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Investing, Licensing & Trading Conditions Abroad

Panama

1994

ILT

The Economist
Intelligence Unit

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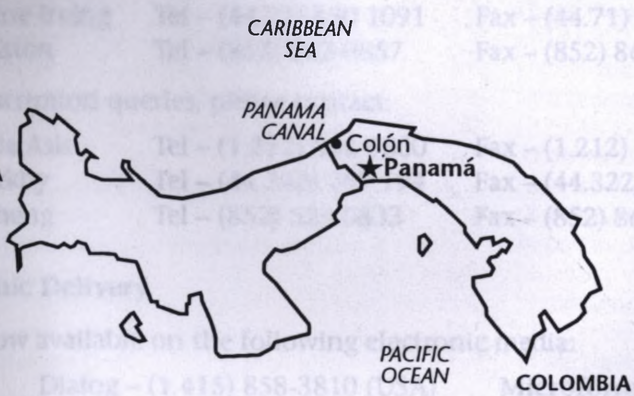

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- The new government of Ernesto Perez Balladares has taken office, pledged to liberalise Panama's overprotected economy (1.01).
- Panamanian and US negotiators have met in a preliminary round of talks on Panama's application for GATT membership (1.02).
- A tourism law passed in May 1994 offers numerous tax exemptions and other incentives to Panamanian and foreign investors, as part of a ten-year plan for tourism development (3.03).
- June 1994 law has brought copyright legislation up to world standards (4.02).

Market watch

- GDP growth of 4–5% is projected in 1994, with increased activity in most sectors of the economy led by construction and the Colón Free Zone (1.02).
- The government is working on a major plan to privatise public utilities, for which it is seeking union and public support (1.04).
- A major overhaul of patent and trademark law is in the offing (4.02).
- The government will seek to make Panama's rigid Labour Code more flexible (10.01).

Market assessment

Among the main advantages of doing business in Panama are the following:

- Excellent geographical position;
- Monetary and political stability;
- An absence of excessive government regulation on business (eg no exchange controls, few limits on business practices);
- Extensive programme of incentives to industry;
- A well-educated population with widespread knowledge of English.

Among the main drawbacks of doing business in Panama are these:

- A small internal market;
- Relatively high labour costs and an onerous labour code;
- Less-than-clear import policies;
- Insufficient respect towards the written law;
- Inadequacy and lack of independence in the legal and judiciary systems.

1.00 The operating environment

1.01 Political conditions. Ernesto ("El Toro") Perez Balladares took office as Panama's president on September 1, 1994, after his Revolutionary Democratic Party (PRD) triumphed over six other parties in national elections held on May 8, 1994. He began his five-year term signalling an intention to push through important liberalisations in the economy, underpinned by a consensus-building political style.

Cognisant of being a minority president (elected with only 33% of the vote), Mr Perez Balladares has given important cabinet posts to members of other political parties in an attempt to widen his support. An alliance with the National Solidarity Movement (MSN) and several smaller groups has afforded him a slender but workable majority in the Legislative Assembly, whose approval will be necessary for important pieces of the government's economic reform package. The chief group in the opposition is now the Arnulfista Party of the former president Guillermo Endara, which won 29% of the votes in the May election.

Though the PRD was founded by Panamanian strongman Omar Torrijos and supported the corrupt military regime of Manuel Noriega, overthrown by the 1989 US invasion, the party's return to power does not herald confrontation with Washington. Mr Perez Balladares began his tenure making important overtures to the USA, accepting Cuban refugees (*balseros*) and granting asylum to the Haitian military leader Raul Cedras. The government's goal in these arrangements may be seen in the announcement that it seeks eventual accession to the North American Free Trade Agreement (NAFTA) after early adhesion to the General Agreement on Tariffs and Trade (GATT). At the same time it announced new measures to curb money laundering.

Shortly after taking power, the new government circulated an outline of its ideas on economic policy to business, labour and other groups, claiming it sought input into the final draft. The policy statement promises a broad attack on poverty and unemployment via what is in effect a structural adjustment of Panama's overly protected domestic economy. The major planks of the programme are a commercial opening and market deregulation, the privatisation of major public utilities, reforms in the labour code, the promotion of foreign capital, and public investment to solve Panama's social ills. Less clear are the government's ideas about what to do with the US base areas that will revert to Panama over the next five years.

The policy of consensus building (*concertación*) is an attempt to convince key elites as well as the general public that the government's policies will bear fruit, despite significant short-term costs for important interests. The sectors most affected will be industry and agriculture producing for the home market, and labourers. The president also faces discontent within his party over his refusal to rehire en masse public officials of the Noriega years fired after the US invasion.

The Perez Balladares administration will make major efforts to attract foreign investors back into the country. The government takes care to respect contractual arrangements. But the judiciary and civil service continue to lack independence and are plagued by corruption and scandals.

1.02 Market conditions. Panama's economy is led by its export-oriented service sector, which consists mainly of the Panama Canal, the transisthmian oil pipeline, the Colón Free Zone (CFZ), offshore banking operations, tourism and services sold to the US military bases around the canal. Earnings from services traditionally account for more than 70% of total GDP. Panama's lack of restrictions on most types of imports makes the country a shopping centre for Central and South Americans, who come to buy consumer goods that are difficult to obtain at home.

Following a 5.9% jump in 1993, real GDP should grow by 4–5% in 1994 and a similar amount in 1995. Growth has centred on the CFZ and on increased activity in construction and construction-derived manufacturing (3.05). Activity in the banking centre also continues to recover (9.02).

Thanks to the use of the dollar as the main monetary unit and to price controls and the par-

Exchange rates

Panama uses the dollar ($) as its currency. (The Panama balboa, at par with the dollar, circulates in coin form only, in a maximum denomination of B10.) The dollar floats freely against other currencies, with the following approximate exchange rates:

Exchange rate	1993 average	End-Nov 1994	Exchange rate	1993 average	End-Nov 1994
¥:$1	111	99	$:£1	1.50	1.57
DM:$1	1.65	1.57	Ecu1:$1	1.17	1.21

tial deregulation of import markets, inflation was only 0.5% in 1993. Prices are expected to rise by 1.1% in 1994 and 1.5% in 1995.

The combined agricultural, livestock and fishing sector (accounting for about 11% of GDP) experienced growth of only 1.4% in 1993, and 1994 will see a similarly small increase. Panama's banana producers have been hit by floods and by import quotas introduced by the European Union in mid-1993, and exports are continuing to decline. Sugar exporters face price weakness as the USA has cut its preferential quota for Panamanian sugar, while cattle breeders continue to be hampered by sanitary restrictions that have stymied efforts to break into new export markets. Ecological problems have struck the shrimp and fishing industry.

The outlook is brighter for Panamanian industry (9% of GDP). Fuelled by the on-going construction boom, industrial production increased by around 7% in 1993, although a slow-down to around 2.5% is projected for 1994. Construction (7% of GDP) continues to expand, thanks to ample credit and increased public-sector investment. The number of building permits in Panama City and Colón rose by 70% in 1993, and construction output leaped 39%—with a further 20% jump forecast for 1994. The activity has centred on high-rise luxury condominiums and office buildings, however, and this market is becoming saturated. There are allegations that some funds have come from illicit drug trafficking.

