 18 years old; and
- they are the principal applicant's children between 18 and 25 years if such children are still under the economical protection of the applicant as well as attending university or a college.

33 Does such a programme give an individual a right to reside permanently or indefinitely in your jurisdiction and, if so, how?

Depending on the residency programme, the granting of permanent residency status could be in different stages.

There are two immigration residency programmes that grant immediate permanent residency status to the applicant, which are the retiree and the friendly nation programmes.

- Retiree - The principal applicant must be receiving from a government or private entity a lifetime pension of no less than US\$1,000 per month.
- Friendly nation programme - The principal applicant must be from a citizenship considered as part of the friendly nation list and further comply in creating an economic link with Panama by means of setting up a business or purchasing a real estate. Unlike other programmes, there is no specific amount for the investment.
- Other programmes, such as the investor and some employment programmes, initially grant a two-year temporary residency status and further the right to apply for a permanent residency status.

34 Does such a programme enable an individual to obtain citizenship or nationality in your jurisdiction and, if so, how?

All permanent residency programmes (friendly nation, investors or employment) grant the applicant the right to apply for citizenship after seven years. However, the retiree programme is not included.



**Pardini &
Asociados**
Attorneys • Abogados

**Juan F Pardini
Eduardo Achurra
Juan R Sevillano**

pardini@padela.com

Plaza 2000 Tower, 10th Floor
50th Street
Panama City
Panama

Tel: +507 223 7222
Fax: +507 223 7535
www.pardinilaw.com

Getting the Deal Through

Acquisition Finance
Advertising & Marketing
Agribusiness
Air Transport
Anti-Corruption Regulation
Anti-Money Laundering
Appeals
Arbitration
Art Law
Asset Recovery
Automotive
Aviation Finance & Leasing
Aviation Liability
Banking Regulation
Cartel Regulation
Class Actions
Cloud Computing
Commercial Contracts
Competition Compliance
Complex Commercial Litigation
Construction
Copyright
Corporate Governance
Corporate Immigration
Corporate Reorganisations
Cybersecurity
Data Protection & Privacy
Debt Capital Markets
Dispute Resolution
Distribution & Agency
Domains & Domain Names
Dominance
e-Commerce
Electricity Regulation
Energy Disputes
Enforcement of Foreign Judgments
Environment & Climate Regulation
Equity Derivatives
Executive Compensation & Employee Benefits
Financial Services Compliance
Financial Services Litigation
Fintech
Foreign Investment Review
Franchise
Fund Management
Gaming
Gas Regulation
Government Investigations
Government Relations
Healthcare Enforcement & Litigation
High-Yield Debt
Initial Public Offerings
Insurance & Reinsurance
Insurance Litigation
Intellectual Property & Antitrust
Investment Treaty Arbitration
Islamic Finance & Markets
Joint Ventures
Labour & Employment
Legal Privilege & Professional Secrecy
Licensing
Life Sciences
Loans & Secured Financing
Mediation
Merger Control
Mining
Oil Regulation
Outsourcing
Patents
Pensions & Retirement Plans
Pharmaceutical Antitrust
Ports & Terminals
Private Antitrust Litigation
Private Banking & Wealth Management
Private Client
Private Equity
Private M&A
Product Liability
Product Recall
Project Finance
Public M&A
Public-Private Partnerships
Public Procurement
Rail Transport
Real Estate
Real Estate M&A
Renewable Energy
Restructuring & Insolvency
Right of Publicity
Risk & Compliance Management
Securities Finance
Securities Litigation
Shareholder Activism & Engagement
Ship Finance
Shipbuilding
Shipping
Sovereign Immunity
State Aid
Structured Finance & Securitisation
Tax Controversy
Tax on Inbound Investment
Telecoms & Media
Trade & Customs
Trademarks
Transfer Pricing
Vertical Agreements

Also available digitally

Online

www.gettingthedealthrough.com