

Private Client

2020

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Forsters LLP

Lexology Getting The Deal Through is delighted to publish the eighth edition of *Private Client*, which is available in print and online at www.lexology.com/gtdt.

Lexology 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 Lexology 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 Guernsey and Jersey.

Lexology 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.lexology.com/gtdt.

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.

Lexology 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.

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Contents

Global overview	3
Anthony Thompson and Nicole Aubin-Parvu Forsters LLP	
Andorra	5
José María Alfín, Marc Urgell and Júlia Pons Cases & Lacambra	
Austria	10
Paul Doralt, Katharina Binder, Elmar Drabek and Siegfried Poddla-Prewett Dorda Rechtsanwälte	
Belgium	15
Saskia Lust and Barbara Albrecht Loyens & Loeff	
British Virgin Islands	21
Robert Lindley Conyers	
Cayman Islands	26
Robert Lindley and Wesley O'Brien Conyers	
Colombia	31
Rodrigo Castillo Cottin, Ana María Lopez, Alejandra Becerra and Hanspeter Misteli Reyes Baker McKenzie	
Dominican Republic	39
Maria Arthur Arthur & Castillo (AC Law)	
England and Wales	44
Anthony Thompson, Nicole Aubin-Parvu and Alfred Liu Forsters LLP	
France	55
Maryse Naudin Tirard, Naudin – Société d'Avocats	
Germany	63
Andreas Richter and Katharina Hemmen P+P Pöllath + Partners	
Guernsey	69
Angela Calnan Collas Crill LLP	
India	74
Bijal Ajinkya, Aditi Sharma and Natasha Bardia Khaitan & Co	
Ireland	84
John Gill and Lydia McCormack Matheson	
Japan	91
Kenichi Sadaka and Akira Tanaka Anderson Mori & Tomotsune	
Jersey	100
Kellyann Ozouf and Nick Marshall Collas Crill LLP	
Liechtenstein	107
Thomas Nigg Gasser Partner Attorneys at Law	
Malta	113
Ramona Azzopardi, Aleksandr Belugin and Joselyn Teuma WH Partners	
Monaco	121
Christine Pasquier Ciulla and Regina Griciuc CMS Pasquier Ciulla Marquet & Pastor	
Netherlands	127
Dirk-Jan Maasland and Jules de Beer Loyens & Loeff NV	
Panama	135
Juan F Pardini, Eduardo Achurra and Juan R Sevillano Pardini & Asociados	
Singapore	140
Ronald Choo, Adam Liew and Leslie Lim Ronald Choo LLC	
Spain	145
Ernesto Lacambra and Cristina Villanova Cases & Lacambra	
Switzerland	150
Natalie Peter and Claude Blum Blum & Grob Attorneys at Law Ltd	

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TAX

Residence and domicile

1 | How does an individual become taxable in your jurisdiction?

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

Panamanian 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 Panama are considered foreign source income and not liable to tax.

Income

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

An individual's income generated from salaries, business investments or commercial activities within Panama will be subject to income tax or taxes (capital gain, value added tax (VAT), dividend, interests, etc). See question 1.

Income tax chart

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

Capital gains

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 taxed at a reduced rate of 10 per cent. However, in the latter case, the purchaser must withhold 3 per cent of the higher of the purchaser price or the rateable value of the property as an advance payment of tax.

Lifetime gifts

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

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

Inheritance

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.

Real property

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 paying property taxes every year as outlined in the following charts:

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%

Any property tax exemptions granted prior to the new property tax legislation will be honoured in accordance with the time frame awarded.

Non-cash assets

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, VAT or luxury tax 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.

Other taxes

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 a number of goods, such as cigarettes and tobacco, alcohol, jewellery and vehicles. The applicable rate will vary depending on the goods or services.

Trusts and other holding vehicles

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.

Charities

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.

Anti-avoidance and anti-abuse provisions

11 | What anti-avoidance and anti-abuse tax provisions apply in the context of private client wealth management?

Please see www.lexology.com/gtdt.

TRUSTS AND FOUNDATIONS

Trusts

12 | Does your jurisdiction recognise trusts?

Panamanian 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. Panamanian 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 the transfer is exempt from income tax 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. Panamanian 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 Panamanian 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 Panama's public policy rules.

Private foundations

13 | Does your jurisdiction recognise private foundations?

Foundations fully own the assets contributed to them and are managed by a foundation board or council. The person who establishes the foundation (the founder) normally does so for a particular purpose. The organs of the foundation are strictly bound to this purpose. The founder decides who will be 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 these by-laws. The founder can also appoint an adviser or guardian to control the foundation board.

Significant advantages are offered by a Panama private interest foundation, including the following:

- no legal requirement to disclose the name of the real founder, beneficiary or protector;
- no requirement to file an annual tax return or financial statement;
- no obligation to hold an annual meeting of the foundation council, the founders or the protectors;
- no legal requirement of maximum authorised capital;
- no requirement to pay the foundation capital for the incorporation of the foundation, and no time restriction or deadline to make the contribution;
- no limitation in respect of perpetuities, accumulation of capital and other restrictions that are required in similar structures in other jurisdictions, such as the Anglo-Saxon or common law trust; and
- no limitation on the maximum permitted number of founders, members of the foundation council, beneficiaries or protectors.