The CFZ (9% of GDP) has experienced strong export growth for several years, mainly because of import liberalisation in Central and South America. Goods worth $5.151 billion were exported from the zone in 1993 (5.5% more than during 1992), and strong expansion has continued into 1994. Total trade turnover in 1993 came to $9.608m.

Changing world trade patterns have led to a stagnation in Panama Canal traffic (about 9% of GDP). Total transits declined by 3% in 1993, when 190m tons of cargo moved across the waterway. However, because of a 1992 toll increase, revenues jumped by 8.7%, to $401m. With the world economy recovering, canal traffic should grow by around 2% in 1994 and 1995. Meanwhile, declining Alaskan oil production, competition from the California pipeline network and the loss of an important customer further depressed the activity of the Chiriqui-Bocas del Toro transisthmian oil pipeline (about 0.8% of GDP) in 1993, when revenues fell by 46%, to $30m. Though pumping recovered somewhat during the first half of 1994, the increase is not considered sustainable.

The government's economic strategy calls for liberalisation, privatisation and labour market reforms balanced by increased public spending on social and physical infrastructure. An agreement with the Interamerican Development Bank in October 1994 will make $750m in credits available for public investment projects over the next two years. In 1995 the new government expects to start negotiations with international financial institutions over a financing package to refloat $3.2 billion in debt to foreign commercial banks, service on which has been suspended since 1987. Some 20% of the 1995 budget is earmarked for foreign and domestic debt service.

1.03 Currency. Panama uses the dollar as its paper currency. The Panamanian balboa, at par with the dollar, circulates in coin form only, in a maximum denomination of B10. No changes are expected for the foreseeable future. Panama imposes no exchange controls.

1.04 State role in the economy. Like the previous Endara government, the Perez Balladares administration has taken a basically liberal approach towards private enterprise. Governmental or quasi-governmental entities will exert little control over business. However, the government has announced it will introduce anti-monopoly legislation designed to curb market distortions in industry and agriculture.

Currently, the government still owns all telephone, electricity and water systems, a large part of the health and education services, and a sugar refinery. No industries are specifically reserved for the state, however, and private participation in these sectors is possible. One successful example of a joint public-private venture has been Petróterminal de Panamá, the consortium that manages the transisthmian oil pipeline (built in 1982). The government controls 40% of the equity. Two large US corporations, Northville Terminal and Chicago Bridge & Iron, also hold stock in the enterprise. (See the box on p 7 for a description of the major state-owned concerns in Panama.)

There are no specific laws dealing with nationalisation or expropriation. Though Panama's constitution gives the government the right to nationalise property for reasons of public interest, this must be done through the judicial process and with prior compensation. The government also has the right to intrude on private property without compensation in time of war or any other major disturbance, but only for limited periods. No nationalisation of either type has occurred since 1972.

In 1982 Panama and the USA initialled an investment treaty that guarantees US investors "prompt, just and effective" compensation in the event of expropriation and recognises the International Centre for the Settlement of Investment Disputes as a means of resolving disputes with for-

Major state-owned concerns in Panama

100% state-owned firms

- Public health and social security system
- Public schools and two state universities
- INTEL (telecommunications institute)
- IRHE (power and light company)
- IDAAN (water and sewage disposal institute)
- DIMA (garbage collection institute)
- Cristóbal and Balboa ports
- La Victoria Sugar Mill (sugar factory)
- Agricultural Insurance Institute
- Agricultural Marketing Institute

Mixed companies

The two major enterprises with mixed ownership are the Petróterminal de Panamá, an oil pipeline 40% owned by the government, and the Panama Canal Company, an agency of the US government in which the Panamanian government has administrative and economic participation under a bilateral treaty.

eign investors. Nationalisation or expropriation of any private business is very unlikely under the current administration, which has announced a major programme to divest itself of public utilities and a few remaining state-owned companies.

During its term of office the Endara government sold off two hotels, Air Panama (the state airline), Cítricos de Chiriquí, the Compañia de Palma Aceitera, the Corporación Bananera del Atlántico and Cementos Bayano. Certain services provided by the National Port Authority were also transferred to private companies. In order to facilitate the privatisation programme, Law 16 of July 14, 1992, created a co-ordinating unit (ProPrivat) to oversee the sale of government assets and establish procedures for each case. However, the new law requires the passage of special additional legislation prior to the privatisation of public utilities, such as the electrical institute (IRHE) and the telecommunications institute (INTEL).

Though public opinion is heavily against the sale of public utilities, the Perez Balladares government is working on a five-year privatisation programme and has announced its intention to turn INTEL into an autonomous government corporation in 1995, after which it will sell 49% of the stock to private investors and an additional 2% to the firm's workers. The electric and water companies (IRHE and IDAAN) are slated for some degree of privatisation a year or two later, along with the Victoria Sugar Mill and the Port of Cristóbal. Sale of the installations of the Agricultural Marketing Institute (IMA) is also under study. So far, however, there are no clear indications that the near-bankrupt social insurance system will be affected.

1.05 Foreign investment. As an international service centre, Panama welcomes foreign investors and with a few exceptions (2.04) does not discriminate against them. The country's tax structure is favourable, and generous incentives are available to manufacturing operations—particularly in-bond assembly operations devoted entirely to export (3.03). Since much of the economy depends on the activities of non-Panamanians (eg canal traffic, activities in the Colón Free Zone and operations of the international financial community), chances are slim that any Panamanian government would take steps to discriminate against foreigners.

The Institute for Foreign Trade and Investment (IPCE, an agency of the Ministry of Commerce and Industry) promotes inward foreign investment, directing investors to public and private sources of information on the country's operating conditions and tax advantages. The Perez Balladares government aims to transfer these functions to the Foreign Ministry and a special office of the presidency. The government further encourages investment through a scheme for special export-processing zones (3.01) and a unified tax rate on corporate income (7.02).

Direct foreign investment in Panama has been declining slowly since 1987. According to the latest available figures from a yearly survey of companies carried out by the office of the country's general comptroller, accumulated foreign direct investment (excluding investments in banks and the Colón Free Zone) decreased by $36.8m during 1993, falling to $432m at year-end. The net 1992 return on accumulated direct foreign investment is reported to have been $65.6m, or 14%, but to have dropped to just $4.2m, or 1%, in 1993. The USA is by far the largest source of investment, accounting for about 75% of the total.

See the box on p 8 for a breakdown of investment by sector and country of origin.

For US direct investment in the country, US Department of Commerce data indicate average rates of return of 9% in 1993, versus 8.4% in 1991. (Returns shown are total current-dollar income expressed as a percentage of total historical cost of investment.)

