Panama

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Regulatory framework

1 What are the principal governmental and regulatory policies that govern the banking sector?

The principal governmental and regulatory policies relating to the banking sector in Panama are ensuring the strength and efficiency of the banking system, strengthening and promoting appropriate conditions for the development of Panama as an international banking centre, promoting the public's trust in the banking system and ensuring the juridical equilibrium between the banking system and its customers.

2 Please summarise the primary statutes and regulations that govern the banking industry.

The primary statute governing the Panamanian banking industry is Decree Law No. 9 of 1998, as amended, which amendments have been consolidated into a reordered and renumbered unified text by Executive Decree No. 52 of 2008 (the Banking Law). The Banking Law grants the Superintendence of Banks (see question 3) the power to issue regulations, resolutions and letters that expand, explain and provide instructions as to compliance with, the provisions of the Banking Law.

The Banking Law requires that any person who engages in the banking business in or from the Republic of Panama shall obtain a banking licence. The banking business is defined as 'principally, the taking of resources from the public or financial institutions, by means of the acceptance of deposits or money or by any other means specified by the Superintendence of Banks or banking practices, and the use of such resources, at the bank's own risk and for its own account, to grant loans, make investments or any other transactions specified by the Superintendence of Banks'.

The Banking Law then sets forth provisions relating to the Superintendence of Banks (its creation, objectives, functions, governance and the career of bank supervisor), the banking system (banking licences, banking supervision, capital adequacy rules, liquidity requirements, external auditors, reporting requirements, prohibited activities, confidentiality, money-laundering and other crimes, and bank reorganisation and liquidation), penalties, the banking client and consumer protection. Many of these aspects of the Banking Law have been the subject of regulations, resolutions and letters of the Superintendence of Banks.

Other statutes have an impact on the banking industry, but such statutes would fall more within the realm of ancillary regulation. Examples of such statutes are the Negotiable Documents Law (Law No. 52 of 1917), the And/Or Bank Accounts Law (Law No. 42 of 1984), the Microfinance Law (Law No. 10 of 2002), the Electronic Signatures Law (Law No. 51 of 2008), the Credit Card Law (Law No. 81 of 2009) and certain consumer protection laws.

3 Which regulatory authorities are primarily responsible for overseeing banks?

The Superintendence of Banks is the authority primarily responsible for overseeing banks. The Superintendence of Banks is an autonomous institution of the state, with statutory existence, its own assets, and administrative, budgetary and financial independence. The legal representative of the Superintendence of Banks is the superintendent of banks, who is appointed for a period of five years, and this appointment may be extended for a second period of five years.

4 Describe the extent to which deposits are insured by the government. Describe the extent to which the government has taken an ownership interest in the banking sector and intends to maintain, increase or decrease that interest.

The Panamanian government does not insure any deposits. However, some depositors are granted priority by the Banking Law in the case of a liquidation of the bank (see question 16), and the Panamanian government put in place an emergency fund in 2009 to enhance the liquidity of banks (see question 7).

The Panamanian government has not taken any ownership interest in the banking sector, neither before nor after the crisis of 2008, other than its interest in certain 'official' banks, such as the Banco Nacional de Panamá, the Caja de Ahorros and the Banco Hipotecario Nacional. It is not currently contemplated that the Panamanian government increase or decrease its interest in the 'official' banks or in any other banks in the Panamanian banking sector.

5 Which legal and regulatory limitations apply to transactions between a bank and its affiliates? What constitutes an 'affiliate' for this purpose? Briefly describe the range of permissible and prohibited activities for financial institutions and whether there have been any changes to how those activities are classified.

The Banking Law and the regulations thereunder impose limitations on transactions between a bank or a bank holding company and certain related parties. The definition of 'related parties' for these purposes varies in accordance with each specific prohibited transaction, but includes, among others:

- any individual or entity that is part of the same economic group as such bank or bank holding company;
- any person or entity who controls, is controlled by or is under common control with such bank or bank holding company;
- the directors and the senior officers of such bank, such bank holding company or any other entity (including non-banking entities) that is part of the same economic group as such bank or bank holding company;
- shareholders holding at least 5 per cent of the voting shares of such bank or bank holding company;
- any entity at least one of whose shareholders owns at least 20 per cent of the voting shares thereof and also either is an officer or

director, or owns at least 5 per cent of the voting shares, of such bank or bank holding company;
- any entity of which such bank or bank holding company owns at least 20 per cent of its voting shares;
- the employees of such bank or bank holding company; and
- the spouse of any such related party.

