

APPENDIX 2 TO ANNEX XVIII

REFERRED TO IN ARTICLE 5.4

RESERVATIONS BY PANAMA

**PANAMA**

<b>1. Sector:</b>	Retail Sales
<b>Sub-Sector:</b>	-
<b>Legal Source or Authority of the measure:</b>	Article 293 of the Political Constitution of the Republic of Panama of 1972, as amended. Articles 5 and 10 of Law No. 5 of January 11, 2007. Article 12 of Executive Decree No. 26 of July 12, 2007.
<b>Succinct description of the measure:</b>	<ol style="list-style-type: none"><li>1. Only the following persons may own a retail business in Panama:<ol style="list-style-type: none"><li>(a) Panamanians national by birth;</li><li>(b) natural persons who, on the date of entry into force of the 1972 Constitution were a naturalised person and married to a Panamanian national or have children with a Panamanian national;</li><li>(c) Panamanians by naturalization, who are not covered by the description under (b), after three years of the date on which they have obtained their naturalisation letter;</li><li>(d) Panamanian juridical persons or juridical persons organized under the law of a foreign country and foreign natural persons who on the date of entry into force of the 1972 Constitution, owned a retail business in Panama according to the domestic law; and</li><li>(e) a juridical person, whether organized under the laws of Panama or any other Country, if ownership of that person is held by natural persons described in subparagraph (a), (b), (c), or (d), as set out in paragraph 5 of Article 293 of the Constitution.</li></ol></li><li>2. Notwithstanding paragraph 1(e), a foreign national may own a juridical person engaged in retail business if:<ol style="list-style-type: none"><li>(a) the products sold by the juridical person in retail business are exclusively products that are</li></ol></li></ol>

	<p>produced at its direction and bear its label; or</p> <p>(b) the juridical person is engaged primarily in the sale of a service, and the products that it sells are necessarily associated with the sale of that service.</p> <p>3. Senior managers and directors of a retail business must meet the same nationality requirements as owners of a retail business.</p>
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**PANAMA**

<b>2. Sector:</b>	All Sectors
<b>Sub-Sector:</b>	-
<b>Legal Source or Authority of the measure:</b>	Article 17 of the Labour Code.
<b>Succinct description of the measure:</b>	<p>Any employer shall maintain Panamanians workers, or foreigners married with a Panamanian, or foreigners with at least 10 years of permanent residence in the Country, in a proportion no less than 90% of the total ordinary workers of the Company; and, it may retain foreign workers up to 15% of qualified personal, specialist or key personal.</p> <p>Based on an employer request, this proportion can be diminished when it involves workers who are specialist or strictly technicians and just for the necessary time, subject to the approval of the Ministry of Labour.</p>

**PANAMA**

<b>3. Sector:</b>	All Sectors
<b>Sub-Sector:</b>	-
<b>Legal Source or Authority of the measure:</b>	Articles 290 and 291 of the Political Constitution of the Republic of Panama of 1972, as amended.
<b>Succinct description of the measure:</b>	<ol style="list-style-type: none"><li>1. No foreign government, foreign official, or foreign state enterprise, may own real property in Panama, except property used for an embassy.</li><li>2. No foreign national or enterprise or enterprise organised under the laws of Panama owned entirely or partially by foreign nationals may own real property within 10 kilometres of Panama's borders.</li></ol>

**PANAMA**

<b>4. Sector:</b>	Public Utilities
<b>Sub-Sector:</b>	-
<b>Legal Source or Authority of the measure:</b>	Article 285 of the Political Constitution of the Republic of Panama of 1972, as amended.
<b>Succinct description of the measure:</b>	<ol style="list-style-type: none"><li>1. Panama may require that the majority of the capital of a private enterprise operating a public utility be owned by Panamanian persons. However, Panama may provide exceptions to the preceding sentence by law.</li><li>2. Panama may require that the senior managers and members of the board of directors of such an enterprise be Panamanian nationals.</li><li>3. For greater certainty, it should be considered as a public utility: potable water supply, sanitary sewer, electricity, telecommunications, radio and television, transmission and distribution of natural gas.</li></ol>