Despite generous incentive schemes, Panama has had limited success in attracting investors to its export-processing zones. One major investment project by a Hong Kong consortium, Isla Margarita Development, approved in 1992, is envisioned as a $40m factory and tourism complex located in Colón province that will include apart-

Foreign investment in Panama*

Direct foreign investment in Panama has declined since 1987, but not uniformly. While significant disinvestment has occurred in transport, warehousing and the banana industry, foreign manufacturing firms have continued to maintain their Panamanian operations. Over the next few years new mining and tourism investments are likely to reverse the recent slide in overall investment.

	1989	1990	1991	1992	1993
Total direct investment	504.2	485.7	466.9	468.9	432.2
By sector:					
Agriculture, forests, fisheries	82.9	78.0	78.2	77.5	35.8
Manufacturing	134.6	174.1	167.4	179.7	188.0
Wholesale and retail commerce	66.1	74.8	77.8	70.2	74.2
Transport, warehousing, communications	125.2	74.7	62.3	54.7	51.8
Finance and services	70.6	58.4	55.4	64.0	60.0
Other	24.8	25.7	25.7	22.9	22.3
By country of origin:					
USA	417.2	389.2	356.2	356.3	321.1
Britain	6.7	11.5	19.8	17.7	16.7
Japan	21.0	22.5	22.3	18.4	16.2
Costa Rica	15.0	20.6	21.5	23.2	24.3
Other	44.3	42.0	47.1	52.4	53.8

*In millions of dollars.

Source: Contraloría General, Statistics and Census Division. Data do not include investments in the banking centre or the Colón Free Zone.

ment houses, an exhibition centre and eight factories. Production is to focus mostly on textiles for export. So far, however, only two companies have set up facilities.

Two similar investment projects with Panamanian capital, Telepuerto and Ojo de Agua, are designed to take advantage of export-zone legislation. Telepuerto is to be a managerial-services, data-processing and computer-assembly export zone located in the area of Tocumen, on the outskirts of Panama City, with an initial investment of $2.5m. Ojo de Agua will produce clothing and other items for export in Panama City's San Miguelito district. Neither of the projects is in production as yet. Plans are under way for a fourth processing zone, PanExport, backed by Panamanian and Spanish capital.

Significant foreign investment is occuring in mining, and this will expand rapidly over the next few years. Industry sources estimate that more than $40m will be spent in 1994 in exploration and mine construction. Adrian Resources of Canada has sunk $14m into exploration and drilling of the huge copper and gold deposits of Cerro Petaquilla, in Colón province, the third-largest in the world. In conjunction with Metall Mining, another Canadian firm, Adrian envisions participation by an industry major and creation of a syndicate to finance an investment of some $450m over five years.

With the passage of the 1994 Tourist Law (3.03), large-scale foreign investments are expected in hotel construction and other tourism activities. The Marriott chain is planning to build a 280-room business hotel in Panama City, and plans are under way for the development of the Fort Amador area as a tourism site after its reversion to Panama in 1995. The Marriott and Hyatt Hotel chains have expressed interest in putting up hotels, and construction of a major marina is foreseen.

In other investment areas, INTEL will shortly accept bids for the introduction of cellular phone service. Petróterminales de Panama is negotiating with the government on a $20m project to enlarge the port of Chiriquí Grande, in Bocas del Toro. Texaco (Refinería de Panamá) will invest $40m in 1994 as part of a $77m expansion plan.

The Overseas Private Investment Corporation (OPIC) supports several US investments in Panama. Panama appears ready to rescind a requirement that government approval be obtained for any OPIC-insured investment. It has also approached the World Bank to join the Multilateral Investment Guarantee Agency, which provides investment guarantees similar to OPIC's.

1.06 International agreements. In the early 1970s Panama signed bilateral treaties for free or preferential trade with all five Central American countries. The treaties are of indefinite duration and cover agricultural products and manufactures produced in the signatory countries, but not assembled or similar products. A more inclusive preferential arrangement, recently signed with Colombia, awaits ratification by the Assembly. However, the new Panamanian government has said it is not interested in becoming part of the Central American free-trade area. Instead, it will seek adherence to GATT by mid-1995, and aspires to eventual accession to NAFTA. An initial round of bargaining with the USA and other countries over the terms of GATT access is scheduled for November 1994. Panama is a beneficiary of the Caribbean Basin Initiative.

1.07 Key contacts. Panama does not yet have a "one-stop" window to help investors with information and procedures. The main source of business information is the Institute for Foreign Trade and Investment (IPCE—#3 Banco Exterior Building, Panama City; mailing address: PO Box 1897, El Dorado, Panama, Republic of Panama; Tel: 25-7244; Fax: 25-2193). Other information sources include the Chamber of Commerce, Industry and Agriculture (Cuba Avenue No 33a, Panama City; mailing address: Box 74, Panama 1, Panama; Tel: 25-0833, 27-1233; Fax: 27-4186) and the American Chamber of Commerce (Box 168, Balboa, Panama City, Panama; Tel: 69-3881; Fax: 23-3508). The American chamber publishes a helpful guide on doing business in Panama.

2.00 Organising an investment

2.01 Overview. There are few requirements for establishing a company in Panama, almost no restrictions on foreign participation in most business ventures, and few environmental regulations. Numerous investment incentives are available (3.00).

Panamanian corporate law, never amended since its passage in 1927, is conducive to organising a company in the country for the purpose of directing operations elsewhere, and taxes are levied only on net income derived from operations within Panama. Income tax laws are also attractive (7.00, 8.00). Licensing is not difficult, although protection of intellectual property is still less than adequate (4.00). There are no restrictions on remitting funds (6.00). Labour costs are considerably higher than those in near-by countries (10.00).

2.02 Basic investment approval. There is no approval mechanism governing foreign investment. Both local and foreign investors must comply with organisational formalities and obtain a licence from the Ministry of Commerce and Industry. The cost of obtaining one ranges from $250 to $750. Licences are granted for commercial and service operations (class A and B), and for manufacturing and construction operations (industrial licence).

2.03 Acquisition of an existing firm. No regulations prohibit mergers or takeovers in Panama.

2.04 Restrictions on foreign equity. Panama's constitution does not permit foreign companies to engage in retail trade, although this is not strictly enforced and may be avoided by setting up an anonymous corporation. Foreigners may not practise in certain professional activities. In addition, foreigners may not invest in radio stations.

The new privatisation law (Law 16, of July 14, 1992) does not restrict foreign participation in the purchase of utilities, but it does forbid state companies of foreign governments from purchasing Panamanian state companies. Otherwise, no restrictions are imposed on the percentage of foreign equity in Panamanian industries and businesses.

2.05 Building and related permits. Building permits are readily obtainable from the Ministry of Commerce and Industry.

2.06 Environmental law. There are few environmental restrictions in Panama, although in the past few years government actions indicate increasing concern with safeguarding the environment. The following regulations have been enacted:

• Laws 20 and 21 of 1990 ratified an international agreement on preventing pollution of the South Pacific via radioactive waste and the international Basilea Accord on the control and elimination of dangerous wastes.

• A 1991 agreement with other Central American countries established the Central American Interparliamentary Commission on Development and the Environment (CICAD), designed to monitor and combat the deterioration of the regional environment.

