

LATIN LAWYER REGULATORS 2020

Superintendency of Capital Markets of Panama

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AUGUST 2020

Useful pages on the regulator website

- Main site
- List of regulated entities
- Published list of current regulation: www.supervalores.gob.pa/reglamentacion/ley-de-valores; www.supervalores.gob.pa/reglamentacion/acuerdos
- Anti-money laundering
- Published sanctions

Key individuals

- Julio Javier Justiniani, Superintendent of Capital Markets in Panama
- Ramón Ricardo Diez, Legal Director
- Celia Ana Bravo, Director of Administration and Finance
- Javier A Miranda, Director of Administrative Investigations and Sanctions
- Yolanda G Real, Director of Issuers
- Elena M Martín, Director for the Supervision of Intermediaries

Regulatory oversight

The SMV of Panama is the regulatory body responsible for the implementation and enforcement of Decree Law No. 1 of 8 July 1999, as amended to date (Securities Act) and the supervision and regulation of:

- broker-dealers, investment advisers, foreign exchange services, investment managers, investment managers of pension and severance funds, investment companies and investment funds, credit rating agencies and third-party price providers (collectively, licensed entities);
- issuers of securities (collectively, regulated entities); and
- self-regulated entities, such as the Panamanian Stock Exchange (BVP) and LatinClear, the central securities settlement agency and depositary.

Each of the listed licensed entities require a licence issued at the discretion of the SMV. The approval process entails a review of the relevant entity or individual's formal application and accompanying documentation, interviews with the representatives of the applicant entity or individual and research about the applicant entity or individual by the SMV.

In addition to the issuance of licences, the SMV has oversight of and discretion over the registration and public issuance of securities. Under the Securities Act, any issuer, underwriter or agent of an issuer that sells or offers to sell securities to the public must first register the securities with the SMV. There are no minimum size limit, trading record, working capital or free float requirements to register any securities with the SMV for public offering or trading on the BVP. Companies may issue securities on a non-registered basis if the offer is exempt from registration under the Securities Act. Registration is not required under the Securities Act if, among other things, the securities are offered in a private placement, to institutional investors or under the correspondent broker exemption. The two most commonly used exemptions in connection with raising capital are the private placement exemption and the institutional investor exemption. Investors acquiring securities in non-registered offers are usually institutional investors such as large banks, mutual funds, insurance companies and pension funds.

Reporting and disclosure obligations

The SMV oversees the reporting and disclosure obligations for all regulated entities. The main reporting and disclosure obligations include filing annual and quarterly reports that discuss issuers' financial and operating results, accompanied by unaudited financial statements for the respective quarter and audited financial statements for the full fiscal year. Annual reports must be filed within three months from the end of the fiscal year and quarterly reports must be filed within two months from the

end of each fiscal quarter. In addition, issuers must provide updates on their corporate governance structures, report suspicious financial transactions and publish immediately press releases about certain material events identified in the Securities Act. Reports of material events should be filed with the SMV and disclosed to the market within one business day from the occurrence of the event (when the event is deemed irreversible). Broker-dealers, investment advisers and managers, and fund managers must also provide periodic reports on assets managed by them.

Monetary sanctions and recent behaviour

The SMV's monetary sanctioning regime extends to four main categories of infraction: disclosure of confidential information, minor infractions, serious infractions and very serious infractions.

Disclosure of confidential information

Any regulated entity, or any of its directors, officers or employees that disclose privileged or confidential information in the exercise of their functions, may have fines of between US\$1,000 and US\$100,000 imposed on them in addition to certain non-monetary sanctions that can also be imposed (discussed further below).

Minor infractions

Any acts or omissions that violate provisions of the Securities Act and that have not been qualified as either serious or very serious infractions are considered minor infractions. Any regulated entity or person that commits a minor infringement may be fined up to US\$300,000, in addition to a public admonishment.

Serious infractions

Any person who violates the information disclosure obligations regarding the acquisition of publicly offered shares, as well as any licensed entity that commits, among other infractions, violations of the reporting and disclosure obligations or accounting regulations, or charges clients fees not previously agreed with them, are considered to be committing serious infractions and as such may be sanctioned with a fine of no less than the gross profit obtained as a result of the acts or omissions of which the serious infraction consisted or, if such criteria do not apply, a fine of up to the greater of the following amounts: 2% of the resources of the infringing person or entity or 2% of the total funds used in the infraction; or US\$500,000.

