

**LAW 52**

**Dated October 27 of 2016**

**Which establishes the obligation to maintain accounting records for certain legal persons and issues other provisions**

**THE NATIONAL ASSEMBLY**

**DECREES:**

**Chapter I**

Accounting records and its Supporting Documentation

**Article 1.** Legal persons not carrying out transactions which are perfected, consummated or become effective within the Republic of Panama are under the obligation to keep accounting records and to maintain its supporting documentation at the offices of its resident agent within the Republic of Panama or at any other place within or outside the Republic of Panama, as determined by its administrative bodies.

The accounting records and supporting documentation must be maintained and be available for a period of not less than five years, counted from the last day of the calendar year within which the transactions for which these records apply were completed, or from the last day of the calendar day in which the legal person ceases its operations.

**Article 2.** In those cases where the accounting records and the supporting documentation are maintained at a place other than the offices of the resident agent, the legal persons shall be under the obligation to provide to the resident agent, in writing, the following information:

1. Physical address where the accounting records and the supporting documentation are maintained.
2. Name and contact data of the person maintaining same under his custody.

Legal persons must inform the resident agent, in writing, of any change in physical address or contact information with respect to where the accounting records and supporting documentation are maintained, within a period not greater than fifteen working days, counted from the date on which the respective change was approved.

**Article 3.** In the event that the legal person shall maintain outside the Republic of Panama the accounting records and the supporting documentation, it shall be under the obligation to provide them to the resident agent, upon prior request from the competent authority, within a term not greater than fifteen working days counted from the notice of

said request for information to the resident agent of the legal person on whom the information is requested.

**Article 4.** In the event that the legal person does not provide the resident agent with the accounting records or the supporting documentation within the term set forth in the foregoing article, the resident agent shall be under the obligation to resign as resident agent of said legal person within a term not greater than ten working days, counted from the day following the expiration of the term set forth in the foregoing article. Said resignation must be submitted in writing to the Public Registry of Panama, which shall register it free of any charge. In this event, the use of plain stamped paper may be dispensed with.

In the event that the resident agent shall not register in the Public Registry of Panama its resignation within a term of ten working days set forth in the foregoing paragraph, the competent authority shall impose on it a sanction of five hundred balboas (B/.500.00) and shall order to the Public Registry the definitive removal of said resident agent of the legal person. The removal shall have as a result thereof that said resident agent shall not be registered again as such for the same legal person.

In the event of removal of the resident agent, as set forth in this article, the Public Registry of Panama shall not register a new resident agent for the legal person sanctioned until the competent authority shall inform it that the causes that gave rise to the sanctions have been remedied.

**Article 5.** The resident agent is under the obligation to maintain from the legal persons not carrying out transactions which are perfected, consummated or become effective within the Republic of Panama, a registry of the place where the legal persons maintain the accounting records and the supporting documentation, in the event they are maintained in a place other than the office of the resident agent. The registry to which this paragraph refers to must include:

1. The name of the legal person.
2. Physical address where the accounting records and the supporting documentation are.
3. The name of the person who keeps under his custody the accounting records and the supporting documentation.

Likewise, the resident agent is under the obligation to maintain a copy of the share and shareholders registries of those corporations for whom he acts as such.

## **Chapter II**

### **Definitions**

**Article 6.** For the purposes of this Law, the following terms shall be understood as:

1. *Competent authority.* The General Income Directorate of the Ministry of Economy and Finance of the Republic of Panama.
2. *Supporting documentation.* That including contracts, invoices, receipts or any other required documentation to support the transactions performed by a legal person.
3. *Administrative Bodies.* Directors, administrators, foundation council or any other body administering a legal person.
4. *Legal person.* Every corporation, of limited liability or of any other type with mercantile purposes, as well as private interest foundation, incorporated and in force pursuant to the laws of the Republic of Panama.
5. *Accounting Records.* Data indicating clearly and precisely the commercial transactions of the legal persons, its assets, liabilities and patrimony, and allow to determine the financial condition of the legal person, as well as to prepare financial statements of said legal person.

