The Mergers & Acquisitions Review

Sixth Edition

Editor
Simon Robinson

Law Business Research

The Mergers & Acquisitions Review

SIXTH EDITION

Reproduced with permission from Law Business Research Ltd.

This article was first published in The Mergers & Acquisitions Review, 6th edition
(published in August 2012 – editor Simon Robinson).

For further information please email
Adam.Sargent@lbresearch.com

The Mergers & Acquisitions Review

Sixth Edition

Editor
Simon Robinson

Law Business Research Ltd

The Law Reviews

PUBLISHER
Gideon Roberton

BUSINESS DEVELOPMENT MANAGER
Adam Sargent

MARKETING MANAGERS
Nick Barette, Katherine Jablonowska, Alexandra Wan

PUBLISHING ASSISTANT
Lucy Brewer

EDITORIAL ASSISTANT
Lydia Gerges

PRODUCTION MANAGER
Adam Myers

PRODUCTION EDITOR
Joanne Morley

SUBEDITOR
Caroline Rawson

EDITOR-IN-CHIEF
Callum Campbell

MANAGING DIRECTOR
Richard Davey

Published in the United Kingdom
by Law Business Research Ltd, London
87 Lancaster Road, London, W11 1QQ, UK

ISBN 978-1-907606-41-0

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following law firms for their learned assistance throughout the preparation of this book:

AABØ-EVENSEN & CO ADVOKATFIRMA

ABDULAZIZ ALGASIM LAW FIRM
IN ASSOCIATION WITH ALLEN & OVERY LLP

ADVOKAADIBÜROO GLIMSTEDT OÜ

ÆLEX

AGUILAR CASTILLO LOVE

ANDERSON MŌRI & TOMOTSUNE

ARIAS, FÁBREGA & FÁBREGA

BEITEN BURKHARDT RECHTSANWALTSGESELLSCHAFT MBH

BERNOTAS & DOMINAS GLIMSTEDT

BOWMAN GILFILLAN INC

BOYANOV & CO

BREDIN PRAT

BRIGARD & URRUTIA ABOGADOS SA

BULBOACA & ASOCIATII SCA

CRAVATH, SWAINE & MOORE LLP

DEBEVOISE & PLIMPTON LLP

DF ADVOCATES

DITTMAR & INDRENIUS

DRYLLERAKIS & ASSOCIATES

ELİG ATTORNEYS-AT-LAW

EUBELIUS

F CASTELO BRANCO & ASSOCIADOS

FONTES, TARSO RIBEIRO ADVOGADOS

GLIMSTEDT & PARTNERS

GORRISSEN FEDERSPIEL

HARNEYS ARISTODEMOU LOIZIDES YIOLITIS LLC

HARNEY, WESTWOOD & RIEGELS

HENGELER MUELLER

JIMÉNEZ DE ARÉCHAGA, VIANA & BRAUSE

KBH KAANUUN

KEMPHOOGSTAD, S.R.O.

KIM & CHANG

KING & WOOD MALLESONS

KINSTELLAR S.R.O., ADVOKÁTNÍ KANCELÁŘ

MAKES & PARTNERS LAW FIRM

MANNHEIMER SWARTLING ADVOKATBYRÅ

MARVAL, O'FARRELL & MAIRAL

MATHESON ORMSBY PRENTICE

MNKS

MORAVČEVIĆ VOJNOVIĆ ZDRAVKOVIĆ
IN COOPERATION WITH SCHÖNHERR

NAGY ÉS TRÓCSÁNYI ÜGYVÉDI IRODA

NOERR OOO

OSLER, HOSKIN & HARCOURT LLP

PIROLA PENNUTO ZEI
& ASSOCIATI

RUBIO LEGUÍA NORMAND

RUŽIČKA CSEKES, S.R.O.

S HOROWITZ & CO

SALANS

SANTAMARINA Y STETA, S.C.

