

## The Role of the Resident Agent In Panama

On several occasions, especially in recent times, we have seen with concern how the role of the Resident Agent has been mistaken with that of the companies that we incorporate as part of our practice. It has even become customary to find headlines in the media that hold Panamanian Resident Agents accountable for investigations and legal proceedings against Panamanian corporations conducted in other countries.

These are the times when I personally have come to realize that we tend to assume that whoever receives, processes, investigates and disseminates information is fully aware of the role and duties of a Resident Agent in our country, which is, of course, not necessarily true.

What is actually true is that whoever receives the information is also likely to be unclear about it. And when this news, based on erroneous or flawed conceptions, reaches the international level, the impact is quite unfavorable to the promotion efforts being made to attract foreign investment to our country and consolidate the reputation of our services platform internationally.

Hence the importance of having those who act as qualified information sources fully understand these concepts.

What does the Resident Agent represent then?

In our legislation, this figure has its origins in Law 32 of 1927, which is today the law regulating corporations in our country. In its Section 2, subsection 7, this law sets forth that every corporation must have an agent in the Republic of Panama, which may be a "juridical person".

The rule, as worded then, left the door open for any person, natural or juridical, regardless of their profession or trade, to serve as Resident Agent of a corporation.

It was not until 1966 when Decree 147 of May 4 of that year, which regulated the registration of certain documents at the Public Registry, specified that "only a lawyer or law firm authorized to exercise that profession could be an agent for a corporation".

The qualification introduced by this decree followed the criteria that whoever represents a juridical person is acting on behalf of this person vis-a-vis the authorities, and that representation is not done on their own behalf but on that of a different person, therefore, this type of representation or action is, by law, reserved to attorneys-at-law.

This is how we as lawyers, individually or jointly, through law firms, were made responsible of the notarization and registration at the Public Registry of Articles of Incorporation that legally formalize corporations, irrespective of whether they operate within or outside Panama.

Indeed, company formation has always been part of our professional practice and our role as Resident Agents has been to serve as liaison between the Panamanian authorities or third parties and our clients, without this granting us the ability to bind and engage the company or act on its behalf.

Now then, the Supreme Court has stated on several occasions that Resident Agents have a duty to cooperate and assist the competent authorities of the Public Prosecutor's Office in matters related to the prosecution of crimes.

Lawyers, as everyone else, are obliged to grant ex officio any notes, data and reports requested from the Public Prosecutors when they act in defense of public interests or as investigating officers. This obligation is contained in Section 391 of the Judicial Code.

But this cooperation role must not be confused with connecting the Resident Agent to the actions or measures resulting from the operations conducted by the corporation that we help incorporate. Resident Agents are not responsible for the commercial actions or decisions of these companies merely for acting as Resident Agent.

Our responsibility as Registered Agents is to know our clients in order to ensure as far as reasonable or possible to do so that they are reputable persons and that the activities carried out by these companies are legitimate.

Since 1994, through Executive Decree 468, Resident Agents in Panama have been required to collect customer information and have it available for the authorities in case investigations for crimes related to money laundering or drug trafficking arise. The regulations in this area have improved substantially and today we have Law 2 of 2011, to which I will refer in a few minutes.

However, lawyers have been conducting due diligence efforts for years without any law forcing us to do so. As international lawyers, we have done so because this obligation exists in other jurisdictions where we also act as Registered Agents, and this long before Panama regulated the matter. As far as our due diligence processes are concerned, which include information that we collect from our customers, they are very similar to those applied by banking institutions.

Act 2 of 2011, which regulates the measures that Resident Agents must take to know their customers, arises from the efforts made at country level to meet international standards of transparency and information availability, as well as the obligations Panama contracted as a result of the ratification of international treaties or conventions.

This law provides for the first time a clear definition of what a Resident Agent is considered to be, establishes the measures to be taken by Resident Agents to comply with the law, in particular, the documentation that must be kept on each client, and provides penalties for those who fail to comply, ranging from financial penalties to the temporary suspension of the ability to provide the Registered Agent service.

In short, this legislation seeks to ensure that Resident Agents:

1. Identify our customers, updating the information requested at the beginning of the professional relationship;
2. Keep records on the client and the companies for which we have provided the Registered Agent service for the duration of the relationship and even for a period, if I remember correctly, of 5 years after the relationship has ended; and,
3. Deliver to the competent authorities the information required for the purposes of combating money laundering, the financing of terrorist activities and any other illegal activity where any of the companies for which we serve as Resident Agents are involved. Such information should help identify the client linked to the possible commission of illegal acts and make it possible for Panama to meet commitments under ratified treaties.

For this, the law establishes a comprehensive list of documents and information that we should request from clients, as a condition for us to provide our services as Registered Agents, and it also provides guidance on the procedures and requirements that all competent authorities must follow when requiring such information from us.

To conclude, we can summarize this matter as follows:

- Resident Agents act as liaison between the competent authorities or interested parties and the clients for whom we incorporate corporate vehicles.
- This liaison role should not be confused with a power of representation that can link us in any way with the commercial or civil acts conducted by the companies that we help incorporate.
- Resident Agents have the legal obligation to know our clients and to conduct due diligence efforts that enable their proper identification if so required by any competent authorities.

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