Very serious infractions

Persons who publicly offer securities without proper registration or fail to comply with the reporting obligations for more than 60 days, and individuals or entities offering regulated services without the proper licence granted by the SMV, among other infractions, are considered to have committed a very serious infraction and can be fined up to the higher of 5% of the total funds owned by the infringer and used in connection with the infraction or US\$1 million together with administrative sanctions such as:

- the suspension of securities activity for two years;
- the cancellation of any licences or registrations; or
- a public reprimand of the infringer in the Official Gazette.

In addition, for legal entities, not only can a company that committed an infraction be sanctioned, but any individual who holds an office of administration or control and is responsible for the infraction can also be sanctioned with a fine of the higher of US\$1 million or 5% of the total assets owned by that party used in the infraction.

Many of the monetary sanctions levied in the past couple of years have related primarily to failures to comply with timely reporting obligations.

Non-monetary sanctioning powers and behaviour

Aside from monetary fines, the SMV may use non-monetary sanctions in connection with the general enforcement of an entity's obligations under the Securities Act and its regulations. The tools available to the SMV include the suspension and cancellation of licences, as well as private and public reprimands. To the extent that violations continue or persist, the SMV is entitled to impose monetary sanctions as detailed above. The right of the SMV to continue to impose more severe sanctions for

unremedied conduct and its broad oversight powers may serve to deter continued breaches of regulatory obligations. Public reprimands in the past couple of years have related primarily to unauthorised changes of control and amendments to the articles of incorporation of regulated entities without the SMV's consent.

Recent and upcoming developments

In January 2020, Julio Javier Justiniani Castillo was appointed as Panama's new Superintendent of Capital Markets. Mr Justiniani has over 30 years of experience in the banking and financial markets sector, and obtained an MBA at the University of Louisville. Mr Justiniani resigned as a member of the board of directors of the Fondo de Ahorros de Panamá (Panama Savings Fund) to become the SMV's new Superintendent.

During 2019, the SMV introduced a new regulation creating an abbreviated registration process for financial instruments issued by frequent registered issuers. This new regulation allows such frequent registered issuers to present abbreviated offering documents, and also shortens the SMV review and registration process for such documents. The SMV also made several regulatory changes aimed at improving transparency and strengthening the anti-money laundering requirements.

During a recent public meeting with members from the financial, corporate and other private sectors, the SMV confirmed its intention to boost Panama's competitive advantages as a financial centre and as a commercially attractive country for investments with sustainable growth. The SMV announced the formation of an internal taskforce that will carry out a comprehensive review of the SMV and its regulations, aimed at improving national financial market conditions and developing Panama's role as a regional financial hub, all while safeguarding investor protection. The SMV has also confirmed that it is working on the implementation of a risk-based supervision framework that will improve efficiency, and its continued commitment to the training of its personnel and investment in technology (for further details, see www.supervalores.gob.pa/attachments/article/10442/nota-de-prensa_06032020.pdf).

Challenges

The SMV is facing significant challenges as a result of both a continuously changing international regulatory environment and a slowdown of economic activity internationally and nationally. Like the Panamanian banking sector, the SMV will probably see a continuation of the consolidation trend in the financial services sector as a result of more stringent compliance requirements and challenging economic conditions.

Internationally, Panama continues to face pressure from the Financial Actions Task Force and the European Union, which recently placed the country on tax haven lists. These lists may lead to increased regulatory obligations for licensed broker-dealers, investment advisers and other financial services providers, and may also increase reporting requirements and cooperation with other regulators.

Interacting with the regulator

The SMV is a professionalised regulator that has experienced career officials and a board of directors that includes various private sector participants with industry experience.

The regulator is known for being fairly accessible and willing to coordinate calls and other informal communication in addition to more formal channels. The SMV has shown an interest in developing Panama as a regional financial hub, aiming to attract foreign securities willing to register their securities in Panama and list them on the BVP, while keeping in mind at all times the safety of the investing public. Nevertheless, in the context of ongoing investigations or other procedures, officials are expected to be more reserved in their involvement.