SCHELLENBERG WITTMER

SCHÖNHERR RECHTSANWÄLTE GMBH

SHEARMAN & STERLING LLP

SLAUGHTER AND MAY

STAMFORD LAW CORPORATION

TORRES, PLAZ & ARAUJO

URÍA MENÉNDEZ

VAN DOORNE

VASIL KISIL & PARTNERS

WILSON SONSINI GOODRICH & ROSATI

YOUNG CONAWAY STARGATT & TAYLOR, LLP

CONTENTS

EDITOR'S PREFACE

Deal-making has remained on the agenda in the past year, although the first half of 2011 showed a stronger performance than the second half, which saw a significant fall in transactional activity. In the wake of continuing economic uncertainty, opportunities for acquisitions remain limited to companies and institutions on a stable financial footing. At the same time, corporates are beginning to focus on their core business and looking for ways to return value. Valuations remain favourably low for purchasers, and the prospect of striking a bargain makes cross-border M&A attractive for those who can afford it. While access to the loan market has remained difficult, cash-rich corporations have begun to swing the balance in their favour. Shareholder participation and a desire for control and accountability are on the rise, and an atmosphere of increased regulation, reform and austerity is building. We remain in a state of geopolitical flux, and these factors continue to complicate the global economic scenario. The period of widespread unrest in the Middle East and North Africa seems to be reaching a settled conclusion, although the situation in Syria (and possibly Mali and Sudan) is still volatile. A number of countries have seen fresh elections and a transition of leadership, including France and Russia, and a change of leadership in China is expected following the 18th National People's Congress this autumn, when the US presidential elections will also take place. The sovereign debt crisis and the ongoing uncertainty over the fate of the eurozone are further contributing to the lack of confidence in the markets.

All is not doom and gloom, however, and whereas the global picture remains difficult, there are signs of hope. The emerging markets have shown a persistent growth in outbound investment, spurred on by a desire to build a more prominent global presence and for the purpose of accessing new markets. European targets remain of interest to both US and Middle and Far-Eastern buyers. Inbound investment from the emerging markets into both Africa and Australia is on the rise, and this has strengthened activity in the energy, mining and utilities sector. The technology, media and telecoms sector has also shown signs of promise with some high-profile deals, and must be watched with interest in the coming year. There is hope that, as political and economic factors stabilise, M&A activity will once more gather pace and momentum, and enter a new era of resurgence. We shall see.

Once again, I would like to thank the contributors for their continued support in producing this book. As you read the following chapters, one hopes the spectre of the years past will provide a basis for understanding, and the prospect of years to come will bring hope and optimism.

Simon Robinson
Slaughter and May
London
August 2012

Chapter 44

PANAMA

Julianne Canavaggio[1]

I OVERVIEW OF M&A ACTIVITY

Even after the financial crisis, Panama has shown unprecedented growth in its economy, and the figures from the National Census Institute of Panama concerning the gross domestic product of 2011 have shown a 10.6 per cent increase on 2010, surpassing national and international expectations. The GDP of Panama increased from $26.59 billion in 2010 to $30.677 billion in 2011, indicating growth of 15.4 per cent in only one year, making Panama the highest-performing country in Latin America[2] – double-digit growth has only ever been experienced before the recent financial crisis.

Construction increased greatly in Panama, especially in the non-residential sector with an increase of 15.3 per cent in economic growth. Another impressive increase has been within the insurance market, having reached record heights in 2011 and having shown a 250 per cent increase since 2004. The Panamanian Stock Exchange conducted $3.4 billion in transactions in 2011, up 27 per cent from the previous year. Corporate bonds ($1.4 billion) and government paper ($1.2 billion) were the leading categories.[3]

Large projects such as the estimated $100 million expansion of the International Tocumen Airport, the $1.6 billion construction of metropolitan transportation system, the $5.25 billion expansion of the Panama Canal and the 15.1 per cent growth of business in the Colon Free Trade Zone, due to increased re-exportation, have all been motivating factors in increased foreign investment in Panama.