In terms of lending limits, banks and bank holding companies may not grant to their applicable related parties:
- loans or other credit facilities secured solely with the shares of such bank or bank holding company;
- if the applicable related party is an employee, unsecured and unguaranteed loans or credit facilities to such employee in an amount exceeding the annual salary of such employee;
- loans or other credit facilities under pricing or other terms that are more favourable than the market;
- unsecured and unguaranteed credit facilities in excess of 5 per cent of its capital; or
- credit facilities in excess of 10 per cent of its capital secured by assets other than deposits maintained with such bank or bank holding company.

In addition, regardless of whether the borrower is a related party, the aggregate amount of unsecured and unguaranteed loans and credit facilities, and the aggregate amount of loans and credit facilities secured by assets other than deposits maintained with the applicable bank or bank holding company, shall not exceed 25 per cent of the capital of such bank or bank holding company. The amount of consolidated capital of the applicable bank or bank holding company is used for purposes of determining whether such loans or credit facilities exceed a certain percentage of the capital of such bank or bank holding company.

No changes have been made to the permissible and prohibited activities for financial institutions since the Banking Law was consolidated by Executive Decree No. 52 of 2008. With respect to prohibited activities, banks and bank holding companies may not:
- own or acquire shares in non-banking entities in excess of 25 per cent of the capital of such bank or bank holding company, except if acting as a trustee or as a result of enforcement of collateral security;
- purchase real estate, other than (i) for its operations or for the housing or recreation of its employees, (ii) to build housing or communities to be sold or (iii) as a result of enforcement of collateral security; or
- take deposits while insolvent.

Permissible activities depend on the type of banking licence that the particular bank holds. Banks holding a general licence may carry on banking business anywhere in Panama, as well as transactions that are consummated or have effects abroad. Banks holding an international licence may manage, from an office in Panama, transactions that are consummated or have their effects abroad. Banks holding a representation licence may establish in Panama a representation or liaison office for client relations and marketing purposes.

6 What are the principal regulatory challenges facing the banking industry?

In our view, the principal regulatory challenge currently faced by the banking industry in Panama will arise from the adjustments required by the adoption of the standards of the Basel II Accord.

7 How has regulation changed in response to the recent crisis in the banking industry?

Banking regulations have not changed in response to the recent crisis in the banking industry, although the overhaul of the Banking Law coincided with such crisis. The banking crisis has been milder in Panama than in other countries, and no bank in the Panamanian banking system has failed or needed a public bail-out, probably owing to the confluence of three causes: the Panamanian banking system had very low exposure to international 'toxic assets'; prior to the crisis, the Superintendence of Banks had imposed strict requirements relating to lending to the local real estate industry; and the Panamanian banking system has, by international standards, a very high level of liquidity.

The Panamanian government did put in place a financial stimulus programme in 2009, funded (because there is no central bank in Panama) through loans from a multilateral organisation and Banco Nacional de Panamá; these funds would then be loaned to any banks in the Panamanian banking system which so request. However, this financial stimulus programme has not been used by the banks in the Panamanian banking system.

8 In what ways do you anticipate the legal and regulatory policy changing over the next few years?

In our view, it is unlikely that Panamanian banking regulatory policy will change over the next few years. More probably, such policy will continue to evolve in a manner consistent with recent years. In particular, regulations will probably continue to adopt international standards of regulation, such as those recommended by the Basel II Accord, in order to strengthen the Panamanian banking system, including in respect of liquidity and emergency lines for banks as a safety net for systemic risk (taking into account that there is no central bank, and therefore no lender of last resort, in Panama), and to tighten requirements relating to the prevention of money-laundering and the financing of terrorism.

Supervision

9 How are banks supervised by their regulatory authorities? How often do these examinations occur and how extensive are they?

Supervision takes two forms: on-site inspections (also called in situ) and required reports. The on-site inspection of a bank is for the express purpose of determining the bank's financial situation and whether, during the course of its operations, the bank has complied with the Banking Law. The inspection may also cover the companies that are part of the same banking group (defined as any bank holding company and its direct and indirect subsidiaries that provide financial services, and also non-banking subsidiaries thereof that operate under common management) and, in some cases, non-banking affiliates of the banking group. On-site inspections are required to take place at least once every two years, but in practice they take place more frequently.

