

MEMORANDUM  
**LAW No.41 of August 24, 2007**  
SPECIAL REGIME FOR THE ESTABLISHMENT AND OPERATION  
OF MULTINATIONAL CORPORATION HEADQUARTERS  
IN THE REPUBLIC OF PANAMA

Dear Client,

We would like to bring to your attention the enactment and effectiveness of the new Law No41 of August 24, 2007, stipulating the creation of a special regime for the establishment and operation of Multinational Corporation Headquarters, with the intention of attracting investments, generating employment and encouraging transfer of technology. It also has the objective of increasing our country's competitiveness in the global economy, by taking advantage of our geographical position and our infrastructure in relation to the service offer.

This Law will only benefit corporations that obtain the Multinational Corporation Headquarters (Sede de Empresa Multinacional - SEM) License.

The Law in reference creates the Multinational Corporation Headquarters License Commission as a consulting and advising body for the establishment of SEM in our country. This commission will be part of the Ministry of Commerce and Industry and will be integrated by 5 commissioners, members of different ministries.

The Commission will have the power to establish requirements to grant Multinational Corporation Headquarters License, to apply for visas for personnel working for SEM, issue SEM certificates for administrative procedures to be performed, impose sanctions, decide in first instance claims filed or motions presented, supervise SEM compliance with this Law, perform administrative procedures managing benefits for SEM and its personnel, keep the Official Registry of the corporations with Multinational Corporation Headquarters License, as well as its personnel and its dependents, and develop forms, guides and/ or instructions that SEM should utilize according to this Law.

The term "Multinational Corporation Headquarters" is defined as a multinational corporation that from our country carries out operations, offering those services defined by this Law to its Home Office or its subsidiaries or its affiliates or to associated companies or that establishes its home office in Panama. Therefore, for a corporation to be considered a Multinational Corporation Headquarter, it should be part of a multinational corporation with international or regional or important operations in its country of origin, or be the Home Office of an economic group performing some of the services defined by this Law.

In this same order of ideas, the term "Multinational Corporation" is defined as a body corporate that having its home office in a determined country, develops productive activities, commercial, financial or important services in different countries or in just one country, with operations of great importance in its different regions.

The function of the Multinational Corporation Headquarters (SEM) will be to offer services only to the economic group to which it belongs and only for those activities permitted by this Law.

## SERVICES PERMITTED.

The activities exclusively permitted to SEM by this Law are the following:

1. The direction and/or Administration of business operations in a specific or global geographical area of a company of the business group. The following are examples of these services: strategic planning, business development, personnel management or training, operations and/ or logistic planning.
2. Logistics and storage of components or parts, required for the manufacturing or assembly of manufactured products.
3. Technical assistance to companies of the business group or to clients that have acquired any products or services on behalf of other companies of the same economic group.
4. Financial management including treasury or back-office services.
5. Company accounting.
6. The elaboration of designs and/ or construction plans that constitute part of the typical business activities of the economic group.
7. The electronic processing of any activity included in the consolidation of operations of the business group, including network operations.
8. Counseling, coordination and follow-up of market and advertisement guidelines of goods and services produced by the economic group.
9. Operations and research and development of products and services for the group.
10. Any other type of analogous services previously approved by the Cabinet Council through motivated resolution.

## SEM LICENSE AND ANNUAL REPORT

For a company with the before-mentioned characteristics to have the right to operate as SEM under the provisions of this Law, it should perform its operations as a foreign corporation registered in our country or as a Panamanian corporation property of the multinational corporation, of its subsidiaries or its affiliates and obtain a Multinational Corporation Headquarters License.

Because the regulations of this Law are yet to be issued, the necessary details or documents to obtain the Multinational Corporation Headquarters License are not available at this time. However, this law stipulates that the Multinational Corporation Headquarters License Commission according to the following parameters, will establish these requirements:

- Multinational corporation assets.
- Location of operations or headquarters of the multinational corporation.
- Commercial activities or operations performed by the multinational corporation.
- Share price in the local or international stock markets.
- Any other element or information that the previously mentioned commission considers necessary.

To obtain the License, a written request must be submitted to the Technical Secretariat of the Commission through the appropriate form. A letter from the corporation must be attached to this request including a sworn declaration stating the intention of establishing a SEM in our country and that the corporation complies with all the requirements to obtain this license.

This license will be in force for an indefinite term and it will have a unique registration number to perform its activities that should be used for all the necessary administrative procedures.

The SEM License will establish the activities to be performed by the SEM. If the SEM desires to perform additional activities or services different to those that have been previously authorized, it should request the Technical Secretariat a modification of its License.

If the SEM wishes to engage in operations or activities not covered under the Law, they must then be carried out through the creation of a separate corporation. This corporation will NOT be covered by this Law, which means that it will not obtain the benefits established for the SEM, and must have its own personnel. Sharing the same personnel with SEM is not permitted.

Likewise, this Law establishes the causes for the cancellation of the SEM license. These are:

1. Suspension of activities
2. If the company does not start operations within the next six months following procurement of the License.
3. If the SEM is intervened or declared in bankruptcy by the authorities of the country of origin.
4. Violation of the stipulations of this Law.
5. Violation of the Laws of our country.
6. Other events stipulated by this Law.