International indexes generally rate Panama as one of the best countries in Latin America for business and investment.[4] This may be due to its encouragement of foreign

1 Julianne Canavaggio is a senior associate at Arias, Fábrega & Fábrega.

2 Juan R Cortes Dean, 9 March 2012: www.panamaeconomyinsight.com.pa/0209031201.html.

3 US Department of Commerce, 2011: http://export.gov/panama/doingbusinessinpanama/investinginpanama/.

4 Id.

investment through legal incentives. In 1998, the government of Panama enacted the Investment Stability Law, which, *inter alia*, guarantees foreign investors who invest at least $2 million in Panama equal treatment under the law to that given to their domestic competition. Under Law 41 (2007), Panama encourages multinational companies to open regional headquarters in Panama by offering various tax incentives. Sixty-three international companies have been established under this law as of 1 January 2012. [5]

On 28 June 2007, the United States and Panama signed the United States–Panama Trade Promotion Agreement ('TPA'). Panama approved the TPA on 11 July 2007. The US Congress approved implementing legislation on 12 October 2011, and President Obama signed it on 21October 2011.[6]

II GENERAL INTRODUCTION TO THE LEGAL FRAMEWORK FOR M&A

The relevant Panamanian laws and regulations governing business combinations include Law No. 32 of 1927 ('the Corporations Law'), Law No. 4 of 2009 ('the Limited Liability Company Law') and the Commercial Code, which is supplemented by the Civil Code. As combinations generally cause taxable events, the Tax Code and its regulations (especially Executive Decree 18 of 1994, which establishes a special regime regarding stock-for-stock mergers) and Law No. 18 of 2006, which created a special capital gains regime are also pertinent. In the case of publicly traded companies, Decree Law No. 1 of 1998 and its regulations ('the Securities Law') govern tender offers, proxy statements and rules of disclosure, among other matters.

Business combinations in Panama are usually structured as stock or asset purchases, tender offers, or mergers, but other techniques can also be used. One example is the capitalisation of stock of two operating companies to a holding company incorporated for that purpose with joint participation in the holding company. In the case of publicly traded companies, combinations usually involve a two-step process that begins with a tender offer (either for stock, cash or a combination of both) followed by an actual merger. Several recent bank mergers have followed this format.

III DEVELOPMENTS IN CORPORATE AND TAKEOVER LAW AND THEIR IMPACT

Corporate and takeover law can be divided into two kinds of transactions: mergers and stock and asset purchases. In the case of mergers, Panama law allows a company to be absorbed by another regardless of the place of incorporation of the firms (merger by absorption). It also allows two companies to merge forming a new consolidated body. Once a merger becomes effective, the absorbed company ceases to exist as a legal entity and the surviving company assumes all the assets, rights, licences, capital, liabilities and obligations of the absorbed company by universal succession. Unless the articles of incorporation state otherwise, a

5 Id.

6 Id.

merger agreement must be executed by a majority of the directors of each company and approved by the holders of a majority of issued and outstanding shares of each firm. The merger agreement must then be registered with the Registry of Companies in Panama to bring it into effect, unless a later effective date is defined in the merger agreement.

With stock and asset purchases, unless the articles of incorporation state otherwise, the acquisition of a company, regardless of whether it is structured as a stock or an asset purchase, generally requires approval from a majority of the directors of the acquiring company. On the other hand, the sale of a company, if it represents all or substantially all of the assets of the seller, generally requires approvals from both a majority of the directors and from the holders of the majority of all the issued and outstanding shares with the right to vote of the selling company.

IV FOREIGN INVOLVEMENT IN M&A TRANSACTIONS

The globalisation of markets and free-trade alliances has resulted in a general increase in the past few years in cross-border M&A activity. In almost all of the more recent M&A transactions in Panama, local companies have been the targets of foreign and multinational corporations. Political instability in nearby Latin American countries, especially Venezuela, Argentina, and Ecuador, has also been a substantial driver for inbound investments into Panama, as individuals and companies seek to diversify their country risk.

Generally, there are no foreign ownership restrictions in Panama. Due to issues of national security and national interest concerns, however, ownership of local companies by foreign governments or nationals is restricted in certain industries including aviation, radio and TV, and retail trade, among others. In the case of the retail services market, foreign participation is generally prohibited with very few exceptions.