The spread of the accounting records shall depend on the complexity and magnitude of the activity to which the legal person is engaged into.

### **Chapter III** Sanctions

**Article 7.** The legal person that does not comply with the obligations established in the present Law shall be sanctioned by the competent authority with:

1. A fine of one thousand balboas (B/1,000.00).
2. A fine of one hundred balboas (B/.100.00) for every day elapsing without the cause that gave rise to the noncompliance is not remedied.

### **Chapter IV** Additional Provisions

**Article 8.** Article 73 of the Code of Commerce shall read as follows:

**Article 73.** The indispensable accounting records which every merchant must keep are: a Journal and a Ledger. Commercial companies must keep further a Minutes Book and a Stock or Stockholders Register or, in its case, a Register of the Quotas or Contributions of Equity or Corporate Participation.

**Article 9.** Article 318-A of the Fiscal Code shall read as follows:

**Article 318-A.** Corporations, limited liability companies, and any other legal persons, national or foreign, shall pay at the time of registration and in the subsequent years an annual franchise tax of three hundred balboas (B/.300.00) to be maintained in full force. Private interest foundations shall pay at the time of its registration a first annual franchise tax of three hundred and fifty balboas (B/.350.00). In the subsequent years payment in this respect shall be of four hundred balboas (B/. 400.00) to maintain the foundation in full force. For legal purposes, full force shall be understood as the valid registration in the Public Registry of Panama. The obligation to pay the annual franchise tax is not extended to non-profit organizations, cooperatives and civil corporations.

The first franchise annual tax dealt with in the present article shall be paid at the time of registration of the legal person together with the respective registration fees as if it were part of the Registration Fees. Once the first annual franchise tax has been collected, the Public Registry of Panama shall forward said amount to the General Income Directorate on the first working day of the following week from the day of its collection and shall report the name and number of registration of the respective corporation or foundation.

The second and following annual franchise tax shall be paid as follows:

- a. Until July 15<sup>th</sup> of every year, by the legal person whose registration date of the charter of incorporation or constitutive document in the Public Registry of Panama corresponds to the months from January to June, inclusive.
- b. Until January 15 of every year, by the legal person whose registration date of the charter of incorporation or constitutive document in the Public Registry of Panama corresponds to the months from July to December, inclusive.

These payments shall be made through the legal representative or the registered or resident agent of the legal person.

At the time of making the payment, the legal representative or registered or resident agent, must declare the date on which the charter of incorporation or constitutive document has been registered in the Public Registry. This affidavit shall be made in a form that, to such end, the General Income Directorate shall provide.

Payment of this tax out of term shall cause a sole surcharge of fifty balboas (B/.50.00) per year or fraction of a year. For these purposes, the provisions of articles 1 and 2 of Law 60 of 1973 shall not apply.

Taxpayers may pay in advance this tax, in which case said payment shall be understood as definitive for the periods covered.

**PARAGRAPH 1.** Non-payment by a legal person of its annual franchise tax within the period in which it is due shall have as a result the non-registration in the Public Registry of Panama of no corporate act subject of registration and non-issuance of certificates related to said legal person. Without prejudice of the foregoing, the Public Registry of Panama shall issue certifications of delinquent legal persons upon request of a competent authority or of third parties only for the purpose to enforce its rights, in which event, the certification shall exclusively be issued to such effects, indicating that it is in default.

Delinquency of legal persons on the payment of its annual franchise tax shall not preclude the registration in the Public Registry of the unilateral resignations on the part of any member of its administrative bodies or of its resident agent.

**PARAGRAPH 2.** The Public Registry of Panama shall suspend the corporate rights to the legal person that shall continue without designating a resident agent during a period greater than ninety calendar days after the resignation, removal or termination of the existence of its previous resident agent.

Likewise, the Public Registry of Panama shall suspend the corporate rights to the legal person that shall incur in delinquency in the payment of its franchise tax for a period of three consecutive years, prior order from the General Income Directorate of the Ministry of Economy and Finance. To such purposes, this Directorate shall forward semiannual reports to the Public Registry of Panama informing about those legal persons which are in arrears by three consecutive years.

