

TRANSLATION

NATIONAL EXECUTIVE BRANCH  
DECREE-LAW NO. 5  
(Of July 2, 1997)

"Whereby some articles of the Commercial Code are modified and supplemented for the purpose of modernizing some of the institutions therein, Law 1 of 1984 on Trusts is amended, and other provisions are enacted."

THE PRESIDENT OF THE REPUBLIC

in exercise of his constitutional powers and, particularly the powers vested on him by ordinal No. 4 of Law 20 of June 27, 1997, and having the impress of the favorable opinion of the Cabinet Council

DECREES:

Article 1. Article 11B is added to the Commercial Code as follows:

Article 11B. A corporation validly constituted under foreign law, may choose to come under the laws of the Republic of Panama and to continue to exist under said laws, as a Panamanian corporation, regardless if the provisions of the legislation of its place of origin, by submitting to the Public Registry for recordation, the documents appearing below:

- 1) A certificate that it is constituted and existing under the laws of the pertinent country or jurisdiction, issued by the proper authorities in said country or jurisdiction or, in lieu thereof, by means of a notarial certificate.
- 2) A Certificate or certified copy of the agreement or resolution of the proper corporate body evidencing the authorization to continue the existence of the corporation under the laws of the Republic of Panama.
- 3) The corporate charter or articles of incorporation subscribed in accordance with the requirements of the laws of the Republic of Panama on the subject, indicating that it supersedes the instrument of constitution or organization of the foreign corporation.

The documentation issued in foreign countries or jurisdictions shall be Apostilled or authenticated by a Consul

of the Republic of Panama or, in his stead, by the consul of a friendly nation in the country or jurisdiction where the documentation originates.

Article 2. Article 11C is added to the Commercial Code as follows:

Article 11C. Once such documents have been recorded in the Public registry, the continuation of the corporation under the laws of the Republic of Panama shall become effective among the parties and vis-à-vis third parties as from the date of the initial constitution of the corporation in its country or jurisdiction of origin.

The corporation shall continue with all its property, rights, privileges, powers and franchises, and as the owner and the holder thereof, but subject to the restrictions, obligations and duties which would correspond to the corporation in its country or jurisdiction of origin, being understood that neither the rights of creditors against the corporation nor existing encumbrances against its assets shall be impaired by its continuation under the laws of the Republic of Panama.

Article 3. Article 11D is added to the Commercial Code as follows:

Article 11D. A corporation duly organized and existing in good standing under a foreign law may conditionally register in the Public Registry the corporation's continuation in the Republic of Panama pursuant to the above provisions, the condition being that said continuation is to become effective upon recordation of a statement to that effect by its duly authorized representative or attorney-in-fact.

Upon compliance with this formality, the provisions contained in the preceding article shall apply.

Article 4. Article 11E is added to the Commercial Code as follows:

Article 11E. A corporation organized under the Panamanian law may, when so stipulated in its articles of incorporation or in amendments thereof, continue under the laws of another country or jurisdiction, provided that the laws of such country or jurisdiction allow the corporation to do so, and provided that the corporation has settled all of its tax obligations to the Republic of Panama.

For these purposes, the corporation shall submit for registration in the Public Registry through the intermediary of a lawyer in the Republic of Panama, a certification or a

certified copy of the pertinent resolution or agreement, as well as a certificate that it has been duly registered in the jurisdiction to which it is being transferred.

Once such recordation has been made, the corporation shall continue with all its assets, rights, privileges, powers and franchises, as the owner and the holder thereof, subject to the restrictions, obligations and duties as were of the corporation, being understood that the rights of the creditors of the corporation and the encumbrances on the assets thereof shall not be impaired by its continuation in the foreign country.

Failure to register the corporation in the other country, duly verified, shall not impair the effect of its registration in the jurisdiction of origin.