**PANAMA**

<b>5. Sector:</b>	Power and Energy
<b>Sub-Sector:</b>	-
<b>Legal Source or Authority of the measure:</b>	Articles 4, 21, 35 and 47 of Main Text of August 31, 2011 related to Law No. 6 of February 3, 1997.
<b>Succinct description of the measure:</b>	<ol style="list-style-type: none"><li>1. Electric power generation and transmission in the territory of Panama may be supplied only by the Government of Panama.</li><li>2. It is required to be Panamanian in order to be a member of the Board of Directors of an electrical enterprise of the State, belonging more than 51% to the State.</li><li>3. The Government of Panama may intervene in the energy sector as a matter of public policy and according to the electrical energy supply regulation.</li></ol>

PANAMA

<b>6. Sector:</b>	Mining
<b>Sub-Sector:</b>	Extraction of non-metallic, metallic (except precious minerals) minerals, precious alluvial minerals, precious non-alluvial minerals, fuel minerals (except Hydrocarbons) and reserve minerals.
<b>Legal Source or Authority of the measure:</b>	Articles 4, 131, 132, and 135 of Decree Law No. 23 of August 22, 1963, as amended. Article 11 of Law No. 3 of January 28, 1988. Article 1 of Law Decree No. 30 of February 22, 2011.
<b>Succinct description of the measure:</b>	<p>1. Preference shall be given to Panamanians for positions in all phases of mining operations, in accordance with the Labour Code.</p> <p>Notwithstanding the previous paragraph, the holders of mining concessions (engaged in mining operations covered by extraction, benefit or transport concessions) and contractors (carrying out mining operations), may employ foreign executive, scientific, technical and expert personnel, subject to:</p> <ul style="list-style-type: none"> <li>(a) a necessity requirement for the efficient development of the mining operations; and</li> <li>(b) a limitation of foreign personnel, which cannot exceed 25% of all the employees, and the salaries that they receive do not exceed 25% of the total of salaries.</li> </ul> <p>2. All the concessionaires, with exception of those that only possess concessions for exploration or extraction of minerals for construction or as fertilizers,<sup>1</sup> should:</p> <ul style="list-style-type: none"> <li>(a) establish programs related to their mining operations in the country for the benefit of all the non specialized and semi-specialized workers, so that they can learn more efficient methods to carry out mining operations;</li> <li>(b) provide at their costs, instruction and theoretical and practical training to Panamanian employees, that should be professional and specialized workers, in educative or professional institutions, and on the facilities or activities, within or out of the country;</li> </ul> <p>The nature and scope of such training programs of training shall be reported annually to the</p>

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<sup>1</sup> For greater certainty, minerals for construction are usually non-metallic minerals (“Class I”, former “Class A”), which means those from sedimentary sites (chemical, biochemical and groundwater) that lead concentrations of exogenous, like gypsum, sulfur, phosphates, amorphous silica and derivatives, etc.; used normally and primarily for construction or as fertilizers, or as slag heap of abandoned mines.

	<p style="text-align: center;">Directorate National of Mining Resources.</p> <ol style="list-style-type: none"><li>3. The Directorate National of Mining Resources shall establish the terms and conditions in which such foreign persons may be employed.</li><li>4. The Panamanian government shall not initiate, promote, and approve, the exploration or extraction of mines in Cerro Colorado or in other mineral deposit within the Ngöbe Bugle or any other reservation.<sup>2</sup></li><li>5. Panama reserves the right to adopt or maintain any measure to assure that a foreign government or a foreign state enterprise (official or semi-official entity or institution) does not acquire a mining concession.</li></ol>
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<sup>2</sup> For greater certainty, a Reservation is a special political division ruled by specific regulations applied only for indigenous ethnic groups.