Likewise, the Public Registry shall suspend the corporate rights to the legal person that is in arrears in the payment of any fine or sanction imposed and duly executed, prior order from a competent authority.

The Executive Branch shall regulate the manner in which the suspension order must be filed.

**PARAGRAPH 3.** The registration in the Public Registry of Panama of the suspension of corporate rights of a legal person shall have the following effects, while said suspension lasts:

1. Impossibility to initiate legal proceedings, conduct businesses or dispose of its assets.
2. Impossibility to make claims or exercise any right.
3. Impossibility to carry out any corporate action resulting obliging para the legal person.

Notwithstanding, where the corporate rights of a legal person had been suspended, the latter may:

- a. File a petition for reactivation.
- b. Manage the defense of any proceeding initiated against it.
- c. To continue with legal processes instituted in its name prior to the date of suspension.

**PARAGRAPH 4.** Once the suspension of the legal person has been registered in the Public Registry of Panama the legal person shall have a term of two years to be revived.

During said period any administrative body, stockholder, partner, resident agent or any third party interested may request its reactivation.

Once reactivated, the legal person shall recover its full capacity and may resume its activities.

The Executive Branch shall regulate the applicable proceeding to the petition for reactivation.

**PARAGRAPH 5.** The administrative body, stockholder, partner, resident agent or any third party interested who requests the reactivation of a suspended legal person must pay a reactivation fine of one thousand balboas (B/.1,000.00) to the competent authority that issued the suspension order, and remedy the causes that gave rise to said suspension.

**PARAGRAPH 6.** Upon expiration of the two years term set forth in Paragraph 4 without the reactivation of the legal person having been effected, the Public Registry of Panama, shall proceed with the definitive cancellation and, consequently, said legal person shall be understood definitively dissolved, with all legal effects that this entails.

Once the legal person has been dissolved, as determined in the present Paragraph, the liquidation process of the legal person shall be initiated pursuant to what is provided for in the law.

**Article 10.** Article 9-A is added to Law 2 of 2011, namely:

**Article 9-A.** Certification of the resident agent is established in which it must be stated its consent and that no fees are owed to it in the exercise of this office, which must be issued when legal persons through its administrative bodies decide change it from its resident agent condition. Notaries Public shall not close the Deed without the certification of the resident agent.

**Article 11.** A paragraph is added to article 10 of Law 2 of 2011, namely:

**Article 10. ...**

Resident agents may resign, at any time, to the respective corporation without the obligation to pay any registration or qualification fees for the registration in the Public Registry and Public Deed disbursements, where under oath they express that the required communication with the stockholders has been lost or when they have not received payment of their resident fees for three consecutive years.

**Article 12.** Article 21 of Law 47 of 2013 shall read as follows:

**Article 21.** Failure to deliver in custody share certificates to bearer issued prior to the validity of this Law. In cases where the owner of shares issued to bearer had not delivered in custody the respective certificate, political and economic rights inherent to said share shall be understood cancelled by mandate of the law.

## **Chapter V** Final Provisions

**Article 13.** The present Law modifies article 73 of the Code of Commerce, article 318-A of the Fiscal Code and article 21 of Law 47 of August 6 of 2013, and adds article 9-A and a paragraph to article 10 of Law 2 of February 1 of 2011.

**Article 14.** This law will begin to govern on January 1 of 2017.

BE NOTIFIED AND COMPLIED WITH.

Bill 383 of 2016 approved in third debate at the Palacio Justo Arosemena, city of Panama, on the nineteenth day of the month of October of the year two thousand sixteen.

The President,

(sgd.) (illegible)

Rubén De León Sánchez

The Secretary General

(sgd.) (illegible)

Franz O. Wever Z.

NATIONAL EXECUTIVE BRANCH PRESIDENCY OF THE REPUBLIC

PANAMA, REPUBLIC OF PANAMA, OCTOBER 27 OF 2016

(sgd.) (illegible)

JUAN CARLOS VARELA R.  
President of the Republic

(sgd.) (illegible)

DULCIDIO DE LA GUARDIA

Ministry of Economy and Finance