Banks also have an obligation to provide certain reports, which may be required by law or requested by the Superintendence of Banks from time to time. The regulation that sets forth the required reports lists four annual reports, one semi-annual report, 10 quarterly reports, 15 monthly reports and 5 weekly reports, including audited and unaudited financial statements; reports on assets, liabilities and results of operations; analyses and classifications of the bank's credit and investment portfolios; reconciliations of the capital account; liquidity reports; and movements of cash.

10 How do the regulatory authorities enforce banking laws and regulations?

In the event of a violation of the Banking Law and the regulations thereunder, the Superintendence of Banks may initially take certain measures in order to stop such violation. Such measures may include the separation from the applicable bank of a director, officer, manager or employee, the Superintendence of Banks' taking the operating and administrative control of the bank (see question 15) or even ordering the reorganisation of the bank (see question 16) if it is in the best interests of the depositors and creditors of the bank, or the cancellation of the bank's licence.

In addition, the Superintendence of Banks may impose fines of up to US$1 million, which may be increased from time to time if the applicable violation continues without remedy. These fines may be imposed on the bank itself or on its directors, officers, management and employees who took part in the violation. The superintendent of banks may also impose administrative sanctions for those violations, taking into account the gravity of the violation, whether there is recidivism and the amount of damage caused to third parties.

There are also criminal penalties for certain financial crimes, but those are governed by the Penal Code, not by the Banking Law. However, the fines imposed by the Superintendence of Banks or the sanctions imposed by the superintendent of banks are cumulative with any applicable penalties imposed by the Penal Code.

11 What are the most common enforcement issues and how have they been addressed by the regulators and the banks?

The enforcement issues that most concern the Superintendence of Banks relate to the correct classification of loans and the adequacy of reserves with respect thereto, the handling of off-balance-sheet operations, compliance with capital adequacy requirements and compliance with money-laundering prevention.

12 How has bank supervision changed in response to the recent crisis?

The actual supervision has not changed in response to the recent crisis, other than as a consequence of the overhaul of the Banking Law in 2008.

Capital requirements

13 Describe the legal and regulatory capital adequacy requirements for banks. Must banks make contingent capital arrangements?

Banks must have capital of at least 8 per cent of their risk-weighted assets and contingent off-balance-sheet operations, and tier 1 capital (*capital primario*) of at least 4 per cent of their risk-weighted assets and contingent off-balance-sheet operations, with a minimum of US$10 million in paid-in capital for general-licence banks and US$3 million in paid-in capital for international-licence banks. Banks are not required to make contingent capital arrangements.

14 How are the capital adequacy guidelines enforced?

See question 10.

15 What happens in the event that a bank becomes undercapitalised?

If the Superintendence of Banks determines that the capitalisation, solvency or liquidity of a bank has deteriorated to such an extent that action on the part of the Superintendence of Banks is necessary, the superintendent of banks may take the operating and administrative control of the bank. For these purposes, the superintendent of banks shall appoint an administrator for a period of 30 days, which period may under exceptional circumstances be extended for another 30 days. At the end of the investigation period, the superintendent of banks must determine whether the bank will be reorganised or liquidated (see question 16) or whether the control of the bank will be returned to its directors or legal representatives, as applicable.

16 What are the legal and regulatory processes in the event that a bank becomes insolvent?

An insolvent bank may be reorganised or liquidated, and either of those processes may be preceded by the taking of operating and administrative control of the bank by the superintendent of banks. If the bank is to be reorganised, the superintendent of banks must appoint a person or a board of not more than three persons to exercise administrative control of the bank during the reorganisation period. Such person or board must then develop a reorganisation plan with the objective of the bank's returning to an efficient and secure operation, keeping in mind the interests of the depositors and creditors, and those of the shareholders or partners. During the reorganisation period, the bank's shareholders, directors, officers and management will not be entitled to make any decisions relating thereto. Once the reorganisation process is satisfactorily completed, the administration and control of the bank will be returned to its directors or legal representatives, as applicable (although it is also possible that a sale of the bank to third parties be mandated, if it is found that the original directors, legal representatives or owners are not suited to continue the operations of the bank). However, if it is determined that the reorganisation process cannot be satisfactorily completed, the bank will be liquidated.