V SIGNIFICANT TRANSACTIONS, KEY TRENDS AND HOT INDUSTRIES

Despite the global financial crisis, recent years have seen periods of unprecedented growth in the Panamanian economy. As previously mentioned, major multinational companies such as Procter & Gamble, Caterpillar, AES, Halliburton, LG, Hewlett-Packard, Maersk, Roche, Hyundai, Peugeot/Citroën, Pan-American Life Insurance Company, Western Union and 3M have taken advantage of incentives in taxation, immigration, labour and employment, enacted specifically to benefit multinationals who establish regional offices or headquarters in Panama.

Most important sectors of the Panamanian economy have been subject to cross-border acquisitions. The banking sector, which is Panama's stronghold, saw the sale of the BNP Paribas commercial, retail and private banking operations of its Panama branch to the Bank of Nova Scotia, Panama branch, and the reorganisation and purchase of Stanford Bank, which was the first banking reorganisation to be carried out in Panama. The second quarter of 2011 also saw the buyout of the majority stake in the successor to Stanford Bank, Balboa Bank and Trust Corp.

The Panama Stock Exchange (Bolsa de Valores de Panamá SA), and Latin Clear (Central Latinoamericana de Valores SA) went through a strategic reorganisation. The two exchanges became indirect wholly owned subsidiaries of Latinex Holdings Inc, a newly created corporation whose shares were registered with the Panama National Securities Commission and listed on the Panama Stock Exchange. The aims of the reorganisation were twofold, crystallising the evident synergies between the exchanges, and better positioning the two to compete as part of a unified group in the central American and Andean markets. The reorganisation was implemented through a complex array of transactions including reverse mergers, terminating the public listing and registration of both entities, and public registration of Latinex Holdings shares. The Panamanian Stock Exchange and Latin Clear are, respectively, the only licensed stock exchange and clearance and depositary agency in the country. The most significant banking groups and broker-dealers in Panama are participants in the Panamanian Stock Exchange and in Latin Clear. As of 31 December 2009, the balance of all assets under custody by Latin Clear was $4.6 billion and as of 31 March2010, the total amount of principal of the debt securities listed on the Panamanian Stock Exchange was approximately $2.8 billion. This was the first time that a reorganisation of this magnitude and complexity, involving the most important players of the Panama securities market, had been attempted in Panama.

In the aviation sector, LAN Airlines acquired 98.9 per cent of Aerovías de Integración Regional SA (AIRES), Colombia's second largest airline. In industrial services, Empresas Hopsa SA sold a majority interest in Mortero Seco Panama SA, a pre-mixed dry mortar plant, to local and regional investors.

In the ports sector, Oiltanking Colon SA a privately owned independent oil storage company, in connection with the acquisition of 100 per cent stake in Colon Port Terminal SA (CPT) and Colon Oil and Services, SA (COASSA). Both companies are engaged in storage terminal business and will be managed and operated by Oiltanking. The aim of the terminal is to accommodate the increasing demand for marine fuels by vessels transiting the Panama Canal and calling the ports in the area. The first phase of the terminal is currently under construction and will be commissioned in the third quarter of 2011. The terminal consists of 300,000 barrels of tank capacity for the storage and handling of marine fuels along with an exclusive 260 metre jetty with a draft of 12.5 metre and ability to receive PANAMAX vessels. Oiltanking Colon, SA is a wholly owned subsidiary of Oiltanking, GmbH, the second-largest independent tank storage provider for petroleum products, chemicals and gases world-wide. Oiltanking is a subsidiary of Marquard & Bahls AG, Germany, a leading petroleum company, privately owned. 2012 also saw the acquisition by ConSalfa SAS of an 80 per cent stake in Intercoastal Marine Inc. ConSalfa is a joint venture company between Colombia's Constructora ConConcreto and Chile's Salfa Corp; Intercoastal Marine Inc is a Panama-based maritime facilities constructor.