After the cancellation of the SEM's License through a motivated resolution, the visas, work permits and other licenses granted according to this Law will be canceled. Those affected or their personnel will have a 90-day period to regulate their migratory status or leave the country.

The SEM will have the obligation to present an annual report containing statistics related to their operations in our country. The Technical Secretariat of the Multinational Corporation Headquarters License Commission will establish the form for this report.

#### TAX AND ADMINISTRATIVE BENEFITS

Corporations with a SEM License enjoy several tax benefits, such as exemptions of Income Tax (ISR) payment and the exoneration of Sales and Services Taxes (ITBMS) on export services, as long as they are provided by organizations domiciled abroad, not generating taxable income in Panama; but these exemptions are only for the corporation and not for their personnel, unless they have special visas for SEM foreign personnel which will be detailed henceforth.

However, if the SEM engages in or performs operations inside the Republic of Panama, its services will cause ITBMS, and therefore will pay this tax for the purchase of goods and services in the Republic of Panama and on any imports made by the SEM.

According to the new Law, income will be considered to have been produced or earned in Panama if these services affect the income generation of a Panamanian source or its conservation and provided that the receiving company has deduct it as an expense. In this case the beneficiary of the service will apply the tariffs provided for in article 699 of the Fiscal Code on 50% of the amount to be remitted to SEM using the withholding method at the end of the fiscal period. SEM will file its income tax return declaring its income as exempted and showing the tax paid, without the right to a tax credit due to loss caused by the costs and expenses of its operations.

Corporations with SEM License can reach tax agreements with the Ministry of Economy and Finances, for earning consolidation and tax payments for income produced in other countries, stating the effective date in which the taxes would be paid and the terms of the agreement. If this type of agreement is reached, evidence of the agreement must be presented to the Technical Secretariat of the Commission.

The process for establishing SEM corporations in Panama is governed by the principle of administrative efficiency, and therefore, according to the Law, public officials must improve their administrative efficiency and avoid bureaucratization for procedures relating to SEM and its personnel.

#### MIGRATORY AND WORK REGIME

Foreign personnel and their dependents of SEM License corporations can obtain, through the Technical Secretariat, the Permanent Personal SEM visa or SEM Personnel Dependents (only for spouse, children under-age or children under 25 who are still students).

According to the Law, the Ministry of Commerce and Industry will subscribe agreements with the Immigration and Naturalization Service to implement the procedure for the issuance and approval of Visas for Permanent or Interim SEM Personnel.

The characteristics of the Permanent SEM Visa are the following:

- 1) They are subject to the same tax treatment to those of Special Temporary Visitors Visa, provided the employees receive their salaries directly from abroad, and therefore do not pay Income Tax on their wages.
- 2) The Visa will have the same duration of that of the working contract, but cannot exceed 5 years.
- 3) Once the visa is approved the worker will not be required to obtain a work permit and may freely work for the SEM.
- 4) The worker shall only work only and solely for the SEM, and is not allowed to work for any other company.
- 5) In the event of a change of status, the SEM must immediately notify the Commission.
- 6) The holder of a Permanent Visa will be exempted, upon his first arrival to Panama from import duties on his personal belongings.
- 7) The worker is exempted from affiliation and payment of Social Security contributions, unless he changes his migratory status and requests permanent residence.
- 8) Holders of these visas must have private hospital insurance for themselves and their dependents. SEM is responsible for this coverage.

The difference between the SEM Permanent Personnel Visa and the SEM Interim Personnel Visa is that the latter is issued to foreign personnel providing SEM with technical services for up to 3 –months. All the other benefits of the SEM Permanent Personnel Visa will be applicable to the SEM Interim Personnel Visa, except for the import duty exemption of the personal belongings, since “Interim Employees” come to Panama for a short period of time..

It is important to mention that SEM foreign personnel and residents from abroad can also participate in SEM events, such as trainings, meetings with clients and providers, strategic meetings and conventions. In these events SEM can notify the Technical Secretariat in order to obtain the respective provisional permit, but this will be regulated in the future.

## INFRINGEMENTS AND SANCTIONS

The Technical Secretariat of the Commission can sanction infringements to the standards contained in this Law and its regulations, either by action or by omission, and the sanctions can be the following:

- 1) If the SEM corporation performs in the national territory activities that are different to those authorized by the License, the License will be canceled and a fine equivalent to three times the non-perceived income due to the fiscal exonerations provided by the Law.
- 2) Employees that enter Panama protected by this Law and that do not work in a SEM corporation will be sanctioned with a fine of up to B/. 5,000.00, the visa and/ or work permit will be cancelled and they will be repatriated at the expense of the SEM Corporation; without prejudice to the sanctions corresponding to the corporation for not making the corresponding notifications.
- 3) The SEM enterprise that does not report the change of status of its foreign employees or that does not comply with the dispositions of the Law can be sanctioned with a fine of up to B/. 100,000.00.

## LIFE OF THE LAW

This Law is in force as of August 27, 2007, but its regulation is yet to be issued. This can close some gaps and clarify certain aspects of the Law that require more detailed information.

Prepared: October 2007