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Corporate finance legislation in Panama

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Due to its convenient location in the middle – and narrowest part – of the American continent, Panama has served for centuries as a natural inter-oceanic and intercontinental crossroads, over the years developing an effective set of connected facilities that has given it a well-deserved reputation as one of the world's most important trade routes, and an excellent place for business and investments in the Americas.

The Panamanian legal regime governing business activities and foreign investment has been consistent with its trade and services-oriented economy, offering many facilities and incentives for its development, with almost no restrictions regarding the nationality of the investors. The Panamanian monetary system is completely dollarized, widely open to the flow of capitals, and exempt from exchange and convertibility controls.

Until the early nineties, the Panamanian capital markets were more or less dominated by the banks. This was largely because of the small size of the market, the banks' high levels of liquidity and their easy access to the international capital markets. However, the Panama Stock Exchange was set up in 1989 to provide an alternative way of accessing the capital markets, and its rapid growth meant that new regulations were required.

On July 1 1999 a new securities law was enacted in Panama, bringing the legislation in line with the standards set by the International Organization of Securities Commissions (Iosco) and the Securities and Exchange Commission (SEC).

The new securities law is characterized by:

- more precise regulation of all securities market participants, including broker-dealer houses, investment advisors, brokers, self-regulated organizations, clearing, custody and settlement companies, issuers and investment companies;
- the introduction of regulations governing the most well developed financial instruments, including options, futures, derivatives, dematerialization of securities and indirect holding of securities;
- the provision of more transparency requirements, and accountability for the benefit of investors (by, for example, mandatory registration, regular reporting and remittance of documents to the Securities Commission for public accessibility, specifying acts considered fraudulent and deceitful, regulating the procedure for the reorganization or liquidation of registered institutions, and requiring the voluntary adoption of corporate governance rules);

- the imposition of more severe criminal and civil sanctions (such as fines up to \$300,000 and up to five years' imprisonment); and
- the creation of an autonomous regulatory entity, the National Securities Commission (the NSC) to enforce the law.

The NSC is the securities market regulatory entity created by the new securities law. It is funded independently of central government, and therefore has the right to administer those funds, to decide upon its own budget and to appoint and remove its own personnel. The NSC is composed of three commissioners who must have, among others, a university degree and at least five years' experience. The commissioners are appointed by the president of Panama for a five-year term, and cannot be removed except in the circumstances expressly contemplated in the legislation. The commissioners will act as full-time officers, and cannot engage in business or any other remunerated activities.

Among its functions, the NSC is responsible for: implementing more detailed regulations, based on the legislation; approving registration requests for public offers; issuing, suspending and cancelling licences; examining, supervising and controlling the licence-holders; and imposing penalties according to the legislation.

The law requires that parties intending to embark on business involving the securities market in Panama must first obtain a licence. Such parties include sales agents, investment advisors, broker-dealer firms, securities brokers, analysts, principal executives and compliance officers.

The law requires securities to be registered in three cases: (i) if they are publicly offered in Panama, and/or to persons domiciled in Panama; (ii) if they are stocks from an issuer domiciled in Panama, with 50 or more shareholders who jointly own at least 10% of its paid-in capital, unless 75% of the holders of issued and circulating stocks decide not to get registered; and (iii) securities listed on a Panamanian stock exchange.

The law also requires that any public offer or sale made by an issuer, an affiliated person or an offeror in Panama and/or to persons domiciled in Panama must be registered at the NSC, except if it is exempted by law or regulations.

Every person who publicly offers, within Panama, to buy registered stocks for an amount representing 25% or more of the issued and outstanding (authorized) capital of the issuer or any amount that results in the purchase of more than 50% of the issued and circulating capital of the issuer, must inform the NSC of this transaction.

The law exempts from registration, among others: (i) private offerings or placements, considering as such the offer made to no more than 25 persons that jointly will not result in the selling to more than 10 persons, within a period of one year; (ii) offers made to institutional investors; (iii) offers, sales, distributions, transfers, or

exchanges of shares between the issuer and its stockholders, by reasons of an increase in the paid in capital, declaration of dividends, reorganization, dissolution, liquidation, merger, or the exercise of previously granted option rights; and (iv) offers and sales of securities made by an issuer exclusively to its (or an affiliated company's) employees, directors or officers.