• Law 8, of June 7, 1991, prohibits the importation of toxic wastes into Panama.

• To address the overfishing affecting the shrimp industry, the administration issued Decree 124, of November 8, 1991, restricting shrimp fishing in Panama's territorial waters.

• In response to concerns about deforestation, the Institute for Natural Resources (INRENARE) issued Resolution JD 006–92, of February 7, 1992, forbidding the export of whole pieces of lumber. It authorises the export of only 12 kinds of lumber pieces.

• Ministry of Commerce and Industry Decree 38, of June 15, 1992, restricts tuna fishing in Panama's territorial waters to safe methods.

• To protect natural resources, INRENARE cre-

Requirements of a corporation in Panama

Capital. No minimum; no legal reserve requirement. Capital may be assigned in cash or kind. The board of directors assigns a value to equity contributions in kind. Non-cash investments must be registered in the documents of incorporation as shares with no nominal value.

Founders, shareholders. Minimum two persons of legal age; once founded, a corporation needs only one shareholder. No nationality or residence requirements.

Directors. Minimum three; no restrictions on nationality or residence. Directors need not be shareholders.

Management. Three management officers (president, secretary and treasurer) required, but one person may hold more than one of these positions. No nationality or residence requirements.

Labour. No requirement that labour be represented in management or on the board of directors.

Disclosure. Aside from documents supplied at the time of incorporation and annual income tax returns, no financial reports are required (with the exception of certain reports required for statistical purposes). Accounting books etc must be kept in Panama, except those on transactions outside the country.

Taxes and fees. Based on the amount of authorised capital or, if not reported, on the number of non-par shares, valued at $20 each for purposes of registration fees. Registration fees are as follows: $50 on the first $10,000; $0.75 for each $1,000 or fraction thereof from $10,001 to $100,000; $0.50 for each $1,000 or fraction thereof from $100,001 to $1m; and $0.10 for each additional $1,000 or fraction thereof over $1m. If only some of the shares have nominal value, the fee is computed on the basis of the total that is obtained from the shares with and without nominal value, assuming a value of $20 for those without nominal value. The maximum fee for shares without nominal value is $1,000.

Legal fees. Fees for organisation are about $300; notary charges and stamped paper, $75; translation into English, $35; and miscellaneous expenses, $15. In addition, corporations pay a $150 annual tax.

Types of shares. All types are permitted.

Control. A simple majority of shareholders may conduct business; meetings may take place anywhere.

ated a national system of protected wild areas by means of Resolution JD 022–92, of September 1992.

• To preserve the ecology of the Panama Canal basin and the surrounding areas, regained by Panama through the 1977 Panama Canal Treaties, the government issued Decree 14, of February 3, 1993, approving a master plan to adequately use and develop those lands.

• Law 1, passed by the Legislative Assembly on February 3, 1994, aims to protect and increase Panama's forest resources and regulates the granting of forestry concessions.

2.07 Acquisition of real estate. As in many other Latin American nations, foreigners are prohibited from owning land near the country's borders. Neither foreigners nor Panamanians may own beaches. Islands are state property and cannot be sold to private individuals. Otherwise, foreign companies are freely permitted to acquire land or buildings. However, a general practice is to lease lands for 20–30 year periods.

2.08 Local-content requirements. None.

2.09 Business associations. Membership is not compulsory in any business or industry group.

2.10 Establishing a local company. The following categories of business organisations are recognised in Panama: general partnerships, simple limited partnerships, joint-stock limited partnerships, limited-liability companies, stock corporations, co-operatives and branches of non-resident corporations.

Foreign firms almost always organise as corporations (see the box above for requirements).

When a corporation is established, the government must receive the following items, all notarised, under the articles of incorporation (which, if executed abroad, must be legalised by a Panamanian consul): (1) the name and domicile of each subscriber; (2) the domicile of the company and of the resident agent, who must be a lawyer or law firm in Panama (law firms charge about $200 per year to act as pro forma agents); (3) the names and addresses of directors and officers, who do not have to be Panamanians; (4) the name of the corporation set out in such a way as to distinguish it from other registered corporations; (5) the general objectives of the firm; (6) the amount of capital and the number of shares into which it is divided (either the par value of the shares must be shown or a statement must be issued that the shares have no par value); the (7) the length of time the corporation will function (usually stated as "indefinite").

In addition, firms seeking to engage in local business must secure a *patente comercial* (a commercial or industrial licence) from the Ministry of Commerce and Industry, which determines whether the operation complies with constitutional and other legal provisions.

Incentives for export-processing zones

Law 25 of November 30, 1992, provides incentives for export-processing zones, defined as areas with appropriate infrastructure in which companies produce goods and services exclusively for export.

The Cabinet Council authorises the establishment of export zones in specific areas, while the National Commission of Export-processing Zones (under the Ministry of Commerce and Industry) controls all aspects of the functioning of the zones. The commission, which began work in January 1991, is made up of the ministers (or deputy ministers) of commerce, Treasury, planning and labour, along with three representatives of business associations.

Companies eligible to locate in the zones include high-tech in-bond plants and those providing special and general services, such as restaurants and clinics. Processing zones may be established and operated by promoters of operators, which may be the same juridical person.

Zone promoters may build installations, sell or rent areas within the zones, and set up and operate gas, electrical energy, water, sewage, telecommunications, water treatment, garbage processing, security and other necessary activities. Promoters must invest contractual amounts within specific time spans; hire Panamanian workers (except for technical workers); provide free space for schools, clinics, sport and recreation centres for workers and their dependants; purchase materials in Panama when available at "competitive" prices; meet environmental rules; and prepare annual reports on their activities.

Licences to establish a zone may be obtained from the Technical Secretariat of the National Commission of Export-processing Zones (NCEPZ). Applications for such licences must include a pre-feasibility study of the project. No minimum investment is demanded, but once approved, the investor is bound to comply with terms mentioned.

Contracts to operate the zones will last indefinitely, but they may not be sold or transferred.

Companies wishing to operate within a given zone must also obtain a special licence from the NCEPZ. Application must also contain a study detailing the project details. Again, no minimum investment is demanded, but once approved, the investor is bound to comply with terms mentioned.

Companies established within export-processing zones (EPZs) may temporarily transfer raw materials and semi-finished products to smaller companies located outside the zones for a maximum period of six months without having to pay taxes.

Companies established within the EPZs are free from all taxes and price controls. The law also states that no income tax exemption will be given to foreign natural or juridical persons if the laws of their respective countries allow them to deduct or credit the income tax paid in Panama from the income tax to be paid in their country of origin.

The law creates a special immigration system. Permanent visas are granted to foreigners who invest $250,000 or more, and managerial and technical personnel may apply for temporary residence visas.

The law also offers relaxed labour provisions, including (1) a provision for hiring workers under fixed-term contracts of up to three years without normal severance-pay obligations upon contract termination; (2) freedom from indemnification obligations for workers laid off owing to fluctuations in export markets; (3) freedom from Labour Code requirements regarding bonus payments and productivity regulations; (4) freedom to rotate workers among different production lines according to the company's needs; and (5) the right to divide vacations into two parts and to determine when workers may take them.