Article 5. Article 38A is added to the Commercial Code as follows:

Article 38A. A reservation of the name for a corporation may be made in the Public Registry for a period of time not to exceed thirty (30) calendar days, by means of an application in writing, which the Public Registry shall decide upon with no further requirement, after confirming that the name is available. At the end of this period of time, the reservation of the name shall lapse entirely, without any requirement to make any notation.

Article 6. Article 58A is added to the Commercial Code as follows:

Article 58A. At the option of the mercantile companies, their financial statements approved by the corporation's Board of Directors or members or shareholders, and duly countersigned by a certified public accountant may also be registered in the Public Registry.

Article 7. Article 71 of the Commercial Code shall remain as follows:

Article 71. Any mercantile person is under the obligation to keep accounting records indicating clearly and distinctly their commercial operations, as well as their assets, liabilities and property. The accounting records shall always reflect the amounts and the nature of the transactions.

For the purposes of the provisions of this Title, any mercantile person may keep accounting and make the entries either in books or using electronic means or such other mechanisms as may be authorized by Law and which may afford a clear and distinct determination of the commercial transactions that have been carried

out, provided always that such records may be printed.

Likewise, the juridical persons may use books or electronic means or other mechanisms to keep their Register of Minutes and their Stock Register, as it is described in the preceding paragraph.

Article 8. Article 72 of the Commercial Code shall remain as follows:

Article 72. The number and kind of books of account that are to be kept and the form under which they are to be kept, shall be at the discretion of the mercantile person, provided that they abide by generally accepted accounting standards applied in the Republic of Panama.

Article 9. Article 73 of the Commercial Code shall remain as follows:

Article 73. The required records, which all mercantile persons must keep are: a Journal and a Ledger. Commercial corporations shall also keep a Register of Minutes and a Stock Register and Register of Shareholders, or a Register of Contributions or Participation in property or in the capital stock.

The juridical persons who do not carry out operations perfected or consummated or having effect in the Republic of Panama, are not under obligation to keep their required accounting records referred to in this article, in the Republic of Panama unless they are domiciled in the Republic of Panama.

Article 10. Article 77 of the Commercial Code shall remain as follows:

Article 77. Accounting records shall be kept clearly and distinctly, in chronological sequence, indicating the dates when transactions are made the dates affecting periods.

It is absolutely forbidden to enter or register transactions in a manner other than as they originated, including the dates when they were perfected, and to leave blank spaces, to erase or cross out. Reversions, corrections of mistakes or omissions shall also be clearly set down and identified as such in the Accounting records.

Article 11. Article 78 of the Commercial Code shall remain as follows:

Article 78. Any mercantile person having a commercial establishment in the Republic of Panama, with no exceptions as to location, shall be under obligation to keep its accounting records in Spanish, and in the legal or commercial currency of the Republic of Panama. The documentation evidencing the transactions and the correspondence may be kept in the language of its origin and, if a translation were to be required by any competent authority, the mercantile person shall be under the obligation to provide the translation thereof within a reasonable period of time and at his expense.

Article 12. Article 81 of the Commercial Code shall remain as follows:

Article 81. All operations carried out by the mercantile person shall be entered in chronological sequence in the records called Journal, clearly indicating the date, the amount and the nature of each, as well as the precise identification of the accounts to be affected in the records called Ledger.

Article 13. Article 83 of the Commercial Code shall remain as follows:

Article 83. Entries of the transactions made in the Journal shall be transferred to the Ledger in chronological sequence, under accounts duly classified as assets, liabilities, property, income, expenses and memoranda, making a correlative reference to the entry in the Journal.

Article 14. Article 85 of the Commercial Code shall remain as follows:

Article 85. Mercantile persons may keep auxiliary accounting records reflecting in more detail such information as may be necessary to supplement the entries made in the Journal and the Ledger, provided that the facts, the amounts and the nature of the original transactions remain unchanged.

Article 15. Article 86 of the Commercial Code shall remain as follows:

Article 86. The agreements adopted in the Meetings whether of shareholders, participants, partners or directors shall be entered in the Register of Minutes. An indication shall be made of the date of the prior call or of the waiver thereof, the place and the date when the meeting was held, as well as other circumstances leading to an accurate account of the agreements reached. The names of the persons who acted as chairman and secretary, and who are to sign it, must be stated

in the minutes and either of them may certify the same.