PANAMA

<b>7. Sector:</b>	Mining
<b>Sub-Sector:</b>	Exploration and Exploitation of non-metallic minerals used as construction, ceramic, refractory, and metallurgical materials.
<b>Legal Source or Authority of the measure:</b>	Article 3 of Law No. 109 of October 8, 1973. Article 7 of Law No. 32 of February 9, 1996.
<b>Succinct description of the measure:</b>	<ol style="list-style-type: none"><li>1. Only a Panamanian national or an enterprise organized under Panamanian law may obtain a contract for the exploration and exploitation of limestone, sand, quarry stone, crude, clay, gravel, debris, feldspar, plaster, and other non-metallic minerals.</li><li>2. The following entities, by itself or by interposed persons, cannot obtain, operate or get benefits directly or indirectly from contracts mentioned in the previous paragraph:<ol style="list-style-type: none"><li>(a) foreign governments, official or semi-official entities or institutions; or</li><li>(b) juridical persons in which there is direct or indirect participation of any foreign government, except when the Executive Branch, upon a justified request previously submitted by the interested juridical person, decides otherwise.</li></ol></li></ol>

**PANAMA**

<b>8. Sector:</b>	Fisheries
<b>Sub-Sector:</b>	Fishing
<b>Legal Source or Authority of the measure:</b>	<p>Article 286 of Law No. 8 (the Fiscal Code of the Republic of Panama), of January 27, 1956.</p> <p>Articles 5 and 6 of Decree Law No. 17 of July 9, 1959.</p> <p>Article 1 of Decree No. 116 of November 26, 1980.</p> <p>Article 3 of Executive Decree No. 124 of November 8, 1990.</p> <p>Article 1 of Executive Decree No. 71 of October 20, 1992.</p> <p>Administrative Resolution 003 of January 7, 2004.</p> <p>Article 3 of Executive Decree No. 239 of July 15, 2010.</p>
<b>Succinct description of the measure:</b>	<ol style="list-style-type: none"> <li>1. Only a Panamanian national or enterprise owned or controlled by Panamanian nationals may sell for consumption in Panama fish caught in the jurisdictional waters of Panama.</li> <li>2. Only a Panamanian-built vessel may perform commercial or industrial shrimp fishing in the jurisdictional waters of Panama.<sup>3</sup></li> <li>3. Only a vessel owned by a Panamanian national or an enterprise organized under Panamanian law may fish for tuna in waters of the Jurisdiction of Panama in vessels with a capacity of less than 150 tons. International tuna fishing vessels must use the services of legal shipping agencies domiciled in Panama in order to obtain a license to fish for tuna in Panamanian jurisdictional waters.</li> <li>4. Only a vessel owned by a Panamanian national or an enterprise organised under Panamanian law may obtain a license for inshore fishing (artisanal).</li> <li>5. Panama reserves the right to adopt or maintain any measure relating to requirements for investments in, ownership or control of, and operation of vessels engaged in fishing and related activities in Panamanian jurisdictional waters.</li> <li>6. Panama reserves the right to control the use of beaches, beach lands, water areas and the bottom of the sea.</li> </ol>

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<sup>3</sup> Under Panamanian law, jurisdictional water means the contiguous zone, territorial sea, continental shelf, *aguas archipiélagas* (insular waters), and internal waters.

**PANAMA**

<b>9. Sector:</b>	All Sectors
<b>Sub-Sector:</b>	-
<b>Legal Source or Authority of the measure:</b>	Articles 133-142 of Law No. 64 of October 10, 2012.
<b>Succinct description of the measure:</b>	Panama requires the collective management of rights through a non lucrative Panamanian organisation, subject to the authorization of the copyright authority. Organisations approved by Panamanian authorities are entailed to collect royalties through cultural collective funds and grants.