In the food and beverage industry, the two principal dairy players were sold to foreign investors. Sociedad de Alimentos de Primera (Bonlac), a leading player in fresh dairy products and fruit based beverages, was acquired by Colombia's Grupo Casa Luker. In 2011 Grupo Casa Luker also acquired the operations of the Café Duran Group, including those of Esteban Duran Amat, Torrefactora Coclé, Bianchi Vending Panamá, and Cafetales, the largest market player in coffee processing and distribution in Panama. The acquisition of Bonlac and Café Durán Group were the third and fourth acquisitions in Panama by Grupo Casa Luker; in 2005 they acquired Pascual, the leading local biscuit and sweet factory, and in 2008, through Pascual, Casa Luker acquired the pasta-manufacturing facilities of La Suprema. The second dairy player sold to foreign investors was Grupo Industrias Lácteas, mainly Industrias Lácteas SA (a leading company with a more than 50-year tradition in the Panamanian dairy and juice-based beverage categories), Conservas Panameñas Selectas, SA, Plásticos Modernos, SA and Elisia SA, to The Coca-Cola Company and Coca-Cola FEMSA, SAB de CV, the largest public bottler of Coca-Cola products in the world in terms of sales volume. This transaction represents an important step in the growth strategy of Coca-Cola FEMSA. It is the first incursion of The Coca-Cola Company in the milk and value-added dairy products category, one of the most dynamic segments in terms of scale and value in the non-alcoholic beverage industry in Latin America. It further reinforces the company's non-carbonated product portfolio in the juice-based beverage segment.

In the pharmaceutical industry, Interbank Group, acting through a subsidiary in Panama acquired Inkafarma, a Peruvian chain of pharmacies, with nearly 400 retail stores in the country and 30 per cent of the market share, through a series of Inkafarma companies located in multiple jurisdictions. In the automotive industry, Chile's Grupo Gildemeister acquired a majority stake in the Grupo Los Tres Holding Corp. and its automobile distribution business throughout Central America, through the acquisition of Grupo Los Tres Holding Corp and its numerous operating and off-shore subsidiaries throughout Central America. In early 2012, Financiera Automotriz SA (FASA) sold 100 per cent of its stake in Panameña de Motores SA, the Nissan and Infiniti distributor in Panama, as well as several minority equity stakes in car dealership operations in the Central American region, to Excel Automotriz.[7]

In recent years, M&A deals in Panama have had many drivers. Certain deals have been instigated by the need to consolidate in a very competitive environment, others have been undertaken to control costs and exploit synergies or have been fuelled by the global economy and the need to develop new international markets and expand market share. Some of the largest transactions in Central America have included a Panamanian target company, independent of whether it is an operating company or a holding company registered in Panama with operations in the region.

VI FINANCING OF M&A: MAIN SOURCES AND DEVELOPMENTS

M&A financing in Panama is usually provided by local and international banks, as there are no limitations in Panama on international lending. It can also come from local and international securities issues. It is worth noting, however, that due to the global economic crisis, banks have taken a more cautious approach to lending.

VII EMPLOYMENT LAW

In a merger scenario, the surviving company assumes the labour relations and liabilities of the absorbed company. Similarly, in stock acquisitions, the target company retains responsibility for labour relations and liabilities. Asset acquisitions, however, present a

7 Excel Automotriz is the distributor of 18 brands in Central America: Toyota, Mitsubishi, Lexus, Cadillac, KIA, Chevrolet, BMW, Mini, Honda, Hino, Daihatsu, Hyundai, Mazda, Ford, Volkswagen, Nissan, Fuso and Renault.

special case. If the sale comprises all or almost all of the assets, causing business operations to be transferred, both the buyer of the assets – the new employer – and the seller are, for a one year period following the acquisition, jointly and severally responsible for all labour liabilities that arise prior to the acquisition of the assets or business. Furthermore, employees retain all their rights and benefits and no adverse changes can be made to their terms of employment. Thus, in many asset acquisitions and insofar as may be legally feasible, buyers require sellers to terminate all or certain labour relations as a precondition to closing a deal, in order to rehire some employees on more favourable terms. Labour unions and employees must be notified of the employer substitution even though they cannot prevent it from taking place.