To register publicly offered securities, a prospectus and all relevant information and documents must be submitted to the NSC. The registration process takes between 25 and 35 days. Registration and supervision fees must also be paid – registration fees range from \$500 to \$50,000, depending on the offering price, and supervision fees can be anything up to \$15,000, depending on the market value of the registered securities.

At the time of writing, the NSC is harmonizing the registration of securities across the Central American and Caribbean region (which has around 18 stock exchanges that trade more than \$1.7 billion). This is being achieved through the recognition of certain jurisdictions with similar or higher standards than Panama regarding the registration process. There are around 14 jurisdictions already recognized, including the US, the UK, France, Spain, Japan, Hong Kong, Mexico, Costa Rica and El Salvador. The process is a challenging one, but Panamanians are committed to continuing to work hard towards success.

Corporate and commercial

Recommended firms

Tier 1

Aleman Cordero Galindo & Lee
Arias Fábrega & Fábrega
Icaza González-Ruiz & Alemán
Morgan & Morgan

Tier 2

Alfaro Ferrer & Ramirez
Galindo Arias & López
Patton Moreno & Asvat

Tier 3

Arosemena Noriega & Contreras
Fabrega Molino & Mulino
Sucre Arias & Reyes

Aleman Cordero Galindo & Lee

Aleman Cordero Galindo & Lee casts its net wide, with corporate clients in the telecoms, shipping, aviation, pharmaceutical and energy sectors, among others. The firm's banking clients, meanwhile, include international and regional heavyweights such as Citibank, Scotiabank, Banco Santander, Dresdner Bank and Banco de Crédito.

International services are provided through the firm's BVI, Belizean, Bahamian and Luxembourgian subsidiaries, and the firm has assisted in the establishment of more than 7,500 companies over the past 12 months. But Aleman Cordero's domestic influence is also growing, and this year it advised Grupo Banistmo, the largest bank holding company in Central America, on its restructuring. In another key deal, it acted for Constellation Power in the sale of its shares in

Elektra Noreste to Ashmore Global Special Situations Fund. The Brink's Company is another corporate client, and approached the firm in connection with its acquisition of assets in Panama.

The firm has ample experience in representing clients to the government. The Colon Container Terminal, owned by the Taiwanese Evergreen Group, came to the firm for counsel during negotiations regarding the expansion of its port activities, and representatives of the Panamanian sugar industry instructed the firm in connection with the Free Trade Agreement between the US and Panama. The firm also recently represented Cable 6 Wireless and Elektra Noreste before various governmental entities in corporate and regulatory matters.

Aleman Cordero has 15 lawyers. In January 2006, the firm welcomed back partner Jorge Lee, who had been serving out a term as justice of the supreme court of Panama. Meanwhile, Alejandro Ferrer, the Panamanian minister of commerce and industry, plans to return to the firm following the completion of his tenure in that governmental post.

Leading lawyers

Jaime Alemán
Carlos Cordero
Arturo Gerbeaud

Key contact partner

Jaime Alemán

Arias Fábrega & Fábrega

Arias Fábrega & Fábrega (Arifa) offers a specialized line in offshore services in addition to its standard Panamanian legal practice. The offshore group is headed by Gabriel Galindo, and provides advice, in conjunction with correspondent offices, specific to Hong Kong, the British Virgin Islands and Luxembourg. The department also handles business in the shipping industry. Meanwhile, the firm's domestic practice encompasses financing, M&A and securitization.

Arifa is consistently ranked as one of Panama's leading brands for corporate and commercial law, thanks to a stable of top-drawer practitioners including Ricardo Arango, a leading project finance and securities specialist.