The Register of Shares, of shareholders or of asset, or corporate participation shall contain details of the names of the shareholders in the case of registered shares indicating the number of the certificate, the amount in figures or in percentages which the certificate represents, the sum paid and the kind of securities or certificates involved.

Article 16. Article 87 of the Commercial Code shall remain as follows:

Article 87. The Accounting records of all mercantile persons shall be kept by an Accountant or a Certified Public Accountant whose qualifications must have been approved by the Technical Board of Accounting of the Ministry of Commerce and Industries.

All mercantile persons are under obligation to keep their Accounting records up to date. It shall be understood that accounting records are up to date when the entries are made every month in the required records, within sixty (60) days following the respective month.

The infringers shall be penalized with fines of One hundred Balboas (B/.100.00) up to Five Hundred Balboas (B/.500.00) for every month their Accounting has fallen behind. It shall be up to the General Directorate of Internal Revenue of the Ministry of Finance and Treasury to make the revision referred to under this article and to impose the pertinent sanctions.

Article 17. Article 93 of the Commercial Code shall remain as follows:

Article 93. All mercantile persons or brokers are under obligation to preserve their indispensable accounting records as long as their administration continues and for five (5) years after the closing of their business.

Auxiliary records, vouchers and documents supporting commercial operations, must be preserve until the statute of limitations of any action arising therefrom becomes effective.

The responsibility to preserve the required accounting records and to submit them when so requested by the competent authorities shall be a responsibility of the mercantile person or his successors or assignees. In the case of juridical persons, whoever has the legal representation shall be responsible or, in his temporary or permanent absence, the

persons who legally substitute such representative.

The indispensable accounting records, the auxiliary records and other documents supporting the business transactions shall be kept in the premises of the corporation in any of the forms authorized by law, so that they may be inspected by the proper authority. It is forbidden to move them outside of the country or to places where they may not be readily accessible. Violations of this prohibition shall be penalized with a fine not to exceed five hundred balboas (B/.500.00), and successive fines may be imposed for continuous infringements in the light of repeated unanswered requests.

Article 18. Article 94 of the Commercial Code shall remain as follows:

Article 94. Merchants or brokers who shall not keep the accounting records referred to under Title III of Book I of the Commercial Code, who simulate the recordation of transactions other than in the manner and on the date when they took place, who distort the real and true nature of such transactions or conceal or omit any of them, shall be sanctioned from One hundred Balboas (B/.100.00) up to Five thousand Balboas (B/.5,000.00), and they may incur multiple successive fines if the violations and breaches warrant it.

The fines referred to under Title III of Book One of the Commercial Code shall be imposed by the respective Regional Administration of the Directorate of Internal Revenue of the Ministry of Finance and Treasury, and a remedy of reconsideration may be filed against them before the official in the first instance, and subordinate appeal before the Commission of Appeals in said Directorate. Fines may be imposed to the merchants or owners or to the brokers. In the case of juridical persons, to the corporation, and in the absence thereof, to its legal representative, its directors, managers and officers, in this sequence.

Article 19. Article 95 of the Commercial Code shall remain as follows:

Article 95. All mercantile persons are under obligation to prepare and maintain in their premises financial statements that correctly and truthfully reflect the results of their annual operations, or the operations over a fraction of one year for those who have not completed twelve months of operations. Said reports shall be prepared in accordance with accounting principles generally accepted and applied in the Republic of Panama

The basic financial statements required must include a general balance sheet, a profit and loss statements, a statement of assets including the changes in the retained utilities and a cash flow statement.