**PANAMA**

<b>10. Sector:</b>	All Sectors
<b>Sub-sector:</b>	Natural Resources
<b>Legal source or authority of the measure:</b>	Articles 62, 102, 104 of Law No. 41 of 1998.
<b>Succinct description of the measure:</b>	<ol style="list-style-type: none"><li>1. Natural resources belong to the public domain and its use and conservation have a social interest, without prejudice of legitimate rights acquired by private persons.</li><li>2. Communal lands of ethnic groups are inalienable, imprescriptibly and guaranteed against seizure. Members of communal lands have preference when granting an authorisation related with the access and use of natural resources within its communal land.</li></ol>

**PANAMA**

<b>11. Sector:</b>	Native Populations and Minorities
<b>Sub-Sector:</b>	-
<b>Legal Source or Authority of the measure:</b>	Not applicable
<b>Succinct description of the measure:</b>	Panama reserves the right to adopt or maintain any measure denying to foreign investors and their investments or to foreign service suppliers any right or preference granted to minorities with social or economic disadvantages and native populations in their reservation areas.

**PANAMA**

<b>12. Sector:</b>	All Sectors
<b>Sub-Sector:</b>	Activities Related to the Panama Canal
<b>Legal Source or Authority of the measure:</b>	Not applicable
<b>Succinct description of the measure:</b>	<ol style="list-style-type: none"><li>1. Panama reserves the right to adopt or maintain any measure related to the ownership of the Panama Canal and any juridical person that may succeed the Panama Canal Authority (PCA). A member of the board of directors of any such juridical person must be a Panamanian national.</li><li>2. The PCA may require that an enterprise operating in the Panama Canal be legally constituted under the law of Panama and enter into a joint venture or other legal entity with the PCA. The PCA may adopt or maintain any measure limiting the number of concessions operating in the Panama Canal.</li><li>3. The PCA may impose performance requirements consistent with Article 3 of the Agreement No. 151 of November 21, 2007 as a condition for the granting and maintaining of a compatibility license for activities in the Panama Canal Area as defined in Annex II of Law No. 21 of 1997.</li><li>4. The Panama Canal includes the aquatic route proper, as well as its anchorages, dock berths, and entrances; lands and marine, lacustrine, and fluvial waters; locks; auxiliary dams; docks; and water control structures.</li></ol>

PANAMA

<b>13. Sector:</b>	All Sectors
<b>Sub-Sector:</b>	Issues related to State enterprises or governmental organisations
<b>Legal Source or Authority of the measure:</b>	Not applicable
<b>Succinct description of the measure:</b>	<ol style="list-style-type: none"><li>1. When selling or disposing shareholding interests or goods of an existing State enterprise or governmental organisation,<sup>4</sup> Panama reserves the right to prohibit or impose limitations on the rendering of services and the property of such interests or goods, and on the technical, financial capacity and experience of the owners of such interests or goods, to control any resulting enterprise, by foreign investors or its investments.</li><li>2. Panama reserves the right to limit the transfer or disposal of any interest held in an existing State enterprise, such that only nationals of Panama may receive such interest. However, the preceding sentence pertains only to the initial transfer or disposal of such interest, except as provided in Panama's entry on public utilities.</li><li>3. For greater certainty,<ol style="list-style-type: none"><li>(a) where Panama transfers an interest in an existing state enterprise to another state enterprise, such transfer shall not be considered to be an initial transfer or disposal of the interest for purposes of the preceding paragraph; and</li><li>(b) where Panama transfers or disposes of an interest in an existing state enterprise in multiple phases, the preceding paragraph shall apply separately to each such phase.</li></ol></li><li>4. In relation to the sale or another form of disposition, Panama can adopt or maintain any measure related to the nationality of senior executives or members of the Board of Directors.</li></ol>

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<sup>4</sup> For the purpose of this entry: (b) "State enterprise" means an enterprise that is property of or is under control of the Republic of Panama and includes an enterprise established after the date of entry into force of this Agreement only for the purposes of selling or disposing shareholding interests in, or in the assets of, an existing governmental enterprise or entity.