In addition to the above:

- there is total exemption of taxes in Panama, including, without limitation, income tax, wealth tax, real estate tax, inheritance tax, and sales and transfer tax;
- the private interest foundation can engage in any business or civil transaction (only in exceptional cases) in any 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;
- 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

Same-sex relationships

- 14 | 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.

Heterosexual civil unions

- 15 | 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. One of the ways to obtain marital status is through a common law marriage, although this does not produce any legal effects unless the couple requests the recognition of their marriage before the authorities, which will immediately transform their status from single to married (and therefore it will still constitute the same type of legal marital relationship duly recognised by law).

SUCCESSION

Estate constitution

- 16 | 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, will be inherited through a succession process.

Disposition

- 17 | To what extent do individuals have freedom of disposition over their estate during their lifetime?

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

- 18 | 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 valid means recognised by the law, in principle, there is total freedom of disposition of a person's estate in Panama.

Nonetheless, there are some variables that can limit their will to secure some interests. For example a person may be limited in

disposing a part of the estate in those cases where he or she 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, to provide the 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.

If the deceased has not left a will, a judge, after submitting a motion, will dispose of the deceased's estate in favour of his or her legally recognised spouse and recognised sons or daughters.

Intestacy

- 19 | 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 submitting a motion, a judge will dispose of the deceased's estate in favour of the deceased's legally recognised spouse and recognised sons or daughters in equal parts. If there is no legally recognised spouse or recognised sons or daughters, 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.

Adopted and illegitimate children

- 20 | 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 and natural legitimate children. However, if the individual did not prepare a valid will, the law will not recognise the rights of an illegitimate or unrecognised child. Properly registered adopted children will always be treated as natural legitimate children.

Distribution

- 21 | 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.

Formalities

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

Three types of will are valid in Panama. The simplest of these 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 and properly notarised by a Panamanian notary.

Foreign wills

23 | 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 in that country, the document will be valid and executable in Panama.

Administration

24 | Who has the right to administer an estate?

According to Panamanian law, a testator has the authority to designate a person to administer the estate. If this has not been determined in the will, the court will appoint an administrator of the estate.

The only limitation is that the administrator must be a person who is capable of undertaking legal obligations.

25 | 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.

Generally, there are no administrators unless the successor is an underage child or a person with limited capabilities who 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.

Challenge

26 | Is there a procedure for disappointed heirs and/or 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 present themselves before the court and submit a motion supporting their claimed right. This phase begins with a public announcement lasting five consecutive days that the deceased's succession process has been opened, rendered by the court and published in a national journal by the heirs.

CAPACITY AND POWER OF ATTORNEY

Minors

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

In cases in which one or more heirs are underage children, the court will appoint an administrator to manage their assets until they reach the age of 18. Most of the time, the 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.

Age of majority

28 | 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.

Loss of capacity

29 | 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 to manage his or her assets. Normally, this is decided in a custody process in which a relative requests to be named custodian. After the court's judgment, this person may gain administration powers over the assets.

IMMIGRATION

Visitors' visas

30 | Do foreign nationals require a visa to visit your jurisdiction?

Although visits to Panama are visa-free for an extensive list of countries, the immigration authorities have a list of countries that require a travel visa because they are considered a massive migration risk or a threat to the local economy.

Some citizens may have more restrictions than others.

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

In general, a foreign national may stay in Panama for up to six months. However, the immigration authorities have limited the duration of stay for some foreign nationals to one month or to a maximum of three months.

High net worth individuals

32 | 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 (eg, Person of Means programme, free trade zone investor, large investor programme and second passport).

33 | 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:

- they are the principal applicant's parents;
- he or she is the principal applicant's spouse;
- they are the principal applicant's children up to 18 years old; or
- they are the principal applicant's children aged between 18 and 25 years if they are still under the financial protection of the applicant and attend university or college.

- 34 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:

- Retiree programme: the principal applicant must be receiving a lifetime pension of no less than US\$1,000 per month from a government or private entity.
- Friendly nation programme: the principal applicant must be a citizen of a country that is considered a friendly nation and must create an economic link with Panama by means of setting up a business or purchasing real estate. Unlike other programmes, there is no specific amount for the investment.

Other programmes, such as the investor programme and some employment programmes, initially grant a two-year temporary residency status and further the right to apply for a permanent residency status.

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

With the exception of the retiree programme, all permanent residency programmes (friendly nation, investor or employment) grant the applicant the right to apply for citizenship after seven years.

UPDATE AND TRENDS

New legislation and current developments

- 36 Are there any proposals in your jurisdiction for new legislation or regulation, or to revise existing legislation or regulation, in areas of law relevant to high net worth individuals, particularly those coming to or investing in your jurisdiction? Are there any other current developments or trends relevant to such individuals that should be noted?

No updates at this time.



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