If the bank is to be liquidated, the superintendent of banks must appoint a person (the liquidator) or a board of not more than three persons to exercise the legal representation, the administration and the control of the bank during the liquidation period. The liquidator or the board will then guide the liquidation process taking into account the speed at which the bank's assets must be liquidated to satisfy the bank's creditors, the simplicity and transparency of the process, and the rights and priorities contemplated in the Banking Law. The Banking Law grants first priority to all new deposits that were made with the bank during the preceding reorganisation period, if any, and all deposits of less than US$10,000, which shall be returned by the liquidator or the board within 15 days of the implementation of the order to liquidate. In addition, the liquidator or the board has to promptly return to their owners the assets held by the bank that do not belong to the bank's estate, such as, among other things, assets held in trust or in safety deposit boxes. The Banking Law contains provisions designed to ensure that the interests of the depositors and creditors of the bank in liquidation are protected during the process, and specifies which assets are deemed to be assets of the bank's estate, which liabilities are required to be paid with such assets and in which order of priority. Once the bank is fully liquidated, it is dissolved and the appropriate notation is made in the Public Registry.

17 Have capital adequacy guidelines changed, or are they expected to change in the near future?

Capital adequacy guidelines changed in 2008, with the overhaul of the Banking Law. The capital adequacy guidelines were modernised to adapt them to the Basel II Accord.

Ownership restrictions and implications

18 Describe the legal and regulatory limitations regarding the types of entities and individuals that may own a controlling interest in a bank. What constitutes 'control' for this purpose?

One of the criteria used by the Superintendence of Banks in order to determine whether to grant a licence to a bank is the identity of that bank's shareholders. In respect of shareholders who are entities, there is no additional specification as to how their identity will influence the decision to grant or deny such licence, for which reason it is fair to say that there are no limitations regarding the types of entities that may own an interest, whether or not 'controlling', in a bank. There are, however, limitations regarding the individuals who may own an interest, whether or not 'controlling', in a bank. Such individual shareholders (and also the promoters, directors and officers of the bank) have to be of well-known moral and economic solvency, for which reason banking licences will be denied when any such individual shareholder (or promoter, director or officer):

- has been convicted of certain crimes (including money-laundering, drug-trafficking, corruption of public servants, terrorism and any other crimes against property or public faith (*fe pública*));
- is subject to a prohibition against the exercise of commerce, either in Panama or in any other country;
- has been declared bankrupt; or
- has been responsible (as determined by the Superintendence of Banks) for acts that resulted in the compulsory liquidation of a bank.

Because the identity of the shareholders is one of the criteria to be considered by the Superintendence of Banks when determining whether to grant a banking licence, licences are not issued to any bank if its capital stock, or the capital stock of the entity that would control such bank, is represented in whole or in part by bearer shares.

19 Are there any restrictions on foreign ownership of banks?

There are no restrictions specific to foreign ownership of banks.

20 What are the legal and regulatory implications for entities that control banks?

Because there are no legal or regulatory limitations on the types or even nationalities of entities that control banks, there are no legal or regulatory implications in that respect, either. However, entities that control banks are subject to inspection by the Superintendence of Banks.

21 What are the legal and regulatory duties and responsibilities of an entity or individual that controls a bank?

There are no legal or regulatory duties or responsibilities for any entity or individual that controls a bank. There are, however, restrictions imposed on the bank with respect to transactions with related parties (see question 5), which would limit the bank's ability to engage in transactions with any entity or individual that controls the bank.

22 What are the implications for a controlling entity or individual in the event that a bank becomes insolvent?

In the event that a bank becomes insolvent, the controlling entity or individuals lose control of the bank if the Superintendence of Banks acts to reorganise or liquidate the bank. That control will be returned at the end of a successful reorganisation process, but is permanently lost in connection with a liquidation process. If the liquidation is completed, the controlling entity or individuals might possibly recover a portion of the equity investment made in the bank.

Changes in control

23 Describe the regulatory approvals needed to acquire control of a bank. How is 'control' defined for this purpose?

The prior approval of the superintendent of banks is required for any transfer of the shares of a bank or bank holding company, to the extent that any such transfer results in a change of control or in a substantial influence on the applicable bank. A change of control is defined as the acquisition of all or a majority of the share capital of a bank, whether by one person or by a group of persons acting in concert, or the acquisition of the control of the administration of such bank, namely, the ability to appoint a majority of the board of directors, the president and the legal representative of the bank, or the chief executive officer (*gerente general*) or the highest-level officers. A substantial influence on a bank is defined as the acquisition, whether by one person or by a group of persons acting in concert, in one or more transactions, of 25 per cent or more of the share capital of such bank. The concept of 'acting in concert' does not require an express agreement.