Officers and directors are not required to be in Panama while the company is being organised, but a resident agent must be duly authorised to carry out all legal functions. The individual may be a company employee or director, but an outside legal representative will suffice. The cost to organise a corporation, including attorney's fees, is normally $600-1,500.

2.11 Establishing a branch. Operating in Panama through a locally incorporated subsidiary, as opposed to a branch, offers no distinct advantages aside from tax considerations in the home country.

To establish a branch, a foreign company must record the following in the mercantile registry: (1) the articles of incorporation (and amendments); (2) the latest balance sheet of its operations; (3) an indication of the amount of capital to be used in Panama; and (4) a certificate showing that it is authorised to do business in its country of origin.

These documents must all be authenticated by the Panamanian consul in the country of origin and must be notarised before being recorded. The foreign company must designate a representative in Panama who has power of attorney in case legal proceedings are necessary. There is no noticeable delay in these procedures, especially if a Panamanian attorney is responsible for the filing.

Companies that want to establish a branch for manufacturing purposes are required to obtain an industrial licence from the Ministry of Commerce and Industry.

3.00 Incentives

3.01 Overview. Panama offers incentives for export production (especially for non-traditional products), for in-bond assembly and for locating in the Colón Free Zone or in industrial parks outside the main cities. Benefits include import duty and other tax exemptions, as well as special tax deductions. In addition, Panama is a beneficiary of the US Caribbean Basin Initiative, which grants exporters of many products access to the US market at low tariff levels. A 1992 law offers a range of incentives for the operators and tenants of export-processing zones (see box on p 11).

3.02 General incentives. Most export-oriented, agricultural and manufacturing companies (3.03) and firms operating from the Colón Free Zone (3.04) and special export zones are eligible for generous incentives. Lesser incentives are available for manufacturing firms producing solely for the domestic market (3.03).

Special incentives are also available for mining investments, the construction sector, hydrocarbon operations, tourism investments, ship-owners and reforestation activities (3.03).

Companies located in priority development zones are eligible for additional incentives (3.04).

As indicated previously, these benefits apply equally to foreign and domestic companies, there is no legal requirement to incorporate local equity into the investment and funds may be repatriated without restrictions. Companies must agree to abide by the decisions of the Office of Price Regulation if their (nationally sold) products become subject to price controls.

The government offers special incentives to retired persons and executives of international corporations not deriving income in Panama to persuade them to reside there. Law 9 of June 24, 1987, offer the following benefits:

- A one-time-only total duty exemption on the import of household and personal goods valued up to $10,000;
- A biannual total duty exemption on the import of one motor vehicle for personal use;
- Exoneration from the payment of any deposit, lien or migratory right needed to obtain the pensioner's tourist visa;
- The right to a resident visa if the executive can demonstrate, with authentication by a consul, that he has a minimum income of $750 a month from a foreign source.

Executives of international corporations not deriving income in Panama and residing under a temporary visa may import duty-free, on a one-time basis, household goods up to a value of $3,000. The individual is also relieved of all fees in obtaining a temporary visa. The employer must agree to repatriate the executive upon termination.

3.03 Industry-specific incentives include the following:

Agriculture. Law 2 of 1986 establishes incentives in favour of agricultural and livestock production and exports. Activities that receive the benefits of the law are (1) production of food, forestry, and agricultural raw materials; (2) the commercial raising of cattle, hogs, poultry, fish and other animals; (3) the transformation of the above-mentioned products using not less than 50% local raw materials; (4) the production of fertilisers and other agrochemicals, even though no local raw materials are used; and (5) the financing of equipment, goods and animals for agricultural and livestock production and processing.

Law 2, interpreted by Executive Decree 7 of March 1987, and Ministry of the Treasury Resolution 201-1061, of October 10, 1991, grant the following incentives:

- Reduced electricity rates (up to 30%);
- For income tax purposes, deduction of 30% of the sums invested in agricultural, livestock and agro-industrial activities (deductions not to exceed 40% of the taxable income before making use of this incentive);
- Total exemption from income taxes on (1) the sums donated to non-profit research agribusiness institutions; (2) the revenues from non-traditional agricultural, livestock and seafood exports; and (3) the gross income of farmers of less than $100,000 per year.

In addition, income from the sale of timber cultivated from plantations between 1986 and 1993 is tax exempt.

Fiscal incentives are granted to banks and financial institutions that provide credit facilities and loans aimed at improving the agricultural, livestock and agro-industrial sectors. Revenues from interest and commissions earned from such loans are exempt from income taxes, provided that (1) such loans are used exclusively in the financing or refinancing of investments in these sectors; (2) the terms for the payment of the loans are no less than three years, including a grace period of no less than one year for the payment of the capital; (3) the loans earn interest at a rate no greater than the market rates; and (4) the lender is a bank or credit institution.

Forestry. Law 24 of November 23, 1992, establishes important incentives for reforestation activities, including the following:

- Income tax exemptions for 25 years;
- Exemption from import taxes for machinery, equipment, vehicles, seeds, plants and other ma-

terials needed for reforestation projects;

• Income tax exemptions on dividends and profits earned from stocks, bonds or securities of corporations engaged in reforestation;

• Deductibility of interest paid on loans;

• A four-percentage-point preference against market rates on loans. (Financial institutions making loans for reforestation receive an annual tax credit for the first ten years of the loan period equal to the difference in interest income between what they would have received at market rates and the lower preferred forestry rate.)

Mining offers interesting opportunities to the foreign investor. Minerals found in Panama include copper, gold, silver and manganese. Ore concessions are granted to the foreign or local investor for the minerals found. They include the exclusive right to carry on all geological and seismic investigations, all mineral extraction operations, the transport of extracted minerals, and the warehousing, marketing, and export of the extracted minerals.

Taxes are paid on taxable income from mining operations at normal schedule rates, but a 20% discount is granted for commercial production of mining operations initiated between February 8, 1993, and February 8, 1998. Such discount will be effective for the mine's productive life. A depletion deduction may be applied annually based on the mineral reserves and the extracted units. The depletion allowance may not exceed 50% of the net taxable income during any fiscal year. Exploration expenses may be capitalised and amortised later or declared as expenses during the fiscal year in which they were incurred. Losses may be carried forward for a maximum of three consecutive fiscal periods following the fiscal year in which they originated. The use of accelerated depreciation methods, such as double-declining balance, may be granted for physical assets.

Total exemption from import duties is granted for all equipment, spare parts and materials required for mining operations. Exploration concessions are granted for a four-year period, extendable for two additional periods of two years each; ore concessions are granted for 20–25 years, depending on the class of mineral, and are extendable for three periods of ten, five and five years, again depending on the mineral.

The Department of Mineral Resources of the Ministry of Commerce and Industry is the government agency with the responsibility for formulating mining policy, overseeing mining operations, performing geological studies, preparing geological maps and statistics, and maintaining a file of mining concessions.