The financial statements referred to above shall be countersigned by a Certified Public Accountant in the case of mercantile persons engaging in activities of any nature, having a capital stock exceeding one hundred thousand Balboas (B/.100,000.00), and in the case of mercantile persons with an annual sales volume in excess of Fifty thousand Balboas (B/.50,000.00). These must be issued within one hundred and twenty (120) days after the closing date of the fiscal period, and must be maintained at the disposal of the proper authorities who may demand original copies thereof in order to make the notation concerning the inspection proceedings in the respective file.

Merchants or brokers who do not comply with the provisions of this article shall incur the fines and sanctions described in Article 94 of the Commercial Code.

Certified Public Accountants who, in discharging their professional duties, were to countersign the financial statements shall be subject, in the event of infringement of the provisions governing the indispensable accounting records, the auxiliary records and pertinent documents, to the sanctions provided for in the legal provisions governing the exercise of their profession.

Transitory Paragraph: The obligation to prepare and keep financial statements shall be in effect as from the year 1997 and the fiscal periods beginning on that same year.

Article 20. Article 142 of the Commercial Code shall remain as follows:

Article 142: Any kind of contract, transaction, negotiation and other appropriate acts during the course of its business may be carried out in stock exchange, if not prohibited by law.

Article 21. Article 143 of the Commercial Code shall remain as follows:

Article 143: Acts and contracts in a stock exchange shall be governed by the applicable laws, and in lieu thereof, by the customs and usage of the place.



Article 22. Article 144 of the Commercial Code shall remain as follows:

Article 144: For the purposes of issuing and trading securities in a stock exchange, said securities may be represented by unit or global certificates or by any other document that is a formal recognition thereof, by notations in accounts or by any other means that are common stock exchange practice.

For the purposes of custody, compensation and liquidation, securities may be subject to endorsement in management.

Article 23. Article 144A is added to the Commercial Code as follows:

Article 144A: Stock registers and registers of holders of other securities being traded in the stock exchange, the registers of minutes of the respective issuers, the transfer and other records and legal evidence in connection with securities may be kept by manual or mechanical or electronic, optic, magnetic or other kind of means guaranteeing their accuracy, availability and preservation.

Article 24. Article 146A is added to the Commercial Code as follows:

Article 146A: There are special subject matter of contracting in stock exchanges, both public and private securities, domestic and foreign, that comply with applicable legal and contractual requirements, provided that the issuance and trading thereof has been approved by the issuers and by the National Securities Commission in the case of public offers.

Article 25. Article 147 of the Commercial Code shall remain as follows:

Article 147: Public offers of domestic or foreign securities by any means whatsoever, either to or from or within Panama, shall be subject to prior negotiation and authorization by the National Securities Commission which may require that the securities be qualified by an authorized risk qualifier in order to be placed in the primary market and traded in the secondary market.

Article 26. Article 148 of the Commercial Code shall remain as follows:

Article 148: Acting as intermediary in acts in the stock

market may only be carried out by duly authorized exchange seats and brokers pursuant and subject to legal provisions and special regulations governing the matter.

Article 27. Article 149A is added to the Commercial Code as follows:

Article 149A: The ownership of fungible securities may be transferred for a given price when the party who receives or borrows the securities assumes the obligation to transfer the ownership of said securities, or of other securities of the same or a similar issue, upon the expiration of an established period of time, for a higher price or for the same price plus a premium, commission or interest.

Article 28. Article 149B is added to the Commercial Code as follows:

Article 149B: Repurchase agreements are permitted in stock exchange dealings, for periods not to exceed three (3) years.

Article 29. The Title of Chapter IV of Title VI, Book One of the Commercial Code shall remain as follows:

CHAPTER IV  
Clearing houses, securities custodial, set-off and  
liquidation centers

Article 30. Article 193 of the Commercial Code shall remain as follows:

Article 193: Stock markets or other financial intermediaries may establish centers for the custody, set-off and liquidation of securities, subject to authorization, supervision and inspection by the National Securities Commission.

Article 31. Article 203 of the Commercial Code shall remain as follows:

Article 203: Acts or contracts made via telephone or telefax or other means of electronic communication shall be deemed made by parties present in person, provided that such parties or their representatives or attorneys-in-fact have been directly communicating.