Many SMV officials can speak and work in English, but all formal communication with the regulator must be in Spanish, and all offering documents drafted in a foreign language must be translated into and presented in Spanish.

Notes for foreign investors

The SMV authorises broker-dealers licensed in Panama to have correspondent relationships with other broker-dealers licensed in certain recognised jurisdictions, with the goal of facilitating access to securities traded in such jurisdictions. The list of foreign jurisdictions recognised by the SMV can be found on the SMV's website at www.supervalores.gob.pa/files/Reglamentacion/Listado-Jurisdicciones-Reconocidas.pdf. In addition, under the SMV's regulations, financial instruments that have been publicly registered in such recognised foreign jurisdictions can be more easily registered in Panama. Non-Panamanian issuers must appoint a representative in Panama that will represent such issuer at the SMV and receive formal communications.

Other regulators it works closely with

Domestic

- Superintendencia de Bancos de Panamá (SBP): Superintendency of Banks;
- Superintendencia de Seguros y Reaseguros: Superintendency of Insurance and Reinsurance of Panama; and
- Unidad de Análisis Financiero (UAF): Financial Analysis Unit of Panama.

International

- International Organization of Securities Commissions (IOSCO);
- Council of Securities Regulators of the Americas (COSRA);
- Inter-American Development Bank (IDB); and
- foreign supervisory authorities for the sharing of supervisory information under the principles of reciprocity, appropriateness, national agreement and confidentiality.



Estif Aparicio

Arias, Fábrega & Fábrega

Estif Aparicio is an accomplished partner at Arias, Fábrega & Fábrega and as of 2020, he heads the firm's capital markets and banking group. Mr Aparicio has worked on many of the most complex cross-border financial transactions that have taken place in Panama in recent years. He has extensive experience in the areas of securities regulation; banking and finance; mergers, acquisitions and joint ventures; antitrust, trade and competition; and taxation. From 2004 to 2006, Mr Aparicio worked for the government as chief trade negotiator of all bilateral and multilateral free trade agreements. In this role, Mr Aparicio coordinated Panama's participation in the Doha Round of the World Trade Organisation, successfully negotiating free trade agreements with the US, Singapore and Chile. Mr Aparicio also worked for Sullivan & Cromwell LLP in New York, participating in capital markets, M&A and project finance transactions. Mr Aparicio has a Master of Law from the University of Houston Law Center and a Bachelor of Law from the University of Panama. He is a Fulbright scholar. Mr Aparicio is currently senior vice-chair of the International Bar Association's Latin American Regional Forum. He is admitted to the Panama and New York Bars.



Cedric Kinschots

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Cedric Kinschots has been an international associate of the firm since 2012. Mr Kinschots has worked extensively advising public and private clients, as well as leading local and international financial institutions, in the financing of key energy and infrastructure projects. Prior to joining the firm, Mr Kinschots worked as an attorney for Skadden, Arps, Slate, Meagher & Flom LLP in New York in the areas of M&A and corporate finance. Mr Kinschots obtained a Master of Laws in American law with a concentration in US corporate law and international business practice from Boston University School of Law in 2006, a Master of Laws in international banking and financial law with a concentration in securities law and transactions from Boston University School of Law in 1999, and a licentiate in law from the Catholic University of Leuven, Belgium in 1998. He is admitted to the Bar of the State of New York, and is fluent in Dutch, English, Spanish and French.



Established in 1914, Arias, Fábrega & Fábrega has been at the forefront of the legal profession, advising leading international financial institutions and multinational corporations, as well as some of the largest companies in Panama, for over 100 years. Our legal teams, organised into 30 practice areas led by truly specialised lawyers, offer our clients comprehensive and integrated legal services with a multidisciplinary approach. Our legal practice covers capital markets, banking and finance, mergers and acquisitions, corporations, regulatory work, government contracts, trade, competition and antitrust, real estate, environmental matters, employment relations, trust and estate planning, litigation, taxation and intellectual property. We are proud of our distinguished reputation for consistently providing the highest quality legal advice and for our unparalleled expertise in structuring complex, innovative and sophisticated transactions in Panama and the Latin American region.

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