Manufacturing. Under Law 3 of 1986, companies producing manufactured goods for domestic consumption are granted the following: import duties of just 3% of cif value on machinery, equipment, raw materials, containers and packaging; total exemption from income taxes on that portion exceeding 20% of the net taxable income of the profits reinvested in fixed assets for increasing plant capacity or for manufacturing new products; an option to carry over losses to the next five years (losses can be deducted in any of these years, or be prorated among them); and accelerated depreciation rates.

To apply for incentives, a company falling into an eligible category need only register in the National Industry Official Registry, which is part of the Ministry of Commerce and Industry. The firm submits a form and a few identification documents, along with the $10 registration fee. A registration lasts for a period of ten years (15 years in development priority areas), during which there is an annual fee of $50. Upon expiration companies must renew their application annually.

Construction. Law 11 of 1990 grants preferential interest rates for certain mortgage loans, provided that (1) the loan is used for the purchase or construction of the principal dwelling of the borrower; (2) the house is brand new; (3) the loan is not used for improvements of a previously inhabited house; (4) the loan has a mortgage guarantee; (5) the price of purchase or the value of the construction does not exceed $62,500; and (6) the term to repay the loan is not less than 15 years.

The difference between the reference rate and the rate charged on preferential-interest-rate loans is known as the preferential margin. This margin cannot exceed 5% for loans on houses with purchase prices or values below $25,000 or 4% for houses with prices between $25,000 and $62,500. However, the National Banking Commission can fix periodic rates without exceeding the above top rates, taking into consideration the money-market conditions and the country's need for housing. Those holding preferential mortgage loans cannot deduct the interest paid as an expense on their income tax returns.

• Law 5 of May 1994 extended these preferential rates for a further five years.

Incentives for the construction industry are granted through Decree 44 of 1990, whereby construction projects begun after February 1, 1990, are exempt from real estate taxes for 20 years from the moment the occupation permit is issued.

In addition, as of February 1, 1990, earnings derived from the transfer of real estate that are invested in new construction will be exempt from income taxes, provided such earnings are invested in new construction projects with values of at least four times the profit in each case. If the cost of the new construction is less than the previous one, the tax-payer will be allowed to deduct only 20% of the construction cost from taxable income.

For income tax purposes, deduction of $1,000 is allowed on the first sale of new housing units of priority social interest with purchase prices under $10,000; deduction is $750 for constructions of social interest with prices under $14,000.

Hydrocarbons sector. Several oil companies have explored in almost all the provinces of the country. The most recent activities have centred on the Gulf of Panama near the coast of Darien province and in the province of Bocas del Toro, albeit without success.

Law 8 of 1987 promotes and regulates the exploration and exploitation of oilfields, asphalt in its natural state, natural gas and other hydrocarbons; their refining and transport by pipelines; and the storage, marketing and export of exploited or refined substances.

The Ministry of Commerce and Industry, through the Department of Hydrocarbons, is in charge of granting exploration permits for geological, geochemical and geophysical explorations for a 24-month period. Exploration contracts are granted for a minimum of five years, plus two more if necessary. Companies engaging in refining, transport or storage are granted contracts for 25 years, renewable for periods of five years. These concessionaires undertake all risks, liabilities and costs by supplying capital, machinery, equipment, materials, personnel and technology. Partial or total assignation of rights and subcontracting are allowed provided that the Department of Hydrocarbons grants the authorisation.

During the term of the contract contractors must pay the government the following:

• 20% of the net production of hydrocarbons for the period in which the contractor is recovering from his initial investment (not to exceed five years);

• 50% of the net production of hydrocarbons once the contractor has recovered his initial investment or at the end of the fifth year, whichever comes first;

• 60% of the net production of hydrocarbons under a renewal contract.

Contractors are granted the following benefits:

• Total exemption from import duties on machinery, equipment, parts and any other items necessary for the execution of the activities under the contract.

• Total exemption from income taxes on profits derived from activities during the first five years of production or until the initial investment is recovered, whichever comes first. From then on, the contractor pays 25% of the net production of hydrocarbons. This amount is retained by the government and considered part of the 50% payment mentioned above.

• Special depreciation schedules in the case of machinery and equipment.

• Special carry-over provisions for income tax purposes.

Decree 29 of July 14, 1992, allows for the creation of petroleum export zones in specially designated areas, permitting both foreign and national companies to produce, refine and export petroleum products. This includes making direct sales to ships transiting the Panama Canal. Companies operating out of these zones are exempt from national and municipal taxes and are not subject to regulations affecting the local market.

Maritime registry. Since its creation in 1925, the Panamanian Maritime Registry has experienced tremendous growth. The National Merchant Marine was created by Law 8 of 1925, when the open-register system was adopted and restrictions concerning nationality and residence were eliminated. Since then, the Panamanian Maritime Registry has accepted ships belonging to nationals and foreigners alike, provided that all legal provisions in force are complied with, especially those relating to the administration of vessels, safety, pollution control standards, technical criteria and fiscal matters.

The Panamanian Maritime Registry offers shipowners the following advantages:

• An open registry: Any person or company, regardless of nationality or place of incorporation, is eligible to register ships under the Panamanian flag.

• Low registration fees compared with those of other countries.

• Total exemption from income taxes on income derived from the operation of vessels engaged in international trade.

• No minimum tonnage requirements. However, vessels 20 or more years old must pass a special inspection in order to obtain a permanent navigation patent.

• A provisional ship registration valid for six months, obtainable in Panama through a lawyer or in those ports where an authorised Panamanian consul is present.

• Parallel registry, as long as this is allowed by the country that granted the vessel's original registration. Under the Bareboat Charter System, a foreign vessel may register in Panama for a two-year period without losing its previous registration, which is temporarily suspended. A certificate of consent from the country where the vessel is originally registered is required for this purpose.

The Direccion General Consular y de Naves of the Treasury Ministry is authorised under Decree 39 of December 16, 1987, to grant special discounts on registration fees for ships of virtually all classes if it considers such discounts necessary to attract such ships to the country. It may also grant a discount on any other annual tax or levy applied to foreign vessels once these are registered in Panama.

Tourism. Panama is endowed with substantial natural beauty and diversity, not to mention the Panama Canal. To exploit these advantages, the Panamanian Tourism Institute has developed a ten-year master plan for tourist development whose aim is to move away from primarily business-oriented tourism to capture the recreational and eco-tourism market. The plan, which divides the country into nine tourist zones, aims to increase total hotel rooms from 7,342 in 1993 to more than 18,000. A minimum investment of $685m is foreseen.

Law 8 of May 10, 1994, provides a new regime of tourism incentives, replacing prior decrees in this area. Under the new law, the cabinet may declare areas of the country special tourism-development zones. Incentives are granted for basic infrastructure development in these areas, as follows:

• Total 20-year exemption from real estate taxes on land and improvements.

• 15-year exemption from income taxes.

• 20-year exemption from import duties on materials, equipment, and accessories, as long as these are not produced in Panama. This includes vehicles, aircraft, helicopters, boats and sporting gear.