Leading lawyers

Eduardo de Alba
Ricardo Arango
Francisco Arias
Fernando Cardoze

Key contact partners

Ricardo Arango
Rogelio de la Guardia
Leroy Watson

Icaza González-Ruiz & Alemán

Icaza González-Ruiz & Alemán has posted another strong year, recently representing Citibank and the International Finance Corporation (IFC), alongside other lenders, in relation to the organization of a \$275 million syndicated loan. Alexis Herrera and Alexis Herrera Jr provided advice on the facility, which was granted to Manzanillo International Terminal for the expansion of the Port of Manzanillo.

At the time of writing the firm was also drafting legislation for the government, and advising it on regulatory matters in relation to the Panama-Pacific Special Economic Area on the Pacific coast. The 400-acre site was formerly the Howard Air Force Base, the largest military base in the region, and is being redeveloped into a commercial, industrial and residential zone. Icaza

González-Ruiz & Alemán also has a role in the selection of a master developer for the project.

Leading lawyers

Alvaro Alemán
Juan Tejada

Key contact partners

Alvaro Alemán
Gabriel González-Ruiz
Juan Tejada

Morgan & Morgan

Panama is the headquarters of Morgan & Morgan, a firm with offices and subsidiaries in 16 jurisdictions. Its global network has attracted numerous multinational banks including Société Générale, Bank of China, The Mitsubishi Trust & Banking Corporation and HSBC. The firm's blue-chip client list is also impressive, boasting Matsushita, Louis Vuitton Malletier, Hyundai and Bellsouth, among others.

Morgan & Morgan's large team has a number of stand-out partners, including name partner Juan David Morgan and Roberto Lewis, both specialists in international corporate law, and banking and general commercial lawyer Mario de Diego.

Leading lawyers

Mario de Diego
Roberto Lewis
Eduardo Morgan
Juan David Morgan
Romulo Roux

Key contact partners

Luis Hincapie
Roberto Lewis
Simon Tejeira Jr

Galindo Arias & López

Galindo Arias & López has 11 partners, three of which are engaged in the firm's corporate, banking and capital markets practice. The highlight of the firm's year was the initial public offering (IPO) of Copa Airlines on the New York Stock Exchange. The listing, involving registration in Panama and the US, was completed in record time and was the first registration of a Panamanian entity with the Securities and Exchange Commission. The firm's involvement with Copa Airlines this year also included the arrangement of a \$15 million revolving credit facility with the IFC, financing the construction of six Embrear aircraft, and the company's acquisition of Aero Republic.

Among the firm's other notable successes in the M&A field, the firm acted for SABMiller as it acquired the Bavaria brewing operation for \$7.8 billion in October 2005, and represented Popular International Bank in relation to its purchase of a 19.99% interest in Corporación UBC Internacional, with a value of \$125 million. Of the firm's M&A capabilities, one of the firm's corporate clients confirmed that "Galindo Arias & López has helped us through some important acquisitions in the region ... the whole team has been extremely professional and helpful throughout the whole transaction".

Banco Santander Central Hispano also instructed the firm in connection with a \$235 million financing arrangement with Banco Latinoamericano de Exportaciones, and the firm has been active with Banco Continental, advising the institution on the issue of \$100 million short-, mid- and long-term notes in January 2006.

Leading lawyers

Ramón Ricardo Arias
Diego Herrera Dutari
Diego Alonso de la Guardia

Key contact partners

Ramón Ricardo Arias
Christina D'Anello
Diego Herrera D

Sucre Arias & Reyes

Sucre Arias and Reyes' "very professional and honest, high-calibre individuals" comprise some of Panama's better known figures, including name partners Ernesto Arias and Carlos Sucre. The loss of star lawyer Thaís Chalmers this year was a bit of a blow, however.

The firm has had a relatively subdued year, but has a track record and a reputation for quality. "Sucre Arias have worked for us in a number of financial transactions and we were delighted with the work of Ernesto Arias and Carlos Sucre," said a client.

Among the highlights of the past year was advising Upper Deck and Roger Khafif's K Group in relation to the development of the Trump Ocean Club real estate development in Punta Pacifica. The firm's other clients include Banco Atlántico, Mundial Asset Management and BBVA.

Leading lawyer

Ernesto Arias

Key contact partners

Ernesto Arias
Carlos Sucre Levy