24 Are the regulatory authorities receptive to foreign acquirers? How is the regulatory process different for a foreign acquirer?

The Superintendence of Banks is very receptive to foreign acquirers. This is consistent with the policy of developing Panama as an international banking centre. However, foreign acquirers may need to provide information that is not applicable to Panamanian acquirers (see, eg, item 22 of question 26), primarily because the Superintendence of Banks will rely on the home-country supervisor of the foreign acquirer for purposes of supervision. This does not imply discriminatory treatment but, on the contrary, more flexibility to the foreign acquirer to comply with the requirements of the foreign acquirer's home-country supervisor.

25 What factors are considered by the relevant regulatory authorities in considering an acquisition of control of bank?

In considering whether to approve any change of control or acquisition of substantial influence, the superintendent of banks will take into consideration, among other factors:

- whether the transaction will have an adverse effect on competition in the banking sector in Panama that outweighs any favourable effect on the public interest;
- if it is impossible to verify and confirm information about, or if any doubts exist with respect to, the reputation, integrity or experience of the petitioners;
- any doubts that may exist about the source of the funds to be used in the transaction;
- whether the money-laundering or terrorism-financing prevention programmes of the banks have noticeable weaknesses; and
- whether the transaction is advisable for the banking centre or the entities participating in the transaction, including in respect of the financial strength of the purchaser and the surviving entity.

26 Describe the required filings for an acquisition of control of a bank.

Any application for an authorisation to acquire or transfer shares must be presented, in one original and three copies, by an attorney of the interested parties. The application must include the following documents:

1. the power of attorney granted to the attorney;
2. the application;
3. minutes of the boards of directors approving the transaction;
4. good-standing certificates of the parties;
5. merger or share purchase agreement;
6. unaudited financial statements as of the last day of the month immediately preceding the date of the transaction;
7. corporate and operating structure resulting from the transaction;
8. information relating to the directors, officers and senior management after the transaction;
9. resumés and banking, commercial and personal references of the directors, officers and senior management whose information is not then on file with the Superintendence of Banks;
10. detailed report on the transaction, including:
    - share purchase agreement;
    - purchase price and number of shares;
    - percentage under the control of the purchaser after the transaction;

- an indication of whether any other agreements or parallel transactions exist;
- name of the seller and number of shares sold and retained after the transaction;

11 evidence of the availability and source of funds for the transaction;
12 information about any person who will receive any direct or indirect fee in connection with the transaction;
13 preliminary business plan (short-, medium- and long-term) that the purchaser intends to implement upon completion of the transaction;
14 information about the purchaser (identity, address, citizenship, occupation, resumé, banking, commercial and personal references, etc) (if the purchaser is an entity, this information is to be provided with respect to any equity-holder of the purchaser who holds 5 per cent or more of the equity interests in the purchaser);
15 information about the economic group or banking group of which the purchaser is part;
16 information about the financial activities of the economic group or banking group of which the purchaser is part, including the jurisdiction in which such activities take place;
17 a list of all the entities in which the purchaser and its subsidiaries own 20 per cent of the voting shares or 10 per cent of the voting rights, whether singly or together with other persons;
18 percentage of the ownership participation of the purchaser in the bank holding company that will hold the purchased shares;
19 audited consolidated financial statements of the purchaser and its economic group for the last two fiscal years;
20 name of the external auditor of the purchaser;
21 the latest annual report or similar publication relating to the purchaser and its economic group;
22 if the purchaser is a foreign bank or economic group that includes foreign banks, a certification from the home-country supervisor of the foreign bank in respect of the viability of such bank;
23 affidavit in respect of the truth and completeness of the information;
24 cheque for US$5,000; and
25 any other document, information or requirement that the Superintendence of Banks deems appropriate.

The following information does not need to be provided: items 12 to 21 if the purchaser is a bank subject to the regulation of the Superintendence of Banks and such information has already been provided as a result thereof, and items 4 to 16 and 18 if the acquisition is being made through a public tender offer and the information is included in the applicable prospectus.

27 What is the typical time frame for regulatory approval for both a domestic and a foreign acquirer?

The legally required period is 30 days for purchasers that are regulated by the Superintendence of Banks and 60 days for purchasers that are not regulated by the Superintendence of Banks, each of which periods may be extended by up to 30 additional days.

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