• 20-year exoneration from taxes on the use of wharves or airports constructed by the company in the zone.

• For those lending money to investors, a 20-year tax exemption on interest earned.

In addition, the law grants a series of incentives for investments in tourism hotel facilities proper, provided the value of the investment exceeds $300,000 in Panama City and $50,000 elsewhere in the country:

• Total exemption for a 20-year period from import duties on furniture, household goods, materials and equipment, as well as boats and vehicles with a minimum capacity of eight persons (as long as these are not produced in the country). Restaurants and nightclubs deemed of importance to tourism are eligible for a similar exemption for a three-year period.

• Exoneration from real estate taxes for 20 years, and from any capital tax.

• Exemption from any wharfage or landing taxes on wharves or airports constructed by the company.

• Income tax exemptions on interest earned by creditors who invest in tourist lodgings.

• 10% annual depreciation on fixed assets, excluding land.

Investments in convention centres, recreational parks, marinas and eco-tourism facilities enjoy a similar, three-year exemption from import duties on materials and equipment, depreciation of fixed assets over a ten-year term and a 20-year exoneration from real estate taxes on improvements.

Tourism companies are exonerated once every three years from import taxes on buses, microbuses, limousines, boats and spare parts for same. Those offering transport services to tourists to and from airports, hotels and wharves are also eligible for import-duty exemption on their vehicles upon approval by the Panamanian Tourism Institute (IPAT). Income tax exemptions are available to foreign boat and aeroplane owners who use their craft for tourism purposes, provided reciprocal tax measures exist in their countries of origin.

A number of incentives are available to those investing in tourism facilities outside the Panama City metropolitan area. If a company does not make use of the above-listed incentives, it may opt instead to receive a Tourism Employment Certificate (CET) equal to 21.5% of the gross salary of each employee (not to exceed $400 monthly). CETs are non-taxable, transferable instruments that the investor can use to pay income, import and real estate taxes. In addition, 50% of the amount of equity, bonds and other financial instruments issued by tourism enterprises operating in these areas and bought by unrelated parties will be considered a deductible expense for income tax purposes as long as the instruments are redeemable over a period not less than ten years.

3.04 Regional incentives. In addition to the general incentives (3.02), companies that locate in one of 12 designated districts in the interior of the country and that produce goods for domestic consumption are eligible for a full exemption from income tax for the first five years. They are also granted a full tax exemption for ten years on buildings and land.

3.05 Export incentives and zones. Exporting companies, especially if they are located in special export zones, receive a number of tax and tariff incentives as well as certain Labour Code advantages (10.01, 10.05).

Under Law 3 of 1986, companies that produce manufactured goods solely for export are granted (1) a full exemption from import tariffs and taxes, including value-added tax, on raw materials, parts and machinery; (2) a full income tax exemption (this excludes extractive industries); (3) a full export, sales and production tax exemption; and (4) a full exemption from taxes on capital or assets (excluding taxes on licences and buildings).

Manufacturing companies exporting part of their production may claim exemptions 1–3 above on the percentage of product exported. In addition, they can deduct all fixed expenses incurred from their taxable income, provided that the export sales do not exceed 20% of the total sales in that fiscal year. This incentive is not applicable when the corresponding exports have obtained tax credit certificates (CATs). Export sales that exceed the mentioned percentage can receive tax credit certificates, and deductions are to be taken in accordance with allocation procedures established by fiscal regulations.

Tax credit certificates. Law 108 of December 30, 1974, created CATs to promote the export of non-traditional products wholly or partially produced in Panama. (Traditional exports include agricultural and livestock products, petroleum and its derivatives, minerals and metals, and exports that come under bilateral treaties or move from the Colón Free Zone to foreign countries.)

To be eligible, non-traditional exports are required to have both a minimum national content of 20% and a minimum of 20% national value added. Companies that export products having only a minimum national content of 20% are eligible provided they are located outside the metropolitan area. If eligible, companies may receive CATs equivalent to 20% of national value added to the product exported.

CATs are issued by the Ministry of the Treasury. The certificates are in nominative form and are transferable by endorsement. They can be used nine months after their issuance, but only in the subsequent fiscal periods, to pay all national taxes and import duties. CATs may also be accepted totally or partially by the government at their nominal value in payment for goods or property sold in public auctions, if such acceptance is expressed in the bidding guidelines.

These certificates are exempt from taxes and are not interest bearing. They are negotiable in the securities exchange market, and expire four years after the date of issuance. To qualify for CATs the person or company applying must have operated in Panama for at least one year. Prior to the export of goods it is necessary to obtain a numbered inspection certificate from the Ministry of the Treasury.

Ministry of Commerce and Industry Decree 5 of February 1990 defines value added as the combined cost of labour, taxes, rent, public-service payments and interest payments. Local content is derived by deducting net profits before taxes (up to 12% of invested capital) from value added and adding the cost of local raw materials included in the export product.

The Institute for Foreign Trade and Investment (IPCE) is responsible for determining whether a specific product meets the national-content and value-added requirements. Companies wishing to obtain CATs should consult a guide issued by IPCE to establish the value added of their exports.

In-bond assembly companies are not eligible for CATs.

Colón Free Zone. Companies operating from the Colón Free Zone are granted benefits that existed prior to the inception of Law 3. These include a full tax exemption on imports of raw materials and machinery as well as exemptions from production, sales, property and municipal taxes. The government also offers a temporary income tax holiday for firms in the zone that export at least 80% of their output and employ at least 30 Panamanians. A firm meeting these requirements is entitled to a 95% reduction in tax during its first five years of operation.

Normally, a firm in the Colón Free Zone pays taxes on export income at the following reduced rates: 2.5% on taxable income up to $15,000; 4% on $15,001–30,000; 6% on $30,001–100,000; and 8.5% on taxable income above $100,000.

4.00 Licensing

4.01 Overview. Licensing industrial property poses no major problems in Panama. The government does not place restrictions on payments, nor does it try to influence the kind of technology brought into the country.

4.02 Protection of intellectual property. Panamanian law protects and recognises the rights of the author of any discovery or invention through a patent issued by the country's executive branch, which will assure him the exclusive rights to use his discovery or invention for a term of five to 20 years.

Patents granted for a shorter term than the maximum allowed by law can be renewed at the discretion of the Ministry of Commerce and Industry, provided that the importance of the discovery or invention demands it. The renewal may be requested at any time up to a month after the expiration date of the original term of the patent. No patent will be issued in contradiction to previous acquired rights. Patents will be cancelled when they are issued to the detriment of third-party rights, or when they are not used during the first third of the period for which they were granted.

Inventors who have obtained patents in other countries can obtain the respective patent of invention in Panama, provided that the inventions in question are not in the public domain. In these cases the privilege will be granted for a period no greater than 15 years, and in no event shall the term of the Panamanian patent exceed that of the original patent.

Trademarks may be represented by any word, phrase or symbol, or combination of these, used to distinguish a specific product destined for industry or commerce. They must be sufficiently different from one another so that a given trademark can be clearly distinguished and in the course of its use no confusion can arise.