Meetings of the board of directors or of the assembly of members or shareholders, or of any kind of liquidators of corporations, in which the participants have been directly communicating via any of the means indicated in the preceding paragraph shall also be understood as of parties present in

person. In such cases, the minutes shall be drafted setting down the meeting that was held, the resolutions that were approved and the means through which the participants were communicating.

Resolutions of directors, partners, shareholders, administrators or liquidators of corporations of any description shall be valid even if they have signed the document in different places and on different dates.

Article 32. Article 223A is added to the Commercial Code as follows:

Article 223A: Interests charged in transactions perfected, consummated or having effects outside of the Republic of Panama shall not be subject to the provisions of Law 5 of 1922 or to those of Law 4 of 1935.

Article 33. Article 249 of the Commercial Code shall remain as follows:

Article 249: Two or more natural or juridical persons may organize a corporation of any kind, and one or more of them may be shareholders, directors, officers, managers, attorneys-in-fact or liquidators thereof.

Article 34. Article 275 of the Commercial Code shall remain as follows:

Article 275: The assets contributed to the capital stock may not be reclaimed for paying the personal debts of a partner or a shareholder, except by virtue of an encumbrance constituted in favor of a third party before they were contributed to the corporation.

Disposing or encumbering corporate assets shall be up to the subscribers, the partners, the shareholder or shareholders, administrators or directors, attorneys-in-fact or liquidators according to the provisions contained in the articles of incorporation, and in the absence of such provisions in the articles of incorporation, it shall be as the law provides.

Article 35. Article 580A is added to the Commercial Code as follows:

Article 580A: General or special powers of attorney granted by means of a public deed or private document with date certaine shall be effective vis-à-vis third parties as from the date of execution, and may be recorded in the Public

Registry at the option of the interested party. However, the revocation of such power of attorney as may have been previously registered must be recorded in the Public Registry, unless the very document of this latter provides otherwise or in the case of a power of attorney for a given period of time or for the performance of a given act or event.

Article 36. Article 820 of the Commercial Code shall remain as follows:

Article 820: In case of default and where no particular manner of disposal has been agreed, the creditor or receiver shall have the right to dispose of pledged personal property upon prior notice in writing to the owner thereof no latter than thirty (30) calendar days before the date when the sale is to take place and having made the prior valuation referred to under Article 821.

Article 37. Article 821 of the Commercial Code shall remain as follows:

Article 821: In the cases contemplated under Articles 820 and 822, the parties shall, in the pledge contract, agree upon a method to follow in order to determine the value of the pledged things, in order to ensure their fair value at the time when application thereof to the debt is made. Otherwise, the pledge shall be appraised by two experts each appointed by one of the parties, or by a third expert appointed by the former two in the event of disagreement, or by a judicial authority in lieu of such experts.

In any event, the creditor shall be responsible for damages caused in applying the provisions contained in this article or in the preceding articles.

Article 38. Article 829A is added to the Commercial Code as follows:

Article 829A: Any corporation may pledge its assets located outside of the Republic of Panama, by way of a general pledge, without any need to effect delivery to the creditor, and without impairing the credits that have priority over given movable or immovable assets.

The general pledge of assets must be set down in a public deed or a private document authenticated by a Notary Public in the place of execution. Said document may contain all those stipulations which the parties may consider it convenient to include, but in all events it shall contain the name and address of the pledgor and of the creditor or creditors, and

the fixed or maximum amount secured.

If said document has been executed outside of the Republic of Panama, it must be Apostilled or legalized by a Panamanian Consul in the place of execution or, in his stead, by the Consul of a friendly nation. The public document or the private document with Apostille whereby the general pledge of assets is evidenced must be registered in the Public Registry and, once registered, its effects shall be retroactive to the date when the notation was made in the Journal of the Public Registry that it had been submitted for recordation.

Upon compliance with the formalities stipulated herein, the general pledge of assets shall have priority over credits with no special privilege, which have been set down in a public deed, in a final judgment or in a private document with date certaine.