VIII TAX LAW

One of the main components of any sell-side deal structuring is taxation. The structure of an acquisition is usually influenced to a large extent by the need to make the transaction tax effective for the seller, without causing adverse tax consequences to the buyer. As Panama generally follows a territorial system of taxation, only Panama-source income (generally income and capital gains realised in connection with a trade, business or real estate transaction in Panama) is taxable. Thus, mergers or acquisitions of companies organised in Panama that do not carry out any trade or business or own assets within the country are generally not taxable. Mergers or acquisitions are generally structured as either stock-for-stock transactions, stock-for-cash transactions, or a combination of both. Acquisitions can also be fashioned as a straight purchase of shares or a purchase of assets. A brief description of the tax treatment of each follows.

Stock-for-stock mergers are tax-free transactions, provided that (1) no cash is paid out (except up to 1 per cent of the value of the transaction for adjustments of fractional shares) and (2) certain other accounting parameters are followed. In a stock-for-stock merger, the shareholders of the merged company keep a tax basis on the shares of the surviving company that they receive equal to their average pre-merger tax basis of the surrendered shares. Stock-for-cash mergers, on the other hand, are not tax-free transactions. Gains realised by sellers in these transactions, which are deemed to be gains from Panama-source income, are subject to a 10 per cent capital gains tax. The capital gain is the difference between the selling price allocated to Panamanian sources and the tax basis of the shares owned by the selling shareholder.

Furthermore, the law requires buyers to withhold 5 per cent of the total purchase price allocated to Panamanian sources (as an advance of the capital gains tax) and directly pay this amount to the tax authorities within 10 days of the transfer of the shares. It is important to note that the buyers, as well as the target company whose shares are being acquired, are jointly and severally liable with the buyer for the payment of the 5 per cent advance capital gains withholding. If the 10 per cent capital gains tax on the realised capital gain is less than the 5 per cent advance withholding, sellers can request a tax credit for the difference. This credit must be used the same fiscal year as the capital gain is realised. Alternatively, sellers can choose to treat the 5 per cent advance capital gains withholding as the final and definitive capital gains tax payable in connection with the sale of the shares. In practice, most sellers pay the 5 per cent purchase price capital gains withholding, as it is difficult to request and use the tax credit on the same year that the transaction took place. Notably, although the capital gains tax only applies to gains from Panamanian sources, to date no rules regarding purchase price or income allocation have been enacted.

Stock purchases are subject to a 10 per cent capital gains tax on Panama source gains in the same manner that stock for cash mergers are taxed, including the 5 per cent advance withholding obligation. The Department of Revenue of the Ministry of Economy and Finance has repeatedly taken the position that capital gains tax applies to the sale of the shares not only of Panamanian corporations, but also of any upstream company, regardless of its jurisdiction of incorporation, as long as this company, directly or through one or more subsidiaries, has Panama-source income.

Asset purchases are generally taxable events in Panama. Gains realised on the sale or disposition of assets located in Panama are generally subject to a 10 per cent capital gains tax. In addition, the transfer of chattel property, such as inventory or equipment, is subject to a value added tax equal to 7 per cent, and the transfer of real estate is subject to a 2 per cent transfer tax. In addition, buyers of an ongoing business concern must be aware that they will become liable for past taxes of the business, even if they are buying the assets of the business and not the stock of the company.

Frequently, M&A transactions involve either a pre-closing dividend to exclude assets from the transaction or a post-closing dividend to distribute gains to shareholders. In this regard, as a general rule, corporations in Panama are subject to a 10 per cent dividend tax (20 per cent if the shares are issued to bearer), on Panama-sourced income. Thus, income that is not Panama-source income is generally not subject to dividend tax in Panama. However, due to a recent tax reform, if the company paying the dividend engages in commercial or business activities in Panama that requires the company to obtain a business licence, then in addition to paying the 10 per cent dividend tax on Panama-source income, it is also subject to a 5 per cent dividend tax on non-Panama-sourced income.

Goodwill is another frequent point of conflict between buyers and sellers. Buyers generally want to be able to claim a tax deduction for the amortisation of any goodwill paid in the acquisition. However, amortisation of goodwill is only deductible in Panama if the seller recognises the goodwill as income on its annual tax return.