Intellectual-property law in Panama

Conventions. Pan-American Convention (Buenos Aires), 1910; Inter-American Convention for Trademark and Commercial Protection, 1929; Inter-American Convention on the Rights of Authors (Washington), 1946; Universal Copyright Convention (Geneva), 1952; the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (1962); the Geneva Phonograms Convention (1971) and the Brussels Satellite Convention. The government has submitted legislation for Panama to accede to the Paris Convention on Protection of Industrial Property. Accession to the Berne Convention on Literay and Artistic Works has been discussed. Panama is a member of the World Intellectual Property Organization (WIPO).

Basic laws. Administrative Code (AC) of 1917; Executive Decree (ED) 1 of March 3, 1939; Law 41 of June 29, 1994.

Patents

Types and duration. Patents five, ten or 15 years from date granted; revalidated foreign patents five, ten or 15 years, but no longer than basic foreign patent.

Novelty. Foreign patents may be validated at any time if unknown in Panama.

Unpatentable. Contrary to health, public safety or good morals.

Fees. Annual charge of $10 for the period protection is sought, payable at the time of application.

Compulsory licensing. Local patents must be worked within the first third of their term; if not, they lapse. However, no compulsory licensing provisions are imposed. No working or compulsory licensing requirements in effect for revalidated foreign patents.

Industrial designs and models

Protection is available under the patent and trademark laws, according to the type of design.

Trademarks

Duration. Ten years from date granted; renewable.

Legal effect. Registration confers exclusive rights, but prior user may apply for cancellation of the registration.

Not registrable. Trademarks containing the following cannot be registered: the flag or coat of arms of the Republic of Panama or its municipalities or of foreign nations; pictures or names of living persons without their express consent, or of deceased persons without express consent of their heirs, except pictures or names of historical personages; marks consisting exclusively of information on the class, date and place of manufacture or on the quality, destination, conditions of price, amount or weight of the goods; marks that simply convey the usual name of the item in another language; and marks identical or similar to another trademark already registered or known and used to distinguish the same or similar goods, or goods of the same descriptive properties as those desiring protection, provided the similarity is sufficient to cause confusion.

Fees. $50 application and renewal.

Copyrights

Types and duration. All kinds of copyrights are available.

Legal effect. Registration confers all moral and patrimonial rights, including neighbouring rights.

Fees may be around $200 per work or group of works registered. Government fees are limited to the stamp and official paper, at a total cost of about $5.

A comprehensive new law that was passed in June 1994 covers copyrights on books, artistic productions and other types of intellectual or artistic works. Based on the World Intellectual Property Organisation model, the law provides for royalties, facilitates the prosecution of copyright violators and protects computer software. Registration by the general secretary of the Ministry of Education is still necessary to obtain protection. The author must request registration in writing and must include three signed samples of the work to be protected.

Patent, trademark and copyright provisions are outlined in the box above.

Despite passage of the new law, which goes into effect in January 1995, enforcement of copyrights and trademarks in Panama is still less than adequate. Pirating of videos and music cassettes, though lessened, remains frequent, as is the poaching of cable-TV transmissions. Panama was the object of two Section 301 petitions in 1994, one brought by the Motion Picture Association of America and the other by Nintendo, the latter complaining of trade in counterfeit computer games through the Colón Free Zone. Though neither was granted, enforcement of the new copyright law will be watched.

There is a booming business in counterfeit goods, particularly brand-name clothing, facilitated by the free zone. The decisions of administrative law officers in the Ministry of Commerce and Industry who adjudicate trademark disputes have been inconsistent with regard to which foreign trademarks should be considered notorious (ie subject to protection even when not registered). Lawyers often register famous foreign marks and then demand to be bought out when the companies seek legitimate registration of same in Panama. A draft industrial property law pending action in the Assembly aims to deal with these problems.

4.03 Registering property. Patents can be filed through a certified local attorney; all documents must be presented at one time. The specification and description of the item for patent must be filed with the Patent Office in Spanish.

Patent applications are examined as to form and patentability, not novelty. Upon acceptance, the application is published twice in the *Official Gazette*; opposition must be filed within 90 days of first advertisement. Decisions regarding challenged patents are made by the courts.

For trademarks, the application, description, specimens and electrotype must be filed with the Trademark Office; the application must be complete when filed. The applicant must state the date of first use in Panama or that the mark will be used in due time. For registration purposes there is no difference between a trademark and a commercial mark (Executive Decree 1/39, article 2). Foreign trademarks are those that distinguish goods produced, manufactured or made abroad. National trademarks are those that distinguish goods produced, made or manufactured in Panama (Executive Decree 1/39, article 16).

A foreign trademark will be registered in Panama if it has been previously registered in its country of origin, which can be proved by an authenticated copy of the registration of the country of origin.

Any owner of a trademark, either foreign or Panamanian, may request its registration with the Department of Industrial Property of the Ministry of Commerce and Industry (Tel: 27-42222 or 27-3987; Fax: 27-4134) to acquire the exclusive right to use it in the Republic of Panama.

The application must be accompanied by the following documents: power of attorney, legalised by the Panamanian consul; ten prints of the mark; a certified copy of the registration in the country of origin or its application, legalised by the Panamanian consul; and a sworn declaration stating the date of first use in the country of origin and that no other entity is using the same trademark.

The application is published once in the *Industrial Property Bulletin*, and if after 90 days of the date of publication no claim to the contrary is filed, registration of the trademark is made.

The ownership acquired with the registration of a trademark refers only to its use, and in no case does it grant an exclusive right to the manufacture, distribution or sale of the product.

The transfer of a trademark carries with it the right to exploit the products covered by it. The transfer is not subject to any special formality, but it must be registered in the Ministry of Commerce and Industry in order to be effective against third parties.

Registration is granted for a term of ten years, indefinitely renewable for equal periods of time, provided that the renewal is requested during the period comprising the 30 days preceding and the 30 days following the date of expiration.

In the case where renewal is not requested within this time, the registration will be cancelled and the right acquired will be extinguished. However, no one will be able to register the trademark within the two succeeding years other than the person in whose favour the registration was previously made.

4.04 Negotiating a licence. Royalties and fees vary widely by product and by the licensee-licenser relationship. Prospective investors should contact Panama's Chamber of Commerce or the Institute for Foreign Trade and Investment for possible partners.

Information on licensing agreements is not publicised in Panama.

4.05 Administrative restrictions. Licensing agreements should be covered by a detailed contract, enforceable in court. Although it is not compulsory, assignments of patents and trademarks should be recorded with the Department of Industrial Property at the Ministry of Commerce and Industry, since this registration conveys effective protection against infringement by third parties.

Licensing agreements may include restrictions on materials or services to be used in working the licence. No controls are imposed on the remittance of royalties or fees agreed upon by licensee and licenser.

5.00 Competition and price policies

5.01 Overview. Free trade and competition are encouraged. A constitutional provision authorises legislation to prohibit any combination, contract or action that tends to restrict free trade or competition and that would be detrimental to the public. The new government has announced