Preliminary registration of a general pledge of assets may be made. The manner in which it shall be made and the effects thereof shall be regulated by means of an Executive Decree.

Article 39. Corporations organized before the effective date of this Decree-Law may choose to be governed by its provisions, and to this effect it shall be necessary that they set down such fact in a resolution approved by the partners or shareholders, and this resolution must be registered in the Public Registry.

Article 40. The last paragraph in Article 9 of Law 1 of the 5th of January, 1984 on trusts is amended as follows:

Article 9. The instrument of trust shall contain:

...

Whenever the trust is constituted by means of a private document, the signatures of the settlor and of the trustee or of their attorneys must be authenticated by a notary public.

Article 41: The first paragraph in Article 35 of Law 1 of 1984 is amended as follows:

Article 35.- ...

First paragraph: The foregoing exemptions shall not apply in the event that the assets, money, shares or securities mentioned under items 1, 2 and 3 above are used in operations that are not entitled to exemption from taxes, assessments, charges or encumbrances in the Republic of Panama, unless they are invested in housing, housing development projects, industrial parks or urban development

parks in the Republic of Panama, in which case the profits from such investments shall be exempted from income tax.

Article 42: Article 317A is added to the Fiscal Code as follows:

Article 317A: Twenty-five Balboas (B/.25.00) in fees shall be charged for the reservation of name for a corporation in the Public Registry.

Article 43: The first paragraph of Article 318 of the Fiscal Code is amended, and Item 5 is added to it, as follows:

Article 318. The registration of public or authentic documents or of documents whereby a corporation is organized, extended or continued in the Public Registry, Mercantile Section shall be subject to the following fees as the case may be:

5. The registration fee for the general pledge of assets shall be one hundred Balboas (B/.100.00).

Article 44. All of the provisions in the Commercial Code and other laws in which reference is made to accounting books shall be understood as referring to the records mentioned in this Decree-Law.

Article 45: This Decree-Law revokes subsection 7 of Article 57, Articles 74, 76, 79, 80 and 82 of the Commercial Code, subsection 7 of Article 1776 of the Civil code and item q) of Article 2 of Law 2 of the 16th of January, 1991; it adds Articles 11B, 11C, 11D, 11E, 38A, 58A, 99A, 144A, 146A, 149A, 149B, 223A, 558A and 829A; and it amends Articles 71, 72, 73, 77, 78, 81, 83, 85, 86, 87, 93, 94, 95, 142, 143, 144, 147, 148, 193, 203, 249, 275, 820 and 821 of the Commercial Code; it adds article 317A and amends and makes addition to Article 318 of the Fiscal Code; and it amends Articles 9 and 35 of Law 1 of the 5th January, 1984.

Article 46: This Decree-Law shall come into effect as from its promulgation.

LET THIS BE MADE KNOWN AND PUBLISHED.

Done in the city of Panama, on the 2nd day of the month of July one thousand nine hundred ninety-seven (1977).

ERNESTO PEREZ BALLADARES  
President of the Republic

AIDA LIBIA M. DE RIVERA  
Minister of Health

RAUL MONTENEGRO DIVIAZO  
Minister of Government and

MITCHELL DOENS  
Minister of Work and Social

Justice

RICARDO ALBERTO ARIAS  
Minister of Foreign Affairs

MIGUEL HERAS CASTRO  
Minister of Finance and  
Treasury

PABLO ANTONIO THALASSINOS  
Minister of Education

LUIS E. BLANCO  
Minister of Public Works

Welfare

RAUL ARANGO GASTEAZORO  
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Minister of Agropecuarian  
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GUILLERMO O. CHAPMAN JR.  
Minister of Planning and  
Economic Policies

OLMEDO DAVID MIRANDA JR.  
Ministry of the Presidency and General Secretary  
of the Cabinet Council

The foregoing is a true translation of its original in Spanish.  
Panama, August 26, 1997.