Companies with both Panama-source income and non-Panama-source income present a unique tax issue. Since Panama taxes only apply to Panama-source income, any gain realised on the sale or disposition of stock or assets of these companies should be allocated between the two kinds of income (Panama and non-Panama-source). In the case of an asset sale, such an allocation is relatively easy to do, since it is based upon the location of the asset. However, Panama has yet to adopt rules of income allocation for stock purchases. As such, in cross-border stock purchases or mergers, transactions are often structured so that the sale of Panama-based assets or operations are segregated and sold separately from the operations in other jurisdictions.

IX COMPETITION LAW

In Panama, there is no mandatory merger control approval process; the process is entirely voluntary. That said, with the new antitrust and competition regime established by Law 45 of 2007 ('the Competition Law'), economic concentrations created by the mergers of conglomerates within the Panamanian market have come under increasing, albeit still limited, scrutiny by regulators. The Competition Law prohibits economic concentrations whose effects may unreasonably restrict or harm free competition. An 'economic concentration' is defined as the merger, acquisition of control, or any other act pursuant to which corporations, associations, shares, trusts, establishments or any other kind of assets are combined, and which occurs between suppliers or potential suppliers, customers or potential customers, and other competing or potentially competing economic agents. The law applies to any acts or practices that may unreasonably restrict or harm free competition, and whose effects take place in Panama, regardless of where those acts have been carried out or perfected.

The Competition Law does not prohibit all economic concentrations but only those whose effects may unreasonably restrict or harm competition. In addition, the Competition Law expressly provides that the following business combinations shall not be deemed prohibited economic concentrations: (1) joint ventures formed for a definite period of time to carry out a particular project, which is also contemplated in other jurisdictions; (2) economic concentrations among competitors that do not have harmful effects on competition and the market; and (3) economic concentrations involving an economic agent that is insolvent, if certain conditions are met, which is, roughly speaking, equivalent to the failing company exemption prevalent in other jurisdictions.

Moreover, economic concentrations with restrictive effects on competition may obtain clearance from the Competition Authority if the restrictive effects of the concentrations are outweighed by their contribution to obtaining further efficiencies, such as: (1) improvements in the commercialisation and production systems; (2) fostering technical and economic progress; (3) improvements in the competitiveness of the industry; and (4) contributions to consumer interests.

If advance verification for the economic concentration is sought and approved, the economic concentration cannot be subsequently challenged. If no advance verification is sought, and after the consummation of the transaction the Competition Authority considers the economic concentration to unreasonably restrict or harm free competition, within three years following the effective date of the transaction the Competition Authority may file a lawsuit with a specialised superior court seeking that conditions be imposed on the parties to ensure competitiveness in the marketplace, or seeking a partial or complete divestiture of the concentration (or both).

X OUTLOOK

As Panama's growing economy continues to attract significant foreign direct investment, multinational corporations seeking to take advantage of the country's unique geographical position, its free market system, and investor-friendly climate, will cause the prevalence of cross-border mergers and acquisitions in Panama to increase. Undoubtedly, the body of legislation affecting M&A in Panama will continue to evolve as transactions involve more international parties and they become more and more complex.

Appendix 1

ABOUT THE AUTHORS

JULIANNE CANAVAGGIO
Arias, Fábrega & Fábrega
ARIFA senior associate Julianne Canavaggio has been instrumental in assisting leading multinational and Panamanian companies in key cross-border M&A transactions.

Listed among leading players identified by the top publication *Latin Lawyer 250*, Ms Canavaggio received top reviews from clients and peers alike for her sustained achievements and has been praised as a lawyer 'increasing in prominence'.

Her practice focuses on mergers, acquisitions and joint ventures; corporations; banking and finance; and securities regulation.

Before joining ARIFA, Ms Canavaggio worked as an associate with Baker & McKenzie in Houston.

She obtained her AB from Harvard University in 2003 and her JD from Tulane University Law School in 2006.

ARIAS, FÁBREGA & FÁBREGA
Plaza 2000, 16th Floor, 50th Street
PO Box 0816-01098
Panama
Tel: +507 205 7000
Fax: +507 205 7001
panama@arifa.com
www.arifa.com